[2019] UKFTT 0101 (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 2017/0202

BETWEEN

MOHINDER KAUR

Applicant

and

1. BALWINDER KUMAR MIDDA
2. RAM KISHAN MIDDA

Respondent

Property address: 7 St Mary's Road, Strood, Rochester ME2 4DF
Title number: K834710

Before: Judge Hargreaves

ORDER

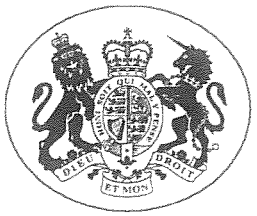
The Chief Land Registrar is directed to cancel the Applicant's application made on 27th April 2016 for a restriction in Form A in Form RX1 dated 19th April 2017.

BY ORDER OF THE TRIBUNAL

Sara Hargreaves

DATED 28th January 2019

PROPERTY CHAMBER LAND REGISTRATION



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Before: Judge Hargreaves
Alfred Place
26th November 2018
19th December 2018

Applicant representation: 26th November: Rebecca Moses, Athena Legal Consultancy Limited
19th December: James Osborne, direct professional access
First Respondent: Roger Mullis instructed by DBP Law Solicitors
Second Respondent: in person

DECISION

Key words – Applicant provided funds to R2 by agreement to provide part of the purchase price of the property – property acquired by R1 – R2 did not divulge source of funds at the

time to R1 – dispute as to whether Applicant acquired a beneficial interest in the property as she alleged or whether she loaned the money as R2 alleged – numerous evidential issues with the Applicant's case resolved in favour of R1

Cases and statutes cited
ss1, 8 Criminal Procedure Act 1865
Re Sharpe (a Bankrupt) [1980] 1 WLR 219

1. For the following reasons I direct the Chief Land Registrar to cancel the Applicant's application in Form RX1 to enter a restriction against the property, 7 St Mary's Road in Strood, which is registered in the name of the First Respondent. The Second Respondent is his father, who had known the Applicant for a number of years at the time of the purchase of the property.

2. References are to pages in the trial bundle (split in two parts) except where otherwise made clear.

3. Before dealing with the relevant facts and chronology, I should outline the progress of the hearing. It was originally listed for three days to be heard at the end of November 2018. On the first day of the hearing (26th November), the Applicant was represented by Rebecca Moses, an employed barrister working for Athena Legal Consultancy. At the start of the afternoon session Ms Moses explained she had only been instructed to attend for one day. No prior notice of this had been given to the Tribunal. That was highly inconvenient and unprofessional. Not only that, Ms Moses indicated that she was unable to continue in any event as she was not available for the next few days which had been listed, and she was leaving Athena Legal Consultancy. As the Applicant was being cross-examined at the time, the hearing continued throughout the afternoon. For reasons which will become clear, Mr Mullis's cross examination was detailed and lengthy. It was extended by the usual delays accompanying interpreted questions and answers. By the end of the session, which terminated well after 5pm, it was highly unfortunate that although the Applicant's cross-examination was finished, Ms Moses indicated she would want to re-examine. It was however too late to continue. The decision, after submissions from both sides, was to adjourn the next two

days on the grounds that the Applicant needed independent representation to continue, and the case was re-listed for 19th December shortly after. So Mr Osborne, instructed to appear on 19th December, was in a challenging position when it came to re-examine the Applicant at the start of 19th December, as he had not had the benefit of reading a transcript or (it appeared) a proper note of what had happened in November. Much of his re-examination was an attempt to re-open the Applicant's evidence rather than a re-examination on her cross-examination. The Applicant's evidence on the second day was delayed because the interpreter was extremely late.

4. The second day also finished late. It was agreed that counsel would file closing submissions by 9th January and brief responses to each other's points by 11th January. I am grateful to counsel for meeting those deadlines, though the Applicant's final response was settled by the Applicant's son Sid Kaur.

5. The manner in which the case was presented in terms of the Applicant's statement of case and witness statement gave rise to a specific submission by Mr Mullis which I have to deal with below.

6. Before turning to that, a further preliminary observation is that there are many unanswered questions about this case and its background and in particular about the Applicant's finances and dealings, as well as the nature of the relationship between the Applicant and the First Respondent (and I exclude any personal relationship from that that). In particular, whilst it appears to be common ground that the Applicant is owed money by the Second Respondent subject to any limitation periods (using the word "owed" neutrally at this stage), there appears to be little or no indication from him as to when that might be paid if he considers himself liable for the balance, even though the debt is a critical part of the First Respondent's case in defence to the Applicant's case that she has a beneficial interest in the property. That said, the unanswered questions are not critical to the decisions I have to make to deal with the reference, and I am satisfied that on the facts that I can find, the Applicant has failed to make out her case on the balance of probabilities.

7. By way of brief outline, the basic facts are as follows. The Second Respondent and Applicant met in 1989. The Applicant's case is that she had moved to Gillingham in Kent after her divorce, and was alienated from her children at the time, barely making

a living. She met and trusted the Second Respondent, as an influential member of her community. She worked for him as seamstress, though the details are unclear; she also said she picked strawberries for a living. In September 1989 the Second Respondent sold 14 East Street, Gillingham to the Applicant for £54,000 and she was registered as proprietor as "Mohinder Kaur Chumber" (1/93). That is where she lived until relatively recently. Ten years later in 1999 she wanted to invest in property and she bought 125 Kingswood Road, Gillingham for £19,000, paying cash (1/6-9). She sold Kingswood Road in October 2002 for £44,502.50, and received the proceeds of sale (1/10-12). The Applicant's case now is that she was pressurised to sell Kingswood Road by the Second Respondent to generate cash. There is some evidence (unclear) that the Second Respondent loaned the Applicant money to renovate Kingswood Road, which was tenanted and generated an income for the Applicant, and that she owes or owed him some money. The amount of money is disputed. No details of any use to me emerged at the hearing.

8. One unusual aspect of the trial was that it only transpired (ie as far as I was concerned) after the first day of the hearing that she had transferred Kingswood Road to the First Respondent who sold it again in August 2003 for £93,000. However, Sid Kaur later confirmed in his oral evidence that the Applicant might have told him some time before the hearing that she had sold Kingswood Road to the First Respondent. In the end, it is a non-issue, but indicated that the parties' financial dealings or relationships were more extensive that they had originally disclosed, for reasons which were not entirely clear or explained. In my judgment the First Respondent had no idea who the Applicant was (until late 2014) and probably cared less: he was starting to dabble in property investment and his father produced Kingsland Road for him to buy, which he did. He made a swift profit which enabled him to repay the Second Respondent as far as I can tell. The Applicant cannot prove that this was all part of a conspiracy to defraud her, as convenient as it might otherwise appear to be.

9. In the meantime, while the Applicant had the proceeds of sale as cash in various bank accounts (as to which she was cross-examined in great detail to solid effect as far as her credibility is concerned), the First Respondent noticed 7 St Mary's Road for sale in early 2003 ("the property") and agreed to pay the asking price of £159,995. Wallwork & Co were instructed to act for the purchaser and it appears to have taken

them until the end of March 2003 to understand that the purchaser would be the First, not the Second Respondent, from whom they seem to have been taking instructions (see generally 2/16-215, the conveyancing file). Looking at the Wallwork conveyancing file overall, there was nothing sinister in this: both the Respondents had the same surname, lived at the same address, the solicitors took their instructions from the Second Respondent until clarification was required and provided. The First Respondent was busy and frequently left matters in the hands of his father on whom he relied for advice and cash. Wallwork & Co were indifferent to the identity of the buyer and there seem to have been no interest in the real source of the cash funds some of which they received directly from the building societies. I agree with Mr Mullis that an examination of the Wallwork file does not cast light on the transaction either way. The First Respondent needed cash and a mortgage to complete the purchase. He was not going to live there, it was an investment, and one mortgagee's report described the property as "virtually uninhabitable" even in 2005. (The Respondents and their families have lived at all material times together at 2 Cliffe Road, Strood.) The Respondents say that the Second Respondent agreed to lend his son £80,000 at 5% interest pa. There is no evidence that the Applicant and First Respondent ever met, at least at the time or prior to the acquisition of the property, or at least in relation to its acquisition.

10. It is common ground that at the Second Respondent's request, the Applicant transferred cash to the buyer's solicitors, Wallwork & Co, as follows. The First Respondent was short of cash to pay a 5% deposit and asked his father for help. The Second Respondent asked the Applicant to transfer £5000 by CHAPS from a Nationwide account to Wallwork & Co. It is agreed that she did. See 1/16, account 0590/218518427, account in the name of Mohinder Kaur. The memorandum of sale is at 2/98. Of the purchase price of £159, 500, a deposit of £7,999.50 was paid. The completion statement of 9th May 2003 (1/58) records that £80,000 was provided by Kensington Mortgage Company and the balance due on completion in cash from the First Respondent was £75, 549.29. In cross examination the Second Respondent said he went to the bank with the Applicant to fill in the details of the payee, as to which she had no interest. She never contacted Wallwork & Co.

11. The Applicant then paid various amounts by cheque to Wallwork & Co from three different Nationwide BS accounts as follows. On 20th May 2003 she obtained a cheque for £2100 from account "500470/0671 Mrs M Kaur" (1/213). On the same day she obtained a cheque in the sum of £50,990 from account "500471/0671 Mrs MK Kauldhar" (1/214), and also for £3,470 from account "500472/0671 Mrs MK Chumber" (1/217). Finally she obtained a counter cheque from an Abbey National account in the name of Mrs MK Kauldhar for £1300 (1/218). These total £62,860. The balance was provided in cash from sources undisclosed by the Applicant except she said it was from various other accounts or cash. It makes little difference to the substance of the case whether the Applicant provided £80,000 or £85,000 as she alleges, except so far as evidentially in casting a question mark over the Applicant's command of detail. But apart from making a cash contribution to the purchase on request, there is no evidence of any particular conversations about a joint investment or venture at the time she handed over the money, or even that she knew what it was for.

12. The sale completed soon after the above transactions on 27th May 2003 (1/58). On 25th May 2003 the Second Respondent signed a promissory note (1/17) agreeing to pay the Applicant (address stated to be 125 Kingswood Road, somewhat oddly) £80,000 by two instalments of £40,000 on 25th November 2004 and 25th May 2006 plus an additional £6000 on either of those dates being interest calculated at 5% pa, with provisions for payments in default. There is a dispute as to who drafted the note (they each say the other did) but no dispute that the Applicant retained a copy in a drawer at home. It is the only contemporaneous evidence of an agreement between the Applicant and Second Respondent. So the deal on the Respondents' case was settled within a week as a money transaction.

13. The Second Respondent says he kept a notebook recording the repayments he made to the Applicant. I saw the original notebook, empty apart from the page copied at 1/99, which records amounts allegedly repaid to the Applicant in cash which she collected from the Second Respondent's shop (which she denies) totalling £43,500 between 21st July 2003 and 31st October 2005. This is a dispute which depends on the oral evidence, there being no other documentary evidence to support either party's contentions. Given that the First Respondent repaid his father £79,000 by cheque on

9th September 2003 (1/82), the latter had (on the face of it) plenty of cash to meet the repayments set out in the promissory note. The Second Respondent says there was a row about money with the Applicant in 2006 and their relationship ended, a version she accepts. Mr Osborne says the book and its record are a sham, but the end of the payments coincides with the start of a rupture in the relationship between the Applicant and the Second Respondent.

14. In 2008 the Second Respondent drafted a deed of trust the effect of which was to declare the First Respondent as trustee of the property for the Second Respondent (1/116-7), backed up with a restriction entered in March 2009 (1/39).

15. After this, there is evidence that the Applicant began to investigate how to recoup her money (putting it broadly). As the Applicant presented herself to the tribunal as a litigant who needs an interpreter, it is interesting to note the first of the letters from Bassets solicitors dated 21st September 2010 (1/18) which is addressed to her and refers to a meeting which appears to have occurred without an intermediary. The letter is significant because it recites that the Applicant: (1) "explained to me that you lent [the Second Respondent] a sum of £85,000 .. to enable him to purchase a property. You stated that initially ... you were going to purchase the property together but it later turned out that [the Second Respondent] transferred the title of the property into his sole name ... and now it is in his and his son's name" and (2) "[the Second Respondent] has provided you with a written statement in which he confirms he owes you £80,000 and that he will be paying this by instalments. Thus far you have not received any payment from him ....." It appears that the Applicant produced the promissory note or at least referred to it.

16. Next (1/20) is a letter dated 9th May 2012 from Davis Simmonds & Donaghey recording that the Applicant had attended to discuss (1) "giving money" to the [Second Respondent] "on the promise that it would be returned" (but had not) (2) this was "seemingly a loan agreement" with repayment to be in two weeks "and the property was to be held in joint names for the purpose of converting the property into flats and sold with the profits to be split equally" (3) trusting [the Second Respondent] to place your name on the property register (4) finding out that the property was registered in the name of the First Respondent. Again the solicitor had the loan agreement. The writer pointed out that there were really two possibilities, a loan or a

claim to an interest in the property. Point (2) should be noted, but it refers to a conversion, not adding an extra storey. The Applicant did not proceed.

17. The Applicant's son, Sid Kaur, discovered the story of the money in the summer of 2014, after his mother had consulted solicitors. So the Applicant's contact with solicitors as evidenced above is important and corroborative evidence of the line she was taking then, which leans to the "loan" argument. He started to seek recompense (on the basis amongst other things that no repayments had been made) and that included approaching the Second Respondent and his family in what can realistically be described as an unpleasant manner, including posting the note at 1/84 through their door. That was threatening and refers to a loan, not a beneficial interest. His explanation was not attractive but I do not think it adds anything to this decision to make findings on the Respondents' daughters' evidence about his alleged intimidatory behaviour: the fact that he had filmed the encounters and offered to show the film in court (still on his mobile phone it appears) without informing the Respondents that he had the film or disclosing it until towards the end of the hearing was again unattractive to say the least. I declined to view the film. But I accept the evidence of Sweena Baddan (1/120) and Meena Midda (1/123) so far as they say Sid Kaur talked about a loan, when they met him. The Second Respondent's restriction would have been cancelled on his application in August 2014 (he failed to answer a requisition), he showed the abusive note to his son, and informed him about the source of the money for the property. His evidence about the deed of trust and cancelling the restriction was not particularly convincing either, as there are other ways to protect an investment (see his statement of case at 1/64, paragraph 3, and the First Respondent's explanation at 1/77).

18. This application was made to HMLR in April 2016. The primary issue is whether the Applicant can establish her claim to a beneficial interest in the property. She also alleges that she was forced to sell Kingswood Road to generate cash and that the Respondents defrauded her of £80,000 (or £85,000 on her case). There are subsidiary factual issues as to who created the promissory note and what if any monies were repaid.

19. Mr Mullis's first submission is that as a preliminary point I should strike out the Applicant's case because her purported statement of case and witness statements were

not actually hers. In the witness box, the Applicant was in a hopeless muddle about her formal statements before her cross-examination by Mr Mullis. As to her statement of case, she confirmed to me that she had signed it (1/5), it having been written by her son who translated it before she signed it. She also confirmed her signatures on the Form RX1 at 1/133 and 1/135, stating that she signed after the form was completed by her son, who then translated it for her. Those signatures are very different to my eye to those on the statement of case and witness statement. The signature at the foot of the Applicant's witness statement (1/68) reflects the one appended to her statement of case. She identified it as her signature to me and again stated that her son wrote the document before translating it for her. She confirmed that the documents concerned her case and that her son had put them together having discussed her case with her. In the course of this part of her evidence I had to ask Sid Kaur to sit at the back of the room out of eye contact with the Applicant, because he appeared to be trying to influence her evidence. She was cross-examined by Mr Mullis about the difference in the two types of signatures, and he asked her to write "M. Kaur 1/4/2018" on a piece of paper as it appeared on 1/5 and 1/68 after she had said it was her signature. It was a laborious effort. The result looked nothing like the signatures on 1/5 and 1/68. She insisted they were the same. That was nonsense. She insisted the signatures on 1/5 and 1/68 were hers, as did her son. She insisted that every line of the statement of case and her witness statement had been translated for her by her son, but she accepted that he had put her case together. She was vague as to when she last read her witness statement and statement of case and suggested it might have been "when we started the case 4 or 5 years ago -2014." Mr Mullis did not challenge the signatures on the HMLR documents.

20. Mr Osborne says that Sid Kaur has "understandably conducted his mother's case in a determined manner." Sid Kaur wrote the final closing submissions for the Applicant dated 11th January and claims that "A was put under extreme pressure and was overwhelmed when giving her oral evidence. It was evident for everyone at the hearing to see that A spoke little English and was unable to read the contents of the hearing file before her." That is of course why the Tribunal provided her with an interpreter for both days, and why there were two long days in court, as it took several attempts on many occasions to frame the question so that I was satisfied she understood what she was being asked. Sid Kaur relies on the Applicant's evidence

that all the signatures she was asked about are genuine (which he confirmed himself), and that the reason for the difference is that some were in the name of "Kaur" and the others "Kauldhar." As Sid Kaur is by no means independent in this argument, having written the contested documents on any view (as he accepts), I put his submissions to one side on this point, as having no real weight.

21. I agree with Mr Mullis that I am entitled to consider the evidence of the signature produced by the Applicant in the witness box and conclude that it was a complete failure as a reproduction of the signatures purporting to be hers on the witness statement and statement of case (*ss1 and 8 Criminal Procedure Act 1865*). I conclude on the balance of probabilities that those signatures were not hers and that she had the opportunity to tell the truth about them and did not do so. But I decline to deal with the case on that basis alone and strike it out on the basis that she has not provided a statement of case or evidence. In terms of overall dispute resolution it makes more sense to record my conclusion about the signatures, which is deeply unsatisfactory, and continue to proceed to deal with the case on the merits and the evidence as a whole, particularly when it is common ground that a substantial sum of money *was* handed by the Applicant to the Second Respondent to be used in the acquisition of the property, some or all of which has not been repaid. Further, there was no challenge to the RX1 signatures and of course I have to determine the matter referred by HMLR (*s73(7) LRA* 2002). As to whether she knew and approved of the contents of the witness statement and the statement of case, the solicitors' letters referred to above indicate an outline of a case several years before her son was involved, which is replicated to an extent, (see further below) in those documents. In addition, the challenge to the signatures came only at the hearing, which is very late. As to the detail in her statements, I am far from satisfied that she concerned herself with that.

22. The better course is to consider what is put forward as the Applicant's evidence as a whole, including the documents put forward on her behalf as her statement of case and witness statement, in the light of the competing evidence. As to whether the Applicant "knew and approved" of the contents of her statement of case and witness statement, my conclusion is that if her son read them over to her, she was not particularly concentrating at the time. At times she was unfamiliar with her written case which was clearly put together by Sid Kaur. As it is, Mr Mullis has made compelling closing

submissions on the Applicant's evidence overall, to which I will refer below, and which I accept.

23. The Applicant's English is not, on the face of it, good. She needed the interpreter but there were occasions when I thought she understood perfectly well what was being asked of her because she would start to answer before the question was completed. I am not wholly convinced by the account she presents on the one hand of being an ignorant, uneducated, divorcee who was left to make her way from 1982 in Kent with a divorce payment of £2000 cash, separated from her children until 1999 (they discovered the facts relating to this dispute as late as 2014), with little or no earning capacity, with the picture on the other hand of being able to lay her hands on £80-85,000 cash twenty years later, over £40,000 of which did not come from Kingsland Road. She was particularly vague about income tax and benefits and why she had various savings accounts in four different names: the suggestion that she saved substantial sums of money by living frugally and being vegetarian is ridiculous. Sometimes she was wholly unaware of the effect of her evidence, on other occasions she was acutely conscious of what she was saying. She was incredibly vague about more recent events such as her visits to the solicitors which generated the letters I have referred to, whereas she could apparently remember without difficulty that she had lent the Second Respondent £2000 in 2000 which he had repaid. Some parts of her evidence are however in my judgment totally unreal: I reject her evidence and belief that an attack on her at home in March 2005, which I accept was a horrible experience and did occur, was "orchestrated" by the Second Respondent, or connected with this case in any way. But again, that departure from truth is damaging if not vengeful as well.

24. Sometimes she had presented partial accounts, the best example being her evidence that the Second Respondent had forced her to sell Kingsland Road. I am not sure we have the full story even now, but it was only in answer to a question from me about why she was so insistent he wanted to buy it (I asked: did *he* want to buy it?) that she said yes, and he *did* buy it. Of course, that cuts both ways – the Second Respondent did not say before the hearing that either he or his son bought it and the First Respondent also failed to reveal in his written evidence that he became a registered proprietor by August 2003 before selling on at a considerable profit (on the face of it).

In cross-examination he said the Second Respondent showed him round the house and he was not interested in who owned it: he wanted to make a profit and thought he spent about £25,000 on it prior to re-sale, on renovations. Having seen both Respondents give evidence, I accept that.

25. The Applicant's statement of case is at 1/1-5. The nub is that the Second Respondent persuaded the Applicant to use the Kingswood Road proceeds of sale to purchase the property in joint names as an investment, rent it out, and share the income (paragraph 4). See also paragraph 3 of her witness statement at 1/65-68, where she refers to making "half" the payments. She says that she made the payments detailed above in accordance with that agreement and that the promissory note does not record their agreement. The nub of the First Respondent's defence is in paragraph 10 of his statement of case at 1/42-47, to which the Second Respondent's statement of case adds little (1/64). Their respective witness statements are at 1/74 and 1/87. The main thrust of the Second Respondent's evidence is that when his son asked him for £80,000 to purchase the property, he knew that the Applicant had told him when she sold Kingswood Road that she wished to invest the cash in making loans with interest, and they agreed that she would lend him £80,000. He says the agreement is evidenced by the promissory note which the Applicant drafted. It is still not clear to me how the Second Respondent knew the Applicant had £80-£85,000 to lend him, but she did, and it is also clear that she only intended to lend it to him.

26. The Applicant undermined her own case in cross-examination and diverged from it in such a way as to render her evidence not credible without independent corroboration, of which there is hardly any. For example, it is unclear what the nature of her relationship with the Second Respondent was. On the one hand she trusted him (as per her written evidence), whereas in her oral evidence she asserted that he threatened her over the sale of Kingsland Road, details not provided in her written case. If so, the idea of a joint venture is fanciful. Whereas I am underwhelmed by the failure of all parties to clarify the fact that Kingsland Road was actually transferred to the First Respondent (until late in the hearing), I cannot see any basis for accepting the Applicant's story of coercion, and the vague suggestion of duress was neither pleaded properly nor made out on the evidence she gave. She had various bank accounts in various names at the time and does not allege that she did not have her own solicitors

for her conveyancing. She made a profit. There might have been a row going on about monies she owed the Second Respondent for renovations, but in the absence of clear evidence from the Applicant, the conclusion I reach is that she sold Kingswood Road and intended, as the Second Respondent says, to make loans to individuals – as she had done in 2000, for example. Further, I accept the Second Respondent's evidence that he "facilitated the sale" to "help" the Applicant who wanted to sell Kingswood Road for cash when it was in a bad condition, at a time when he knew the First Respondent had cash to buy it.

27. As to the purpose of providing funds to the Second Respondent or the alleged agreement, the Applicant damaged her credibility beyond repair by departing from her written case without any supporting evidence. She alleged for the first time in the witness box that the Second Respondent told her that they would buy the property, (half the purchase price each), "make big flats then sell those flats". She abandoned paragraph 4 of her statement of case and paragraph 3 of her witness statement and denied their contents: "I did not tell them to write this. They wrote this for themselves. I don't know who." She insisted the agreement was "to make flats" (by adding another storey to the house). She said she was unable to correct her statement to reflect this because "I skipped it maybe." Sid Kaur confirmed in cross-examination that he drafted the statement with Rebecca Moses of Athena Legal Consultancy but might have been wrong about the Applicant's account in this respect, and "overlooked" what she meant to say. I do not think this is credible. Sid Kaur is an accountant with an evident determination to run his mother's case. She departed from her statement because she had not provided this explanation before the hearing, not because it was a story with any truth. She then denied an intention to lend at interest, but then agreed with Mr Mullis that she trusted the Second Respondent to repay her with interest, before then blaming him for arranging "a black man" to attack her in 2005. In my judgment the allegation and evidence about redeveloping the flats is not only fanciful overall but undermines the Applicant's evidence where unsupported. The idea of building flats was then thoroughly explored by Mr Mullis only to prove that the Applicant was developing her evidence as she went along. It was utterly unreliable. Although there is some evidence that the First Respondent subsequently considered a major redevelopment of the property in 2004 and was negotiating planning permission, the scheme foundered. See 2/229-278 for example. The type of costs and investment

planned (which might well have come to the Applicant's attention subsequently, eg through a search of the local planning authority's records, though I make no findings on that), indicate the unreliability of her evidence.

28. Again, the Applicant's replies to Mr Mullis about the various building society accounts she had in different names prompted some unsatisfactory responses. First, I am far from clear about why and how the Applicant managed to open various accounts in those different names. Secondly, when asked whether she wished to hide or conceal assets, she agreed that she did want to conceal assets from the Second Respondent, which does not ring true: I think he was wholly indifferent apart from establishing she had the funds he needed. He asked her for £80,000 because she told him she had money to lend. Further, contrary to her evidence I find she neither saw the property before it was purchased, nor knew what the purchase price was. She merely handed over money as and when she was asked to by the Second Respondent. There is simply no evidence to support the allegation of a joint venture, not least because Kingswood Road was sold months before the First Respondent saw the property early the following year. There is no evidence that a joint venture was ever discussed: see the Second Respondent's account at 1/87-90 which I accept. It makes no sense to hand over £80-85,000 in a matter of a week for the purpose of a joint venture without considering the details.

29. I should make it clear that I cannot and do not decide whether the amount handed over was £85,000 or £80,000, though the latter is more likely on the Second Respondent's evidence, and the completion statement at 1/73 (£5000 towards the deposit and £75,549.29 required as a cash balance).

30. That brings me to the promissory note, which is the only documentary evidence, apart from the Second Respondent's notebook about repayments (1/99). Who typed it or produced it? On the one hand it is unlikely that the Applicant did type it, bearing in mind her difficulties with written English (it had to be translated in the witness box), and the fact that it gives her address as Kingswood Road months after she sold it, as opposed to the East Street address. Similarly, that would be a mistake by anyone she asked to produce it. But I am far from convinced, having heard the Applicant's evidence about the ease with which she opened various bank accounts, that she would be too particular about that, and might well have asked someone else to draft it. As Mr

Mullis accepts, however, the Applicant's written evidence is consistent with her oral evidence on this point. On the other hand, it is absolutely the type of document which the Second Respondent (who drafted a deed of trust himself in 2008, and gives the appearance of being a businessman who handles cash loans regularly), would also have been able to procure or draft. Only he would have known when completion was due (it was dated just before completion). On the balance of probabilities, I have concluded that it was the Second Respondent who drafted or procured the document and gave it to the Applicant. I also conclude that this was in the context of explaining the contents as he alleges, and that the document encapsulated their agreement. Further, if the Applicant had been under any other illusion about what the nature of their deal was, it was clear to her before completion, and she accepted it. See below as to her oral evidence on this point.

31. Notably, as Mr Mullis submits, the allegation of an investment in the property was not specifically raised until years later 2016. To the extent to which it was inconsistent with (for example) the Davis Simmonds letter at 1/20, the Applicant claimed in cross examination that the letter was not accurate, another example of a casual relationship with reality. As he submits, it is the weakness in the Applicant's case about an investment which prompted the suggestion in the Applicant's case that she was the victim of a fraud and conspiracy. Those claims were neither pleaded properly nor made out evidentially and I reject them.

32. So far I have set out my conclusions based on my findings and taking Mr Mullis's submissions (in all three of his skeleton arguments) into account. I have rejected his case on the writer of the promissory note, otherwise have accepted the First Respondent's case, he not being aware of the circumstances in which he was provided with the balance of the purchase price for the property.

33. The fact that I make that finding against the Second Respondent does not affect my overall conclusions about the Applicant's case. She was cross-examined about the promissory note and it is clear to me that the Applicant knew it contained the Second Respondent's signature, that she was not going to throw it away, and that it benefited her: she agreed that "it was proof that she could sue the Second Respondent." That means she knew it was important and contained the agreement. It was a document that

(at least in part) triggered Sid Kaur's pursuit of the monies. Her insistence that she did not lend the Second Respondent monies, in cross examination, was predicated on her assertion that she was defrauded by the Second Respondent: "my son told me I was defrauded by the Second Respondent." That is wholly inconsistent with her evidence about the promissory note: she never alleged that she challenged the Second Respondent about the contents at the time. To the contrary, she put it in a drawer as an important document. In re-examination she said she kept it as evidence and suggested that she had given a copy to a solicitor. That in my judgment is the most telling aspect of her otherwise confused evidence, and it explains her evidence that she wanted to "pursue her money", "retrieve my money", had "lost my money" (see various references in her witness statement at 1/67). This is the language of a loan.

34. That therefore makes the Second Respondent's case that he repaid her the monies listed at 1/99, credible, despite the fact that he produced the standard reasons for not having further evidence of the repayments ("I never thought I would need it", and cash was "the Indian way"). That in turn explains why, after 2005, the parties fell out over money, as both the Second Respondent (at 1/89) and the Applicant (1/67) indicate some falling out in or around 2006 when the Second Respondent says he stopped payments because he wanted to offset other debts owed to him by the Applicant in relation to renovations at Kingsland Road. It explains (though does not prove) the timing in the Applicant's suggestion that the Second Respondent organised the attack on her by the unidentified intruder in 2005.

35. I have carefully considered the fact that neither the Applicant nor Second Respondent can prove the non-receipt or repayment of funds by reference to any independent evidence. Again, this is unsatisfactory, but would not be the first time that cash payments have been made from undisclosed sources. Whilst I cannot get to the bottom of why, in any detail, the Second Respondent who purports to be a respectable businessman with spare cash to lend his son, would stop paying the Applicant monies which he seems to have agreed to repay her (without evidence that the Applicant owed him around £40,000), I cannot conclude that that behaviour justifies translating my rejection of the Applicant's case to acceptance of it. Whereas the Second Respondent's assertion about the Applicant owing him money lacks substance because of the vagueness of the allegations, and it certainly challenges his projection of an

upright businessman, I bear in mind where the burden of proof lies and put this into the category, as with other factors and incidents, of "unresolved on the evidence before me" but not fundamental to the case. The Applicant's failure for various reasons to make headway in obtaining recompense foundered, to his advantage. But I cannot see that his behaviour means that the Applicant can make out her claim to a beneficial interest, particularly since I have found that considerable repayments were made, on the balance of probabilities. It highlights what I consider was never a relationship of equals.

36. Even if I am wrong about the writer or producer of the promissory note and the repayments, that does not mean that my principal finding as to the failure of the Applicant to make out her case, is affected. Both parties acknowledge the contemporaneity of the promissory note, and the Applicant accepted its significance as evidence of an agreement. If her understanding of her own written case is a useful guide, then it is unsurprising that she now seeks to disavow the effect of the promissory note. The rejection of the loan as evidenced by the note is a comparatively recent invention put together to justify this application. I agree with Mr Mullis that the relevant agreement was a loan agreement, and that excludes a beneficial interest (as per *Sharpe* at p223).

37. This finding survives some testing of the Respondents' evidence. I accept the First Respondent's case that he had nothing to do with the deal between his father and the Applicant and was ignorant of it until 2014. That undermines the allegation of a conspiracy to defraud the Applicant. The impression of the First Respondent is that he was accustomed to being provided for by his father even when a mature professional in his own right, did not ask too many questions, but repaid him (without interest) as soon as he could. The phrase "father .. son" in the context of a close business and family relationship was repeated in their evidence. He confidently assumed the money was his father's. Mr Osborne was unable to make any headway with the First Respondent in cross-examination, and that extends to making anything of the Second Respondent's entry of a restriction to protect his deed of trust dated 1st August 2008 (2/279). Whilst I wonder whether this was part of some agreement between the Respondents connected with their redevelopment plans for the property, or some other protective device, I am equally sure that nothing can be made of it to support the

Applicant's case, even if the Respondents' explanations (that the Second Respondent did *not* own the property, he had only copied the deed from a draft provided by his solicitor, he did not really understand it etc) were at odds with the terms of the deed of trust. For a start, five years had passed since the property was acquired. I should emphasise that in my judgment the fact that both Respondents appear now to be disavowing the apparent effect of that deed is a matter for them: I have taken it into account in the context of credibility and decided that it does not undermine the Second Respondent's account of the deal reached between him and the Applicant. I agree with Mr Mullis: it is otherwise irrelevant to the point I have to decide.

38. However, it emphasises the dominant role of the Second Respondent and also suggests, contrary to the Applicant's case about the property, that he was accustomed to arranging matters to suit his own business interests as well as being able to produce legal documents when it suits him. It also highlights this: nothing in the evidence I heard supports the Applicant's case that the Second Respondent would enter into a joint venture with her. It strikes me overall that nothing was more unlikely: this is a man whose interest in promoting himself as a wealthy individual was so strong that he did not even tell his son he could not afford the £80,000 cash his son thought he would have. The impetus for the acquisition was provided by the First Respondent: the Second Respondent was not looking to invest in property jointly with the Applicant but to supporting his son's investments. The fact that Kingswood Road was transferred to the First Respondent, far from being evidence of a course of dealing to deceive the Applicant as submitted by Mr Osborne, emphasises (on the contrary) the fact that what the Second Respondent thought was in his or his family's interests, would be his guiding principle. Nothing in his relationship with the Applicant suggests that he ever thought of her as a business equal or likely partner, quite the contrary: she was the dependent on his account. Whilst both the facts relating to the deed of trust and the non-disclosure of the source of funds to the First Respondent do not indicate a complete openness in business dealings by the Second Respondent, they suggest a man who is quite capable of doing what he did, which is borrowing money from the Applicant then deciding (on the face of it) not to honour an agreement to repay it. But I cannot see that he would stoop to persuading her to part with the money to invest in a property which he knew his son intended to buy: that would risk what seems to me to be an important principle for the Second Respondent, "family first." In other words, he

would not jeopardise his son's interests by purporting to agree a joint investment with the Applicant, a woman with whom he had no known close personal or equal business relationship. Tested like this, the Applicant's case lacks reality, which is matched by her lack of credibility.

39. Mr Osborne's closing submissions are detailed but essentially re-run the Applicant's case without the benefit of having been present when she was cross-examined or having attended the first day. This produced some unfounded claims such as arguing that at all material times the Second Respondent owned the property, and he never had a loan agreement with the First Respondent. Whilst I can see that making findings on both those points would assist the Applicant, neither is made out on the evidence. In particular, Mr Osborne could not fully appreciate the disastrous impact of his client's evidence, and the reasons why most of it had to be rejected as not credible where uncorroborated. At most he asserts that her evidence "has the ring of truth about it" without explaining why, other than maintaining the case as she presented it. It is notable that given the opportunity to respond to Mr Mullis's detailed submissions on the value of the Applicant's evidence, Mr Osborne was unable to do so because of the challenge to his client's evidence, and Sid Kaur settled the submissions. These suffer from the fact that he drafted her statement of case and witness statement, and was instrumental in putting her case together. He could not, nor could he reasonably be expected to respond in the sort of forensic detail necessary to meet Mr Mullis's careful and detailed submissions head on. In response to most of Mr Mullis's attack, his case was that the Applicant was probably confused due to tiredness and stress and lack of understanding despite having an interpreter. I reject that. None of this explains her most radical departure from her written evidence and her disavowal of it. Furthermore, Sid Kaur has confused reliance on the Applicant's written case with the need for credible evidence to support it. It follows that I have not been assisted by the closing submissions prepared on the Applicant's behalf.

40. In conclusion, this case has come down to an analysis of the written and oral evidence of all parties. The balance of probabilities favours the First Respondent's case, in large part because the Applicant's evidence was inadequate and lacked credibility, unable to withstand the First Respondent's detailed attack.

41. In the circumstances it is more likely than not that if the First Respondent applies for costs, an order will be made in his favour. If he wishes to make an application for costs, he should do so with a brief supporting statement and a schedule of costs claimed, sufficiently detailed (without being a detailed bill) to enable myself and the Applicant to understand the potential liability, by 5pm 18th February 2019. The Applicant should file and serve a reply by 5pm 4th March 2019 if she wishes to respond to such an application.

42. Costs will be dealt with after 4th March 2019.

BY ORDER OF THE TRIBUNAL

Sara Hargreaves

DATED 28th January 2019