

[2018] UKFTT 0718 (PC)

PROPERTY CHAMBER  
FIRST-TIER TRIBUNAL  
LAND REGISTRATION DIVISION

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

LAND REGISTRATION ACT 2002

REF No 2016/0252  
BETWEEN

(1) TOMIZ UDDIN  
(2) PEARA BEGUM

Applicants

and

SHAHJAHAN MOHAMMED AL-SAMI

Respondent

Property: 8 Wentworth Road, Manor Park, East Ham (E12 5BD)

Title number: NGL98058

ORDER

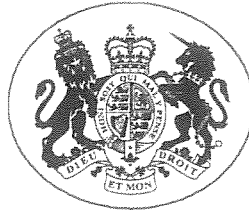
The Chief Land Registrar is ordered to give effect to the application dated 29 October 2015

BY ORDER OF THE TRIBUNAL

*Ann McAllister*

Dated this 19<sup>th</sup> day of October 2018





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Before: Judge McAllister  
Alfred Place  
London  
16 October 2018

Representation: The Applicants were represented by Martin Young of Counsel instructed by White Horse Solicitors. The Respondent was not represented and did not attend.

## DECISION

### Introduction

1. The Applicants are the registered owners of the property at 8 Wentworth Road, Manor Park, East Ham ('the Property'). They have been the registered owners since 14

August 1987. The proprietorship register contains a caution registered on 2 May 2002 in favour of the Respondent. The caution was lodged to protect an apparent Loan Agreement dated 10 October 1998 between the Respondent and the Applicants ('the Agreement').

2. By an application dated 29 October 2015 the Applicants applied to cancel the caution. The Respondent objected and the matter was referred to the Tribunal on 12 April 2016.
3. There have been a number of orders in this matter. There is an issue as to whether or not the Respondent has complied with an order dated 17 October 2016 whereby he was to be debarred from taking any further part in the proceedings unless he served an filed a Statement of Case by 7 November 2016. I have seen a hand written document purporting to be a Statement of Case from the Respondent dated 25 October 2016. This is not supported by a statement of truth. In the event which have happened, the issue as to whether or not the Respondent is debarred from taking part in the proceedings falls away.
4. On 20 September 2018 the parties were notified that the hearing would take place on 16 October 2018. On the day before the hearing, on 15 October 2018, the Applicants and the Tribunal received a number of emails from the Respondent and from the solicitors for his trustee in bankruptcy (Sprecher Grier). This was the first time either the Tribunal or the Applicants were made aware that the Respondent had been made bankrupt. The bankruptcy order was made, it seems, on 31 March 2012.
5. The emails included emails sent by the Respondent to the solicitors earlier in the year informing the trustees of the Agreement and stating that he had realised that he needed the consent of the trustees to proceed with the case before the Tribunal.
6. Of particular relevance is the email from the trustees' solicitor received at 12.07 on the 15 October 2018. This reads as follows: *'It appears that your clients are unaware that Mr Al-Sami was adjudged bankrupt some years ago and accordingly the benefit of the loan Mr Al-Sami states he made to Mr Uddin in 1998 is vested in his trustee in bankruptcy..... The Trustees make no comment as to whether a debt is owed by Mr Uddin to the estate however I am instructed that they have no interest in Mr Al-Sami's caution and it appears to us that in view of Mr Al-Sami's caution he is not entitled to seek to maintain his caution'*.
7. I should also add that at 22.12 on Friday 13 October 2018 Mr Al-Sami asked the Tribunal to delete his name as Respondent because, he said, the trustees were planning

to take steps to collect the debt themselves. It is correct that in an earlier letter to him (2 July 2018) the solicitors for the trustees had written to Mr Al Sami asking him to make an offer to purchase the debt allegedly owing to him, and stated that, in the absence of such an offer, they would take steps to collect the debt. However, the trustees' current position, having regard to no doubt to these contested proceedings, is as set out in the email of 15 October 2018.

8. In the circumstances, therefore, the appropriate order for me to make is to order the Chief Land Registrar to give effect to the Applicants' application to cancel the caution.
9. However, as the Applicants and their witness attended, I heard evidence from them and find, in any event and irrespective of Mr Al-Sami's bankruptcy and the position adopted by the trustees, that the First Applicant did not enter into the Agreement and did not borrow the sum of £8,800 or any sum.

## **Evidence**

10. I heard evidence from the Applicants and from Foyzur Rahman who confirmed their written statements. I have also had regard to the report of Hannah Pocock Bsc MSc of Key Forensic Services Limited.
11. The Agreement relied upon by the Respondent recites that he lent the sum of £8,800 to the First Applicant 'against the security' of the Property at a statutory interest for an unspecified period, and further that the First Applicant agreed to provide security on the Property. As Mr Young for the Applicants rightly points out, this agreement amounts at best to a contract to grant a charge.
12. The First Applicant's evidence is that he came to this country in 1971 as a poorly educated teenager to join his family. He was introduced to the Respondent in 1987 by his brother as someone who could assist him in getting a mortgage, which he did, and thereafter met him on a number of occasions. Matters became complicated when the First Applicant was accused of rape, though no charges were brought. The Respondent demanded payment from the First Applicant in respect of money which, he claimed, he had used to procure that the charges were dropped.
13. Following the registration of the caution in 2002, the First Applicant brought a claim in the Central London County Court against the Respondent, which, in the event he agreed to discontinue. No decision was made regarding the claim.

14. The First Applicant denied ever borrowing any money from the Respondent. Had he needed money he would have been able to borrow it from friends and family without interest.
15. His wife, the second Applicant, added little to her husband's evidence save to say that they have been married for 40 years and that her husband would never not pay debts which were properly due.
16. Mr Rahman accepts that the signature on the Agreement is his, but gave evidence to the effect that he had various dealings with the Respondent (who helped him with some immigration matters) and was asked by him, in connection with immigration issues, to sign two blank documents. He did not witness the First Applicant's signature on the Agreement.
17. Finally, the report of Hannah Pocock concluded that there is strong evidence that the First Applicant did not sign the questioned Agreement. She could not completely exclude the possibility that he signed the Agreement in a different way to that seen in the specimens but she would consider this unlikely. In her opinion, it is more likely that some person other than the First Applicant wrote the questioned signature.
18. Having regard to the above evidence, which I accept, I am satisfied that the First Applicant did not borrow £8,800 from the Respondent nor did he enter into the Agreement.

### Costs

19. The Applicants provided me with a schedule of costs in the sum of £19,050 which they seek to have assessed on an indemnity basis. The Respondent may make such representations or objections as he deems appropriate within 14 days of receipt of this decision, and I will thereafter consider what order to make without the need for a further hearing.

**BY ORDER OF THE TRIBUNAL**

*Ann McAlister*

**Dated this 19<sup>th</sup> day of October 2018.**

