

[2018] UKFTT 573 (PC)

REF/ 2014/0018

PROPERTY CHAMBER, LAND REGISTRATION DIVISION  
FIRST-TIER TRIBUNAL

LAND REGISTRATION ACT 2002

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

BETWEEN

(1) Warren George Christopher Garrett  
(2) Shirley Henrietta Duncan

APPLICANTS

and

Robert Garrett

RESPONDENT

Property Address: 3 Grappenhall Road, Great Sutton, Ellesmere Port,  
Cheshire CH65 0AA

Title Number: CH517191

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ORDER

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The Tribunal orders that the Chief Land Registrar do cancel the application of the first-named Applicant, Warren George Christopher Garrett dated 29 May 2013 for alteration of the register of title number CH517191 in Form AP1 dated 28 May 2013.

Dated this 24<sup>th</sup> August 2018

*Michael Michell*

BY ORDER OF THE TRIBUNAL





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**RESPONDENT**

**Property Address: 3 Grappenhall Road, Great Sutton, Ellesmere Port,  
Cheshire CH65 0AA**

**Title Number: CH517191**

**Before: Judge Michell**

**Sitting at: Liverpool Civil and Family Court**

**On: 21<sup>st</sup> and 22<sup>nd</sup> May 2018**

**Applicant Representation: Mr Warren Garrett in person and for Mrs Shirley Duncan  
Respondent Representation: Mr Green, counsel, instructed by Jacobs Solicitors Ltd.**

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**DECISION**

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*APPLICATION TO ALTER REGISTER TO REMOVE CHARGE – APPLICANTS ALLEGING DECEASED PROPRIETOR DID NOT EXECUTE CHARGE- WHETHER CHARGOR'S SIGNATURE FORGED*

1. Mr Warren Garrett, the first-named Applicant, applied to HM Land Registry on 29<sup>th</sup> May 2013 for alteration of the register of title number CH517191 being the title to 3 Grappenhall Road, Great Sutton (“the Property”) to remove a charge from the register. The charge is dated 15<sup>th</sup> December 2003 and was registered on 13<sup>th</sup> February 2004. I shall refer to it as “the Charge”. The sole registered proprietor of the Property was Warren Garrett’s mother, the late Kathleen Henrietta Garrett (“Mrs Garrett”). Warren Garrett and Shirley Duncan are the personal representatives of the estate of Mrs Garrett. Shirley Duncan was added as an additional Applicant by order of the Tribunal. Warren Garrett alleges that the signature of his mother on the Charge is a forgery. The registered proprietor of the Charge is Robert Garrett. Warren Garrett and Robert Garrett are brothers. Shirley Duncan is their sister. Robert Garrett objected to the application. He denies that the signature of his mother on the Charge is a forgery. The matter was referred to the Tribunal for determination.

*Application to Adjourn*

2. At the start of the hearing Warren Garrett applied to adjourn the hearing on three grounds. He firstly applied to adjourn the hearing on the grounds that he was suffering from stress. He produced a letter from an NHS Mental Health Team. It is unfortunate but common that proceedings before the Tribunal can cause stress to the parties. The letter was not signed by a psychiatrist or other doctor. It did not say when Warren Garrett would be in such a condition that he would not find the hearing stressful. I therefore refused the application to adjourn on this ground.

3. Secondly, Warren Garrett applied to adjourn the hearing on the grounds that Robert Garrett had not complied with the direction for disclosure. I found that Robert Garrett had complied with his disclosure obligation by serving his list of documents by email on Warren Garrett and by sending the list with copies of the documents on the list to the address in London that Warren Garrett had given. Warren Garrett had not given notice of a change of address. All but 18 of the documents on the disclosure list were in the trial bundles. I adjourned the hearing at 3pm on the first day to 10 am the following day, so as to give Warren Garrett an opportunity to look at those 8 documents before the hearing resumed.

4. Thirdly, Warren Garrett applied to adjourn the hearing so that the personal representatives of Mrs Garrett could obtain a *Beddoes* order so that they could be indemnified out of the estate of Mrs Garrett for any costs they might be ordered to pay to Robert Garrett. Warren Garrett said that he did not know that Robert Garrett would be represented at the hearing by solicitors and counsel until shortly before the hearing. I refused an adjournment on this ground. The personal representatives could have made an application if he saw fit to the Court for a *Beddoes* order at any time prior to the hearing. Warren Garrett should have known that Robert Garrett could have decided to instruct solicitors and counsel at any time prior to the hearing and thereby expose the personal representatives to the risk of being ordered to pay costs of an amount greater than those recoverable by a litigant in person.

#### The Charge

5. The Property was formerly a council house owned by The Ellesmere Port and Neston Borough Council. Mrs Garrett was a secure tenant of the Property. The Council conveyed the Property to Mrs Garrett by a conveyance dated 15<sup>th</sup> December 2003 made pursuant to Part V of the Housing Act 1985. Mrs Garrett was registered as proprietor on 13<sup>th</sup> February 2004. On the same date two charges were registered. The first was a charge under s. 156 of the Housing Act 1985 to secure the liability under the covenant in the conveyance to repay the amount of the discount Mrs Garrett received from the purchase price in the event that the discount becomes repayable. The second is the Charge.

6. The Charge recites that Robert Garrett had agreed to lend Mrs Garrett the sum of £21,000 upon having the repayment secured on the terms of the Charge. The Charge contains a covenant by the late Mrs Garrett to repay the sum of £21,000 advanced together with interest by equal half yearly payments on 1<sup>st</sup> January and 1<sup>st</sup> July in each year. Below what purports to be the signature of the late Mrs Garrett on the mortgage is a signature as witness of "BL Coombes" of 19 Grafton Road, Ellesmere Port.

7. There is a document headed "Declaration of Trust" dated 15<sup>th</sup> December 2003 and said to be made between the late Mrs Garrett and Robert Garrett which states that the late Mrs Garrett had received a discount of £47,000, that the costs of purchasing the Property were £21,000, and that Robert Garrett provided the £21,000 purchase monies and the costs of purchase. It includes a declaration that the late Mrs Garrett holds the Property on trust for

Robert Garrett absolutely but also includes a provision that the proceeds of sale after payment of any deposit and the mortgage should be paid to Robert Garrett. It includes further recitals (1) that Robert Garrett had contributed to the purchase price partly as an investment and partly to enable him and Mrs Garrett to live at the Property otherwise than as Council tenants; that Robert Garrett intended that Mrs Garrett should live in the Property for so long as she wished rent free; and that Mrs Garrett acknowledged that the discount should enure “primarily” for the benefit of Robert Garrett and that she would have been unable to buy without his financial assistance. The Trust Deed then provides that the late Mrs Garrett may continue to live at the Property for as long as she wishes provided that she pays all the outgoings, keeps it insured and complies with all covenants and conditions affecting the Property but that Robert Garrett is to pay ½ the outgoings and ½ the costs of insurance while he lives at the Property. The signature on the trust deed purporting to be the signature of the late Mrs Garrett is witnessed by “BL Coombes” of 19 Grafton Road, Ellesmere Port. Warren Garrett says that the late Mrs Garrett did not sign the Declaration of Trust and that the signature on it is a forgery.

#### Background

8. The background is as follows. Mrs Garrett (together with her late husband) was a tenant of the Property from 1959. Mrs Garrett had six adult children but at the relevant time, only Robert Garrett was living at home. Under the provisions of the Housing Act 1985 Mrs Garrett had a right to buy the Property from the Council at a discount. Mrs Garrett may have had in mind the possibility of purchasing the Property as early as 1999 for on the 18<sup>th</sup> February 1999 she made a will including a provision giving such interest as she might have in the Property to her trustees on trust to allow Robert Garrett to continue to live in the Property for up to 5 years and thereafter to hold on trust for her six children, Robert Garrett, Shirley Royle, Warren Garrett, Timothy Green, Alma Garrett and Michael Garrett.

9. Mrs Garrett considered exercising her right to buy. She asked Warren Garrett to help her with the purchase and he agreed. It is common ground that in the discussions between Mrs Garrett and Warren Garrett, Mrs Garrett expressed some concern about what would happen to Robert Garrett because she was under some pressure from the local authority to move into sheltered accommodation. Warren Garrett had funds derived from the sale of a flat he owned in London. Warren Garrett provided a cheque for £18,000. That cheque was paid into a bank account in the name of Mr Michael Price. Mr Price had been a friend of Robert Garrett since shortly after Robert Garrett left school. There is a dispute between the parties as

to why the money was put into an account in the name of Mr Price. Robert Garrett's evidence is that this was done at the insistence of Warren Garrett who said he did not want the money to be traceable to him. Warren Garrett says that it was done so as not to prejudice Robert Garrett's ability to claim State benefits.

#### Exercise of Right to Buy

10. On 1<sup>st</sup> November 2001 Mrs Garrett applied to purchase the Property by giving notice in form RTB1. The price to be paid by Mrs Garrett was £21,000. This was calculated on the basis that the market value of the Property on 1<sup>st</sup> November 2001 was £47,000 (after disregarding tenants' improvements) and Mrs Garrett was entitled to a discount of £26,000 being the maximum permitted discount. Mrs Garrett agreed to purchase the Property for £21,000 and on 10<sup>th</sup> May 2002 the Council wrote to Mrs Garrett enclosing a standard form conveyance, a certificate of title and standard replies to enquiries.

11. There was then a delay of almost a year before further steps were taken towards purchasing the Property. In April 2003 Robert Garrett contacted a firm of solicitors called Blain Boland & Co at their Ellesmere Port office to ask them to act on the purchase of the Property. Emma Butler sent a client care letter to Mrs Garrett dated 22<sup>nd</sup> April 2003. In it she refers to "our telephone conversation of today". There is an attendance note of an attendance on Robert Garrett, recording that his mother was to buy the Property from the Council for £21,000; that Robert Garrett was providing the purchase money; that Robert Garrett believed that house was willed to him solely and the rest of the estate was to be divided between all 6 children. It states that Mrs Garrett was to enter into a trust deed to hold the Property on trust for Robert and that there was to be a mortgage in favour of Robert Garrett with no repayments and interest being rolled up. On 9<sup>th</sup> May 2003 Mr Michael Blain wrote to Mrs Garrett referring to "our attendance and discussions with you on the 7<sup>th</sup> instant concerning the purchase and in particular the funding of the purchase by a loan to be made by your son of £21,000 plus payment of your legal costs plus disbursements". Mr Blain wrote

"I would confirm that having seen you independently of your Son that we discussed the various options open to you and/or your Son to deal with the legalities of protecting the loan that he has made. I am writing to confirm, for the purpose of the file, rather than your Son having an unsecured basis for the loan it is proposed that he has a mortgage on the property for the loan. You and he will have to discuss if the loan is to be with or without interest and also discussions will need to take place as to

the circumstances in which a repayment of the loan can be triggered. In this regard I understand it is not proposed that you make monthly or regular payments on the loan but in general terms the principle is the loan is repaid at the end of an agreed period anyhow and/or on your demise”.

Mr Blain went on to state that it would be preferable if his partner acted for her “Son”. He also stated that Mrs Garrett ought to consider reviewing her will “as to her Son’s continued rights of occupation”.

7. On 3<sup>rd</sup> June 2003 Mr Boland wrote to Robert Garrett enclosing his terms of business and also enclosing a mortgage and declaration of trust. Mr Boland sent the mortgage and declaration of trust to Mr Blain on 12<sup>th</sup> June 2003. Mr Blain wrote to Mr Boland on 19<sup>th</sup> June 2003 saying that he would need to go to see Mrs Garrett to discuss the declaration of trust and mortgage. Mr Blain warned that Robert Garrett would be taxable on interest that was charged under the mortgage, even if it was not collected and suggested that the mortgage should be redrafted so that the right to interest was suspended while Robert Garrett remained in occupation of the Property. He asked Mr Boland to take further instructions and come back to him, whereupon Mr Blain would make arrangements to attend on Mrs Garrett.

8. Mr Boland replied to Mr Blain by letter dated 9<sup>th</sup> July 2003 stating that Robert Garrett wanted the interest provisions in the mortgage to remain.

9. There is a note of an attendance by Mr Blain on Mrs Garrett on 17<sup>th</sup> September 2003 to sign the conveyancing papers and “to discuss the mortgage deed and David’s Declaration of Trust”. The note says “The issue of mortgage are dealt with in the letter to David Boland”. The attendance note is dated 19<sup>th</sup> September 2003 and on the same day Mr Blain wrote to Mr Boland. His letter stated “As far as the mortgage deed itself is concerned this is approved in principle”. It goes on to state that Mrs Garrett feels that the interest should not be capitalised and that there should be a cap on the mortgage monies so that they would never exceed the market value of the Property at the date it is sold. The attendance note records that Mr Blain told Mrs Garrett that as regards the declaration of trust, she had to decide either effectively to give the Property to her son on completion of the purchase or only when she died. The attendance note states

“Her major concern throughout has been that her son should have a roof over his head and she did not want him to go into a Council flat which she had seen as a credential Agent Collector which she felt would be wholly unsuitable for him”.

Mr Blain recorded that he had discussed benefits and detriments with Mrs Garrett.

10. On 19<sup>th</sup> September 2003 Mr Blain wrote a long letter to Mrs Garrett discussing the benefits and detriments of agreeing on completion to hold the Property for Robert Garrett and making provision for him by her will. He referred in the letter to having had a general discussion with Mrs Garrett over the terms of the conveyance by the Council and the draft mortgage deed but said that the major issue discussed was whether she should effectively gift the Property subject to the mortgage immediately on purchase to be held under the trust deed or make provision for him in her will as to what is to happen to her interest in the Property.

11. On 26<sup>th</sup> September 2003, after having written to Robert Garrett on 22<sup>nd</sup> September 2003 seeking instructions, Mr Boland wrote to Mr Blain stating that the interest should be capitalized but that it could be agreed that there should be a cap on the mortgage so that the amount outstanding would not exceed the market value of the Property. Mr Blain wrote to Mrs Garrett on 6<sup>th</sup> October 2003 reporting on Mr Bolan’s letter of 26<sup>th</sup> September 2003 and asking for instructions as to whether Mrs Garrett wanted to go ahead with making the declaration of trust or making a will.

12. On the solicitors’ file is a letter dated 28<sup>th</sup> October 2003. The letter was typed by Robert Garrett and is signed “KH Garrett”. It states

“Having read the documentation you sent to me and the amendments made to the mortgage arrangement between my son and myself, I am now content to go ahead with the purchase of my home ...”.

Robert Garrett accepted in cross-examination that the words of the letter were his “to some extent” but he denied that he signed the letter in her name on her behalf. Mr Blain replied on 7<sup>th</sup> November 2003 asking Mrs Garrett to contact him as soon as possible to confirm which alternative she wished to follow, either a declaration of trust or dealing with her son’s interest by will. A letter dated 8<sup>th</sup> November 2003, typed by Robert Garrett and signed “KH Garrett” states “I am quite content to go ahead with both the Deed of Trust and mortgage agreement as they currently stand with the agreed change that the debt owed will not exceed the value of the property”. Warren Garrett did not accept that Mrs Garrett signed these letters.



13. On 17<sup>th</sup> November 2003 Mr Blain wrote to Mrs Garrett referring to “discussions last week” and enclosing the draft Declaration of Trust with additions and amendments he had proposed to Robert Garrett’s solicitor. These were the removal of reference to Mrs Garrett being responsible for the future maintenance and repair of the structure of the Property and adding a joint liability of Robert Garrett for some expenses while he jointly occupied the Property.

14. Under cover of a letter dated 1<sup>st</sup> December 2003 Mr Boland sent to Mr Blain the Declaration of Trust in duplicate and the mortgage deed, signed by Robert Garrett for signature by Mrs Garrett in readiness for completion. The letter included the following

“We are acting on the understanding that you will only use the funds to be provided by Mr Garrett against the signed and completed Mortgage Deed and Declaration of Trust in the forms enclosed. We will rely upon you to effect registration of the Mortgage”.

15. On 4<sup>th</sup> December 2003 Mr Blain wrote to Mrs Garrett. After informing Mrs Garrett that Robert Garrett had agreed the amendments to the Mortgage Deed and Declaration of Trust, Mr Blain wrote

“If you are happy to sign I should be pleased if you would sign the Declaration of Trust Deed in duplicate where indicated and have your signature witnessed by a none relative who should sign, print out their name and address, again where indicated. Please append your initials to the alteration in paragraph 5 in both copies. In view of the short time before completion of your purchase I should also be pleased if you produce this letter to your son and if he is happy to do so he should initial the amendments to paragraph 5 on both copies. S far as the Mortgage Deed is concerned then you merely need to sign this and have your signature witnessed as before. Please return both Deeds to me undated as soon as possible”.

16. Mr Blain wrote another letter on the same date to Mrs Garrett in which he said that the Council had agreed to complete on 15<sup>th</sup> December 2018, enclosed a completion statement and enclosed a Land Transaction Return, “completed so far as we are able at this stage”. He asked Mrs Garrett to check the information in the return and sign in box 71. In the copy of the Return produced at the hearing, an “x” had been placed against “no” in answer to the question “Is the purchaser acting as a trustee?”.

17. It appears from the attendance note made by Mr Blain dated 19<sup>th</sup> September 2003 that the conveyance was signed by Mrs Garrett on 17<sup>th</sup> September 2003. Mr Blain witnessed her signature.

#### Execution of the Declaration of Trust and Charge

18. In evidence were copies of the Charge and two duplicate Declaration of Trust Deeds. The Charge appears on its face to be validly executed. It purports to be signed as a deed by Mrs Garrett in the presence of "BL Coombes". It is common ground that BL Coombes is Mr Brian Coombes, a former boyfriend of Mrs Garrett's daughter. Miss Burton of Jacobs Solicitors, wrote to the Tribunal on 12<sup>th</sup> February 2014 stating that she had spoken to Mr Brian Coombes, that he had confirmed that he recalled being asked to witness Mrs Garrett's signature and had signed as a witness; that he knew Mrs Garrett very well and that Mrs Garrett "was not the sort to be told what to do". No witness statement made by Brian Coombes was served and Brian Coombes was not called to give evidence.

19. Robert Garrett's evidence was that he was present with Mrs Garrett in the living room of the Property when she signed the declaration of trust and that Brian Coombs was also present. He initialled the amendments made in paragraph 5 of the declaration of trust. He believed that he was present when Mrs Garrett signed the Charge. He thought Mrs Garrett signed the declaration of trust and the Charge at the same time but he could not be entirely sure.

#### Conclusions

20. The burden of proving that there is a mistake on the register lies with Warren Garrett. As he says that there is a mistake because Mrs Garrett did not sign the Charge, it is for him to prove that she did not sign the Charge. The Charge appears on its face to have been regularly executed and to be valid. Warren Garrett has not discharged the burden of proof. He has not shown that it is more likely than not that Mrs Garrett did not sign the Charge. I so find for the following reasons :

- (1) The documents on the file of Blain Boland show Mrs Garrett was aware that the purchase money was to be secured by a charge in favour of Robert Garrett. Mr Blain recorded in an attendance note of his meeting with Mrs Garrett on 17<sup>th</sup> September 2003 that he had discussed the charge and its terms with Mrs Garrett. I accept that he did so. It is utterly improbable that he would have made the attendance note in those terms if he had not

discussed the Charge with Mrs Garrett. Mr Blain wrote in his letter of 19<sup>th</sup> September 2003 to Mrs Garrett that he had discussed the mortgage deed with her. He would not have so stated in a letter to Mrs Garrett if he had not discussed the mortgage deed with her.

- (2) The correspondence shows that Mrs Garrett received advice from her solicitor about the terms of the Charge. That appears from the attendance note of 17<sup>th</sup> September 2003 and from the letters written by Mr Blain to Mrs Garrett on 19<sup>th</sup> and 26<sup>th</sup> September 2003.
- (3) The correspondence shows that Mrs Garrett agreed to enter into a mortgage in favour of Robert Garrett. That is most clear from the letter dated 28<sup>th</sup> October 2003.
- (4) Robert Garrett gave evidence that to the best of his recollection he was present when Mrs Garrett signed the Charge.
- (5) There is no evidence that Mrs Garrett did not sign the Charge. Warren Garrett was not present when the Charge is said to have been signed and there was no evidence from any witness of having seen any person sign the Charge using the name of Mrs Garrett.
- (6) Warren Garrett's assertion that Mrs Garrett did not ever mention to him in her lifetime that she had mortgaged the Property to Robert Garrett does not indicate it is more likely than not that she did not sign the Charge.

22. Warren Garrett submitted that the signature on the Charge was plainly not that of Mrs Garrett and he invited the Tribunal to compare it with the signatures on the conveyance and on the document Mrs Garrett signed to accept the right to buy offer from the Council. There was no expert handwriting evidence before the Tribunal and no application for expert evidence to be adduced. It is certainly not possible for the Tribunal to determine simply from looking itself at the signature on the Charge that it is not that of Mrs Garrett.

23. Many of the points made by Warren Garrett in argument were to the effect that Mrs Garrett could not have understood the effect of the Charge or must have been pressured into signing the mortgage. As I pointed at the hearing, the only issue before the Tribunal is whether or not Mrs Garrett signed the Charge. Warren Garrett had not made any application to set aside the Charge on the grounds that Mrs Garrett signed it as the result of undue influence or duress or that she did not know and approve of the terms of the Charge.

24. I should just note that on 1<sup>st</sup> June 2018 HM Land Registry wrote to the Tribunal to state that on 29<sup>th</sup> May 2018 it had received an application to enter a unilateral notice on the title to the Property. The completed UN1 form stated that the applicant was interested in the

property because there existed an agreement dated 15<sup>th</sup> December 2003 between Mrs Garrett, Robert Garrett and Warren Garrett relating to the transfer of the legal, equitable and beneficial interest affecting the land in the title. Warren Garrett and Shirley Duncan then wrote to HM Land Registry on 4<sup>th</sup> June 2018 stating that Warren Garrett had not made the application for the unilateral notice and had no knowledge of it. HM Land Registry replied on 4<sup>th</sup> June 2018 stating that the signature of Warren Garrett on the UN1 matched the signature of Warren Garrett on the letter of 4<sup>th</sup> June 2018. There then followed further correspondence between HM Land Registry and Warren Garrett and Shirley Duncan, copies of which was sent to the Tribunal by HM Land Registry. On 5<sup>th</sup> July 2018 HM Land Registry wrote to the Tribunal enclosing a copy of a letter of the same date sent to Warren Garrett in which HM Land Registry informed him that the application to enter the unilateral notice had been cancelled. The production of this Decision was delayed while the correspondence about the application for the unilateral notice was being exchanged. However, the making of the application and the subsequent correspondence has had no effect on the substance of this Decision.

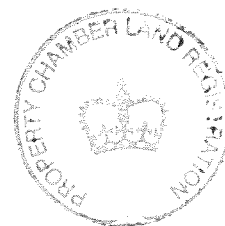
25. I am not satisfied on the evidence that Mrs Garrett did not sign the Charge. Accordingly, I do not find that there is a mistake on the register. The application of Warren Garrett and Shirley Duncan must be cancelled and I shall so direct.

#### Costs

26. My preliminary view is that the Applicants must pay the costs of Robert Garrett in these proceedings, such costs to be assessed (if not agreed) on the standard basis. The Applicants have not been successful in their application. The usual rule in proceedings before the Land Registration division of the Tribunal is that costs follow the event. I can see no reason why the normal rule should not apply in this case. Any party who wishes to submit that some different order should be made as to costs should serve written submissions on the Tribunal and on the other party by 5pm on 10<sup>th</sup> September 2018.

DATED this 24<sup>th</sup> August 2018

*Michael Mitchell*



BY ORDER OF THE TRIBUNAL