



[2018] UKFTT 317 (PC)

REF/2016/0662

**PROPERTY CHAMBER, LAND REGISTRATION
FIRST-TIER TRIBUNAL**

LAND REGISTRATION ACT 2002

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

BETWEEN

**Alan Lewis Lockley (1)
Jill Lockley (2)**

APPLICANTS

and

**Desideria Zumbe (1)
Albert Zumbe (2)**

RESPONDENTS

**Property Address: 23 Glendon Way, Dorridge, Solihull B93 8SY
Title Number: WM604361**

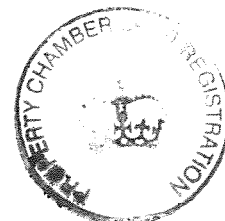
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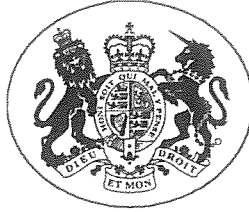
1. The registrar is directed to give effect to the Applicants' application dated 12 April 2016 as if the First Respondent's objection had not been made
2. Pursuant to rule 40(3)(a) of the Tribunals Procedure (First-tier Tribunals) Property Chamber) Rules 2013, if the restriction dated 20 November 2015 in favour of the First Respondent is still on the register of title to the property the registrar is directed to cancel it.

Dated this 16 April 2018

By order of the Tribunal

Elizabeth Cooke





[2018] UKFTT 0317 (PC)

REF/2016/0662

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FIRST-TIER TRIBUNAL**

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BETWEEN

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RESPONDENTS

**Property Address: 23 Glendon Way, Dorridge, Solihull B93 8SY
Title Number: WM604361**

**Before Judge Elizabeth Cooke
Sitting at: the Employment Tribunal, Birmingham
On: 9 April 2018**

Applicant Representation: Mr Richard Morgan of Harrison Clark Rickerbys
The Respondents appeared in person

DECISION

KEYWORDS

Charging order – beneficial interest – declaration of trust

1. The Applicants, Mr and Mrs Lockley, have obtained a charging order against the interest of the Second Respondent, Albert Zumbe, in 23 Glendon Way, Dorridge, Solihull B93 8SY, registered with title number WM604361 (“the Dorridge property”). The order secures a judgment debt owed to them by him. They have applied to HM Land Registry to have the order protected by a restriction on the registered title to the Dorridge property, whose registered proprietor is the First Respondent, Desideria Zumbe.
2. The two Respondents are married, although they have been separated for some years. The First Respondent lives at the Dorridge property while the Second Respondent lives in Geneva. The First Respondent has objected to the application and the matter has been referred to the Land Registration Division of the First-tier Tribunal (“the LRD”) pursuant to section 73 of the Land Registration Act 2002. The Second Respondent has been joined as a party by order dated 12 December 2016.
3. I heard the reference in Birmingham on 9 April 2018. The Applicants were represented by Mr Richard Morgan of Harrison Clark Rickerbys Solicitors; the two Respondents appeared in person. Mr Zumbe asked to represent Mrs Zumbe, but in view of the conflict of interest between them I asked Mrs Zumbe to speak for herself, which she did.
4. The hearing bundle was delivered late to the Respondents; they should have had it 14 days before the hearing but it was received by Mrs Zumbe on 3 April and at an address for Mr Zumbe on the same date. Both said to me that they had not looked at it, Mr Zumbe because it was delivered late and Mrs Zumbe because she had children and grandchildren staying for Easter. The reason for the later delivery was that the Applicants had applied for an adjournment pending parallel proceedings in the High Court; the Tribunal declined to adjourn the hearing on 9 April. I decided that we should proceed using the bundle prepared by the Applicants, despite the late service, since I saw no reason why either Respondent should not have read it and there is nothing in the bundle that would not have been already familiar material to them. I asked them to let me know if in the course of the hearing anything unfamiliar to them was referred to, and they did not do so.
5. I have directed the registrar to respond to the Applicants’ application as if the First Respondent’s objections had not been made. In the paragraphs that follow I explain my reasons for doing so, first setting out the facts, then the legal issue that I have to

decide, then the Applicants' case, the relevant evidence and my findings of fact, and finally my analysis and conclusions.

6. Because in the course of my decision I have to refer to three people with the surname "Zumbe", I refer to the First and Second Respondents as "Albert" and "Desideria" throughout for the avoidance of confusion, and without intending any disrespect.

The facts

7. The following facts are not in dispute.
8. On 6 December 1994 Albert was registered as proprietor of the Dorridge property.
9. In 2011 the Applicants lent their life savings to Mr Samuel Zumbe, Albert's brother, secured by a charge on Samuel Zumbe's property in Leicestershire. That charge turned out to be worthless because a prior charge on the Leicestershire property was registered in favour of Albert. Mr and Mrs Lockley took proceedings against the two Zumbe brothers.
10. On 1 October 2015 Albert made an application to HM Land Registry for the entry of a restriction on the register of title to the Dorridge property, preventing the registration of any disposition of the property without Desideria's consent. In box 9 on the application form he stated that

"this restriction will remain in place until Albert Zumbe has settles [sic] his debts with Desideria Zumbe as outlined in the provisions of Trust Deed dated the 12th December 2008 which was signed by both Albert Zumbe and Desideria Zumbe."
11. In box 12, under the heading "Details of how the applicant's interest arose", Albert wrote:

"A Declaration of Trust between Albert Zumbe and Desideria Zumbe, for funds owed to Desideria Zumbe by Albert Zumbe, dated 12th December 2008 and signed by both parties."
12. On 15 October 2015 Recorder Khan in the Manchester County Court made an order setting aside Albert's charge on Samuel Zumbe's property, declaring that the Applicants' charge was a first charge and that their power of sale had arisen, ordering Samuel Zumbe to give possession forthwith, and ordering Albert to pay their costs of the action. He was also ordered to pay to them the sum of £80,000 on account of costs by 4pm on 7 November 2015. He has not done so.
13. On 10 November 2015 the Applicants applied for a charging order against Albert's interest in the Dorridge property, of which at that date he was the registered proprietor.

14. On 3 December in the Manchester County Court an interim charging order was made against Albert's interest in the Dorridge property.
15. On 11 December 2015 the interim charging order was sent by email to Albert; it was also sent to him by post care of Peter Hannaford & Co in Birmingham. Albert says that it was not validly served upon him. I did not hear argument from Mr Morgan about that because it is a point that must be taken in the charging order proceedings; I do not have jurisdiction to set aside the charging order. What is relevant, however, is the fact that the order was sent and that it is argued for the Applicants that therefore Albert knew about it on this date. I come back to the evidence about that later.
16. On 17 December 2015 Albert redeemed the mortgage on the Dorridge property; he said in cross-examination, and it is not disputed, that the amount required to redeem the mortgage was in the region of £10,000 - £15,000.
17. On 18 December 2015 a transfer in Form TR1 was executed by Albert, transferring the Dorridge property to Desideria. Under "Consideration" the transferor ticked the box stating "The transfer is not for money or anything that has a monetary value". The transfer was registered on 21 December 2015; the property was stated to be worth £600,000.
18. On 22 December 2015 the Applicants' solicitors applied for the entry of a restriction in Form K to protect the interim charging order. They were informed by Land Registry, by letter dated 6 January 2016, of the transfer to Desideria.
19. A hearing was listed for 2 February 2016 for the charging order to be made final. Albert wrote to the court on 7 January 2016 and again on 18 January asking for an adjournment; he made no mention either of a declaration of trust or of the transfer, though in the second letter he did say that he had assured his wife when they separated that she could live there and that the property would be transferred to her, and he said that there had been a documented and witnessed agreement to that effect.
20. At the hearing on 2 February 2016 Albert attended and explained that the property had been transferred to Desideria on 18 December 2015. Nevertheless the charging order was made final.
21. On 12 April 2016 the Applicants applied again for a restriction to protect the final charging order, and it is that application and the First Respondent's objection thereto that gave rise to the reference to the LRD. Desideria sent a copy of a document purporting to be the declaration of trust dated 12 December 2012 to Land Registry with an email dated 29 April 2016 (I take that from Land Registry's case summary);

this was the first time such a declaration had been mentioned by either Respondent and the first that the Applicants had heard of it.

The issue to be decided

22. The question that I have to decide is whether Albert had a beneficial interest in the Dorridge property on 3 December 2015 on which the interim charging order could bite. If he did not, then that is the end of the matter. Any application to set aside the transfer would be futile if Albert had no beneficial interest in it by December 2015.
23. If Albert did have a beneficial interest in the Dorridge property on 3 December 2015 then that interest was charged by the interim charging order, despite the fact that the charge was not immediately protected by an entry on the register. And if his interest in the property was subject to a charge, then Desideria – as a transferee for no consideration – took the property subject to that charge when she was registered as proprietor on 21 December 2015, for reasons to be explained later in my decision.
24. Accordingly, I have to determine whether Albert had divested himself of all his beneficial interest in the Dorridge property, by means of a declaration of trust, prior to 3 December 2015.

The Applicants' case

25. The Applicants ask me to consider the sequence of events in 2015. Litigation against the Zumbe brothers was about to culminate in a hearing when Albert registered a restriction against the Dorridge property to protect Desideria's interest under a declaration of trust dated 12 December 2008, which he said set out details of debts owed by him to her. On 15 October 2015 judgment was given against Albert in the Manchester proceedings. An interim charging order was made and Albert was informed of it. Within the next seven days the mortgage on the Dorridge property is redeemed and the property is transferred to Desideria. Some months later the Applicants are informed of a declaration of trust dated 12 December 2012, of a different date from that referred to in the restriction entered in October and in different terms in that it makes no mention of any debt.
26. I am invited to conclude that there was no declaration of trust in either 2008 or 2012, and that the paper purporting to be the declaration dated 12 December 2012, produced at the hearing before me, is a sham, concocted much later in order to keep the property away from the Applicants as judgment creditors.

The evidence and my findings of fact

The evidence given by Albert and Desideria

27. Albert and Desideria each gave evidence; they called no witnesses.
28. It is not now in dispute that there was no 2008 declaration of trust. Albert says that he was away from home when he filled in the application for a restriction and that he simply made a genuine mistake. He was referring in that form to the 2012 declaration. He offered no explanation as to why he stated that the declaration set out details of debts when the 2012 declaration does not.
29. Albert's witness statement says nothing about those debts, but at the hearing he explained that back in 1976 or thereabouts, before they were married, Desideria lent him money to buy a house in Coventry and to build an extension and detached garage. Later, when relations between them were very difficult and they were in the course of separation, Desideria raised the issue of the loan and he agreed to give her the Dorridge property in order to write off the debt.
30. He also said that Desideria contributed to the Dorridge property by paying bills and helping to pay the mortgage and thereby had a beneficial interest in it, although there is no mention of this in either Respondent's witness statement.
31. When asked how much Desideria had lent him in the 1970s Albert was vague, but thought that it was about £30,000, and might be worth £150,000 or £200,000 now.
32. Desideria also gave evidence about the debt. She agreed it would have been about £30,000 but said she did not really remember. When asked how the transfer of a property worth £600,000 could be made in satisfaction of that level of debt, even allowing for inflation, she said that Albert was also seeking to be generous to their children, who would inherit the house. Albert had made no mention of this additional motivation.
33. Albert said that the Declaration of Trust was executed in 2012 when they were going through a very difficult time. He offered no explanation for the fact that it was not protected by the entry of a restriction until three years later. He said that he did not transfer legal title to Desideria at that stage because he could not do so until the mortgage in favour of Santander was paid off. He offered no explanation as to why he did not do so at that time.
34. A document purporting to be the original 2012 declaration was produced at the hearing. It bears both Respondent's signatures, Albert's witnessed by a Mr Peter Hannaford (who I was told is an accountant) and Desideria's by Mr Kevin Thornton-Lynch. Each of those witnesses has made a very brief witness statement for the Respondents; indeed Mr Hannaford has made two (dated 15 May 2017 and 28 March

20180. Mr Thornton-Lynch's is dated 19 January 2018. Each simply says that he witnessed the relevant signature on the Declaration of Trust dated 12 December 2012. Neither says that he witnessed the signature on that date; neither gives any detail of the place or time of the signature; neither was called to give evidence. Albert asked for an adjournment for the two witnesses to be called, which I refused on the basis that he had already had the opportunity to call them.

35. Desideria also gave evidence about the execution of the declaration of trust. She said it was signed at the Dorridge property; that Mr Lockley-Keith was there; that Albert and Mr Hannaford were not there and that she did not know where Albert had executed it.

36. Albert was adamant that he had known nothing of the interim charging order and that the rapid sequence of mortgage redemption and then transfer in December 2015 was pure coincidence. In cross-examination he was shown the email sent to him by Mr Morgan informing him of the interim charging order on 11 December 2015 and the receipt showing not only that it had been received on 16:28 but also that it had been read at 16:29. Albert said that he could not remember seeing it, that he was away from home at the time, that it was probably not important to him and that he might have scrolled down past it.

37. As to the reason why he made no mention of either the declaration of trust or the transfer when writing to the court to ask for an adjournment of the hearing to make the charging order final, he said that he had not realised they were relevant, He is not a lawyer, he says, and he does not know the right words to use.

My findings of fact

38. In his decision of 15 October 2015 Recorder Khan (at his paragraph 42) found that Albert was articulate and highly intelligent, well-prepared for the hearing, but argumentative and evasive when giving evidence; the Recorder rejected his evidence where it conflicted with that of Mr and Mrs Lockley (the Claimants in that action) and accepted his evidence only where it was consistent with contemporaneous documents or other objectively proven facts.

39. I agree entirely with the Recorder's assessment of Albert's credibility. I too found him articulate, but argumentative and evasive. He spoke at some length about the proceedings in the Manchester County Court and the unfairness of the decision made against him, despite my explanation that I did not have jurisdiction to re-open that decision. I note that he has been unsuccessful in his attempts either to appeal that decision or to have Land Registry's administrative actions judicially reviewed. He

claims that he has complained to the police about fraud by Mr and Mrs Lockley. He was vague about past events and unspecific about his dealings with Desideria. I found his evidence wholly implausible on the following points.

40. First, I do not believe that he made a mistake in the application for a restriction in October 2015. He referred to a 2008 declaration of trust which set out details of debts. That was not the 2012 declaration (which does not contain any such details); it was a fictitious document of which no physical copy was ever fabricated. I do not believe he made a mistake because he was well aware of the importance of what he was doing. He is a seasoned participant in litigation. He took a full part in the Manchester County Court proceedings in which a mortgage that he purported to hold over Samuel Zumbe's property was found to be a fabrication; he knew before the hearing what was at stake and he knew how debts are secured on property. I find that he applied to have a restriction entered against the Dorridge property in October 2015 on the basis of a fictitious declaration of trust in 2008, as a precaution in case the Manchester proceedings went against him.
41. Next, I do not believe that Albert was unaware of the interim charging order. I find that Albert opened and read the email copy of the interim order sent to him on 11 December 2015. It is known that he opened it because the receipt says so, and he is certainly not someone who would ignore events in litigation. I find that he was probably also informed by Peter Hannaford & Co of the copy sent by post on the same date, when it arrived.
42. The events of the following week speak for themselves. I find that in response to the charging order Albert made haste to redeem the mortgage and transfer the Dorridge property to Desideria.
43. As to the document purporting to be a declaration of trust dated 12 December 2012 I find that it is a sham, fabricated after the charging order was made final and of no legal effect. For Albert to fabricate a declaration of trust is entirely consistent with his conduct in the events that led to the Manchester proceedings in which he was found to have fabricated a mortgage, and entirely consistent with his pretence that there was a 2008 trust deed in his application to Land Registry in October 2015.
44. I find that the document purporting to be the 2012 declaration was not written until after the charging order was made final because if a declaration had existed in physical form before then – even a fabricated document – it is inconceivable that Albert would not have mentioned it in his letters to the court dated 7 and 18 January 2016 asking for

an adjournment, and equally beyond belief that he would not have produced it nor even mentioned it at the hearing on 2 February 2016. The idea that he did not know what to say is, again, implausible; he understood about legal and beneficial ownership, he knew about trust deeds, he knew that the only possible effective answer to the charging order was to say “the property was not mine when the order was made” and to produce – or at least to refer to - the declaration of trust to demonstrate that fact.

45. I find that the statements of the two witnesses were true as far as they go; but I note that neither has said when he witnessed the signature. Nor was either called to attend the hearing, and I do not believe Albert’s statement that he did not know there was any need for them to do so.

46. As to Desideria’s part in these events, I find that she colluded with Albert. She has submitted very brief statements indicating that the property is hers and that she does not agree with the entry of the restriction. She said that at the hearing that the declaration of trust was executed in 2012; but my finding about that document means that she executed it in 2016 and that she is therefore a party to the deception that Albert has endeavoured to practice upon the Applicants and the Tribunal.

Analysis and conclusions

47. I have found that there was no declaration of trust dated 12 December 2012. The document purporting to be that declaration is a sham, written in 2016 in order to defeat the charging order, albeit not until after the charging order was made final. It has no effect.

48. It is important to appreciate that regardless of whether or not it was registered, the interim charging order made on 3 December 2015 did charge Albert’s interest in the Dorridge property. It was not protected on the register and (in accordance with section 29 of the Land Registration Act 2002) it would therefore not bind subsequent purchasers of the land, but it bound Albert from the moment it was made.

49. Desideria was not a purchaser. The transfer of 18 December 2015 was a gratuitous transfer. Section 29 gives no protection to a volunteer transferee; accordingly priority is determined in accordance with the common law (section 28 of the Land Registration Act 2002).

50. At common law Desideria took the property subject to the prior charge; she obtained the legal estate in the Dorridge property pursuant to section 58 of the Land Registration Act 2002, but could only have taken free of the prior charging order if she had been a bona fide purchaser of the legal estate without notice of the charging order.

But it is clear from the face of the transfer that she was not a purchaser; the transfer was gratuitous. Even if she took a beneficial interest under the transfer of 18 December 2015 – and whether she did, and the extent to which she did, remain undecided – she took it subject to the charge in favour of the Applicants, who are entitled to enforce it against her in the usual way.

51. Moreover the Applicants are entitled to have the charging order protected by a restriction so that they will have notice of any proposed disposition, in order to enable them to require their judgment debt (and the associated costs) to be satisfied out of the proceeds of a disposition. I have therefore directed the registrar to respond to the application as if the objection had not been made.
52. I note that there is no question of Desideria being made homeless as a result. Albert made much of the fact that he has other assets, including a share in a company with assets of £150,000, and I take it therefore that he is well able to satisfy the debt without there being any need for a sale, but if there is the judgment debt represents a small part of the Dorridge property's worth.
53. It appears that there remains on the register, after the registration of the Second Respondent as proprietor in December 2015, the restriction applied for by Desideria in October 2015. As that related to a 2008 declaration of trust which did not exist I have found to be a sham, I also direct the registrar to remove it from the register.
54. The Applicants are entitled to their costs of this reference to the LRD. I have given the Respondents 28 days from the date of the hearing (at which I gave my decision, while reserving written reasons) to object either to paying the costs or to the amount claimed by the Applicants in their schedule, served with the skeleton argument. Albert suggested that they should not have to pay the cost of the bundle because it was served late; I rejected that submission on the basis that he was not disadvantaged by the late service.

Dated this 16 April 2018

By order of the Tribunal

Elizabeth COOKE

