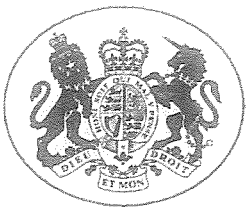

[2019] UKFTT 0630 (PC)

PROPERTY CHAMBER
FIRST–TIER TRIBUNAL
LAND REGISTRATION DIVISION

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

LAND REGISTRATION ACT 2002

REF NO. 2018/00930

BETWEEN

DAVID STANDISH AND NEIL GOSTELOW (AS TRUSTEES IN BANKRUPTCY OF IOANNIS CHRISTOU AKA JOHN CHRISTOU)

Applicants

and

BARKWITH INTERNATIONAL LIMITED

Respondent

Property addresses: 25 Hershey Gardens, Blackwater GU17 0EP
Title number: HP487800

Before: Judge Daniel Gatty

Sitting at: 10 Alfred Place, London WC1
On: 15-16 July 2019

ORDER

UPON hearing counsel for the Applicants and a lay representative for the Respondent at a hearing on the above dates and for the reasons stated in the Decision accompanying this order

IT IS ORDERED that:

1. The Chief Land Registrar is to (i) give effect to the Applicants' application of 8 June 2018 to alter the proprietorship register of the above title by substituting the Applicants

(as trustees in bankruptcy for Ioannis Christou also known as John Christou) as registered proprietors as if the Respondent's objection thereto had not been made, and (ii) reject the Respondent's application of 16 May 2018 to cancel the unilateral notice on the above title in favour of the Applicants.

2. Any application for costs should be made in writing accompanied by a schedule of costs and served on the Tribunal and the other party by 5.00 pm on 11 October 2019.

3. Any response to an application for costs should be served on the Tribunal and the other party by 5.00 pm on 1 November 2019.

4. Any reply to a response to an application for costs should be served on the Tribunal and the other party by 5.00 pm on 15 November 2019.

Daniel Gatty

JUDGE DANIEL GATTY

Dated: 13 September 2019

PROPERTY CHAMBER
FIRST–TIER TRIBUNAL
LAND REGISTRATION DIVISION

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Sitting at: 10 Alfred Place, London WC1
On: 15-16 July 2019

Applicant Representation: Ms Giselle McGowan of counsel instructed by Gowling WLG (UK) LLP
Respondent Representation: Ms Rita Toor, lay representative.

DECISION

Cases referred to:
Malory Enterprises Ltd v Cheshire Homes (UK) Ltd [2002] Ch 216

1. This case concerns two applications to HM Land Registry regarding a residential property known as 25 Hershey Gardens, Blackwater GU17 0EP, title no. HP487800 ("the Property"). The Property was formerly owned by Mr Ioannis Christou, aka John Christou ("IC") who purchased it in October 1999. The Respondent has been registered proprietor of the Property since 28 October 2016, as a result of a TR1 transfer of the Property from IC to the Respondent dated 7 October 2016 ("the Transfer"). At the heart of this dispute is the question whether IC executed that transfer or whether his signature to it was forged without his knowledge, as the Applicants allege. IC was made bankrupt on his own application on 4 October 2017 and the Applicants are his trustees in bankruptcy. They registered a unilateral notice against the Property on 17 January 2018. On 16 May 2018 the Respondent applied to cancel that unilateral notice, an application to which the Applicants objected. That application is the first in time of the two applications before me. The second application was made by the Applicants on 8 June 2018 and was for alteration of the register to substitute the Applicants as registered proprietors of the Property on the grounds that it was registered in the Respondent's name by mistake, an application to which the Respondent objected. Although the second in time, it will be convenient to consider the Applicants' application first. If it succeeds, the Respondent's application is bound to fail and vice-versa.

2. The hearing took place on 15 and 16 July 2019. The Applicants were represented by Ms Giselle McGowan of counsel. The Respondent company, which is incorporated in Belize, was represented by a lay representative, Ms Rita Toor, assisted by Ms Ninu Galot. However, Ms Toor's exact relationship with the Respondent was never made clear to me.

3. At the beginning of the hearing Ms Toor made an application to adjourn the hearing and stay the proceedings pending the resolution of county court proceedings that the Respondent had issued a short time before the hearing was due to take place. I rejected that application for the reasons I gave orally during the hearing. Previously, the Respondent had made an application to amend its statement of case which had been dismissed by Judge Clarke QC.

The background

4. IC purchased the Property for £75,000 in 1999 and lived in it until April 2017 along with his son, Dimitrios Christou ("Dimitrios") and, I think, other family members. As explained below, he was evicted on 4 April 2017 pursuant to a court order obtained against Persons Unknown. The Property was subject to a mortgage in favour of National Westminster Bank plc before its transfer to the Respondent on which £35,408.76 was outstanding as at October 2016.

5. The Transfer was at a price of £36,000 and the National Westminster Bank mortgage was redeemed with the purchase monies. IC's evidence was that he only learned of the transfer of his house when his mortgage instalments ceased to be taken out of his bank account.

6. There was a contract of sale (apparently) between IC and the Respondent which, like the Transfer, was dated 7 October 2016. Solicitors acted on both sides of the sale - Hellewell Parsley & Brewer ("HPB") purportedly for IC and Stapleton Gardner & Co. for the Respondent. I say 'purportedly for IC' because his evidence was that he did not instruct nor have anything to do with them and did not sign any documents in relation to the sale. HPB have since been intervened in by the Solicitors Regulation Authority. I did not hear evidence from any of the solicitors involved in the transaction. A copy of HPB's file was, however, provided to the Applicants by the intervention solicitors and material documents from it are in the hearing bundle.

7. The Respondent's conduct of the sale appears to have been through a Mr Rajan Galot ("RG") who had been granted a power of attorney by the Respondent in connection to property, real estate and land. It was the Applicants' case that RG was behind what they allege was the fraudulent transfer of the Property to the Respondent at a substantial undervalue.

8. The Property was marketed for sale in early 2018 at a price of £280,000 through an estate agency called Prospect Estate Agency and through Purple Bricks, the online estate agency. Gowling, the Applicants' solicitors wrote to Prospect and Purple Bricks putting them on notice of IC's assertion that the sale to the Respondent was without his knowledge. Purple Bricks responded by email on 9 February 2018 stating that the property had been withdrawn from the market. According to the Applicants, Gowling

received a telephone call from a representative of Prospect stating that it had ceased advertising the Property and also stating that the owner according to their file was a Mr R Galot.

The Issues

9. The questions that arise in this case boil down to two. Did IC sell the Property to the Respondent or was it transferred to the Respondent by means of a transfer bearing a forged signature without IC's authority? If the latter, should the register be altered to substitute the Applicants as registered proprietors of the Property.

The witnesses

10. RG did not give evidence before me. Indeed no witnesses were called on behalf of the Respondent. An application was made at the beginning of the second day for permission to call evidence from a Mr Dionysius Vythoukas albeit he was not in the UK at the time, and/or to adjourn the hearing. I was provided with a statement dated 12 July 2019 from Mr Vythoukas indicating the topics on which he would give evidence but not containing that evidence. The statement alleged that there had been "many incidents in which Mr Ioannis Christou has both blackmailed and intimidated me from giving evidence" and that he had been "held in Witness Protection by the Respondent". No details of the blackmail or intimidation were included in the statement, nor any supporting evidence. I refused that application because it was made far too late and Mr Vythoukas was not available to be cross-examined.

11. A document entitled "Statement of Facts" signed by Genevieve Yolanda Pennill, apparently a director of the Respondent, was served by the Respondent and included in the witness statement section of the hearing bundle. Ms Toor made plain, however, that it was not relied on as a witness statement; Ms Pennill did not attend the hearing.

12. I heard from three witnesses on behalf of the Claimant, IC, Neil Gostelow, one of the Applicant trustees in bankruptcy, and Ms Fiona Marsh, a forensic document examiner (i.e. handwriting expert). A fourth witness, Dimitrios, did not appear but I was asked to admit and give weight to his witness statement, dated 18 February 2019, nonetheless. The Applicants contended that Dimitrios had declined to attend because of threats

allegedly made to him by persons acting on behalf of the Respondent including RG. A witness statement dated 10 July 2019 made by Kathryn Jane Garside, a solicitor at Gowling, was provided to the Tribunal containing information about the alleged threats made to Dimitrios. Amongst other allegations, it stated that Dimitrios' car had been vandalised on 19 June 2019, the day after a threatening telephone call from an unidentified representative of the Respondent, and exhibited photographs of a car with its side mirrors broken off. I shall return below to the question of what, if any, weight I should put on Dimitrios's witness statement.

13. Ms Marsh was instructed by the Applicants. That is, she did not act as a single joint expert. The Respondent did not obtain any expert handwriting evidence. Ms Marsh is an experienced handwriting expert. She worked for the Metropolitan Police Forensic Science Laboratory between 1980 and 1988 and has worked as an independent forensic document examiner since then.

14. Ms Marsh's report, dated 21 March 2019, examined what purported to be IC's signature on the Transfer, the sale contract, a sale questionnaire, a letter engaging HPB, a fitting and contents form, and a declaration of solvency. She also examined handwriting on an unsigned property information form. All the documents were copies - she had no originals. She was provided with a number of documents that IC had signed for other purposes and some examples of his signature and handwriting made for the purposes of her report. She concluded that there was no evidence that any of the signatures or handwriting on the disputed documents were made by IC.

15. Ms Marsh was cross-examined by Ms Toor and reiterated and explained the views expressed in her report. She said that in this case her opinion was not compromised by the fact that she had only copies of the disputed documents because the differences between the challenged signatures and handwriting and the examples with which she had been provided were easy to see. I found her explanation in the witness box of the opinions expressed in her report to be entirely persuasive.

16. Mr Gostelow gave oral evidence but could do little more than produce documents as he had no direct knowledge of the relevant events. I will discuss the more significant of the documents below.

17. IC's evidence, in summary, was as follows. He met RG in about 2015 or 2016. His witness statement said that he met him through a friend but in his oral evidence he first said that he met him through his son, Dimitrios, and then through a friend. RG was a financially successful man and acted as an informal financial advisor to IC. RG visited him at his home according to IC and IC provided him with some financial documentation. During 2016 RG helped Dimitrios raise a £3,500 loan for course fees with IC as guarantor. Subsequently, in September 2016, RG told Dimitrios that the loan provider had been audited and they required identity documents for IC as guarantor. RG asked for a copy of IC's passport and utility bills. Dimitrios provided RG with IC's expired passport and utility bills. He refers to what appear to be print-outs of WhatsApp messages between Dimitrios and someone identified as "Raj" which IC says was RG showing Raj asking for and Dimitrios providing a water bill, a BT bill and a passport. One of the messages from "Raj" provides the email address rajangalot@gmail.com. IC says that Dimitrios delivered the documents to RG by leaving them at the offices of RNR Properties, a letting agency on London Street, Reading. I pause here to note that the full name of RNR Properties is RNR Properties (Reading) Ltd ("RNR"). According to Company House records RG is not a director of RNR but Ms Toor (whose previous surname appears from Companies House records to have been Galot) and Ms Ninu Galot are directors. The Respondent's statement of case admits that RG is connected to RNR.

18. The significance of all this is that documents from HPB's file shows that it was provided with a certified copy of IC's expired passport on around 20 September 2016 and with a water bill, a credit card statement and a council tax statement for the property by way of identity documents for IC. It is the Applicants' case that they were provided to HPB by someone, probably RG, impersonating IC rather than by IC himself. The copy of the passport was purportedly certified by a firm of solicitors named NC Brothers & Co. which practices at 47 London Street, Reading. In the bundle is a letter dated 16 November 2017 to the Official Receiver's office from Kuldeep Sethi of NC Brothers & Co. in which Mr Sethi denies that his firm certified the copy of IC's passport. He says that the signature appears to have been made by his assistant but considers that it has been transposed from another document. Ms McGowan relies on the geographical proximity of the offices of RNR and NC Brothers & Co which are located on the same street within a couple of hundreds of yards of each other.

19. IC states that he had no dealings with HPB and no knowledge of the transfer of the Property until he realised a little before Christmas 2016 that his mortgage payment to National Westminster Bank had not been taken out of his Lloyds Bank account as usual. He says that he contacted NatWest in January 2017 to be told that his mortgage had been paid off; NatWest gave him HPB's name as the solicitors who organised the redemption. He says that he contacted HPB on 10 January 2017 and that they said to him that they had been retained by him to sell the Property. On 11 January 2017 he received a letter from the Respondent claiming to have given him 8 weeks' notice to vacate by a letter dated 1 November 2016, which IC denies receiving.

20. IC states that on the evening of 11 January 2017 two men claiming to be from the Respondent attended at the Property and told him that he should move out, in an intimidating manner. He alleges that three months of threats and harassment followed. IC says that he reported the matter to the Hampshire Police as a fraud but was told that they would be taking no action.

21. IC received a Notice of Eviction issued by the County Court at Aldershot and Farnham dated 3 April 2017 addressed to persons unknown and stating that the eviction would take place on 4 April 2017. It identified the Claimant as "Fortune Investments". I presume that is a shorthand for Fortune Investment Group Limited, a company of which RG and Ninu Galot are both directors and the registered office of which is at the offices of RNR although there was no evidence about that from the Respondent. IC states that bailiffs and police officers attended to enforce the order and he had to leave, which he did.

22. IC was also provided with a court order dated 7 April 2017 made in the same court in proceedings with the same claim number in proceedings made between Fortune Investments and Persons Unknown containing a forthwith final possession order in respect of the Property. IC says that he received this order at around the same time but I note that it was not drawn until 27 April 2017. In any event, it appears that "Fortune Investments" must have brought trespasser possession proceedings against persons unknown and obtained first an interim possession order (to which the Notice of Eviction must have related), which it enforced on 4 April 2017, and then a final possession order.

23. It emerged during cross-examination of IC that RG had been given, or given use of, a Ford Galaxy registered in his name by either RG or Fortune Finance Services Ltd in late 2015. IC said that RG did this for him so that he could "look better on the road" and subsequently took it back. Ms Toor produced a document dated 13 January 2016 purportedly signed by IC and apparently concerning the use by IC of a Ford Galaxy vehicle belonging to Fortune Finance Services Ltd (a company of which Ms Toor, Ninu Galot and RJ were directors) and which suggested that IC worked for that company. The document stated that there was permission for the car to be parked overnight outside 86 Erleigh Road, Reading. IC denied working for RG or Fortune Finance Services Ltd and denied the authenticity of the signature. He suggested that RG had tried to involve him in a large-scale cannabis growing enterprise but he refused to participate. I was left with the impression that at one time the relationship between IC and RG had been closer and more complicated than IC was prepared to admit, but in the absence of any evidence on behalf of the Respondent am unable to make any findings about its exact nature.

24. As mentioned above, Demetrios did not attend to give oral evidence, which affects the weight I can give to his witness statement. His written evidence is, however, corroborated by his father's and supported by what I find on the balance of probabilities to be genuine print-outs of WhatsApp messages in important respects so I do not disregard it entirely.

Discussion

25. Pursuant to para. 5 of Sch. 4 of the Land Registration Act 2002, the registrar may alter the register for the purpose of correcting a mistake, subject to certain restrictions discussed below. The word "mistake" is not defined in the 2002 Act but there is no doubt that it encompasses the registration of someone as proprietor pursuant to a transfer which is in fact void because the transferor did not execute it and his signature on it was forged without his knowledge. That qualifies as a mistake because the transfer would not have been registered if the registrar had known that it was a forgery and hence of no effect. See Ruoff and Roper on Registered Conveyancing at para. 46-009. Thus, if I accept IC's evidence that he did not instruct HPB and knew nothing of the Transfer until after the event, it will follow that there has been a mistake for the purposes of para. 5.

26. The Applicants rely on a series of factors in addition to IC's own evidence in support of the proposition that his signature on the Transfer was forged without his knowledge:

(1) Ms Marsh's evidence. I found Ms Marsh to be an impressive witness. The Respondent called no evidence to contradict her opinion.

(2) HPB's file suggests that the HPB fee earners with conduct of the sale did not meet IC. They received proof of identity by email from an email address, mrjohnchristou@gmail.com, which IC denies was his, apparently between 20 and 22 September 2016. This included the purportedly certified copy of IC's expired passport which Mr Sethi of NC Brothers & Co. denied that his firm has certified in the letter mentioned above. WhatsApp messages exchanged between Demetrios show, and I find, that RG was provided with IC's expired passport at around that time along with utility bills for the Property.

(3) Documents from HPB's file also show that Stapleton Gardner & Co. requested a declaration of solvency from IC because they considered that the Property was being sold at an undervalue. A declaration of solvency purportedly made by IC was provided to HPB for passing on to Stapleton Gardner & Co. which was purportedly certified by Mr Sethi of NC Brothers & Co. In the same letter in which Mr Sethi denied that his firm certified the copy passport, Mr Sethi denied having certified the certificate of solvency. If that is correct, it suggests that IC did not sign the declaration of solvency (as Ms Marsh concluded) - there would have been no need to forge a solicitors' certificate to it if it was made by IC. While I did not hear from Mr Sethi, I am entitled to and do take his letter into account as hearsay evidence and weigh it with the other evidence in the case, in particular Ms Marsh's conclusion that there was no evidence that IC signed the declaration of solvency.

(4) The sale price was sufficient to cover redemption of the mortgage and conveyancing costs and no more, was £39,000 less than IC paid for the Property in 1999 and was £244,000 less than the Property was marketed for 15 months later. There was a suggestion from the Respondent that improvement works had been carried out before the Property was marketed but no evidence to show what works and that they increased the value of the Property nearly eight-fold. The sale, therefore, seems to have been at a significant undervalue. Indeed, the Respondent's statement of case

admits paragraph 8 of the Applicants' statement of case which alleges, amongst other things, that £36,000 was significantly below the value of the Property. There was nothing in the evidence before me to explain why IC would sell the Property at an undervalue for barely half of what he paid for it seven years before. It seems most unlikely that he would have chosen to do so.

(5) Nor was there any evidence to show that IC marketed it for sale, or how the Respondent came to agree to buy it.

(6) HPB were not given the Property as a correspondence address for IC. As their retainer letter dated 19 September 2016 shows, they were given 86 Erleigh Road, Reading. The Respondent's statement of case alleged that IC lived at 86 Erleigh Road "sometime between December 2015 to September 2016". IC denies any connection to that address and the only document before me connecting him to it was the document dated 13 January 2016 purportedly signed by IC concerning the use of a Ford Galaxy vehicle belonging to Fortune Finance Services Ltd. That referred to the keeping of the car outside 86 Erleigh Road overnight. However, that document was not produced until the second day of the hearing and IC denied that the signature on it was his. It was too late, by then, to obtain Ms Marsh's opinion about that. There was no other evidence to show that IC had lived there and no evidence to explain why IC should be living at 86 Erleigh Road while owning and paying the mortgage on the Property. The uncontradicted evidence before me was that he was living in the Property in April 2017 when he was evicted.

(7) There is an admitted connection between RG and 86 Erleigh Road. It was managed by RNR Properties as the Respondent admits in its statement of case.

27. Taking all those factors together, I find that IC did not execute the Transfer nor know anything about the sale until after the event. I did not find IC's evidence wholly satisfactory. There appeared to be more to his relationship with RG than he was prepared to explain. His explanation for why RG provided him with a car strained credulity. However, the other evidence discussed above leads me to accept his evidence that he did not execute the Transfer. There is no reason why he should have authorised someone else to sign it in his name so I conclude on the balance of probabilities that he knew

nothing about the Transfer or the sale contract. I therefore find that registration of the Transfer was a mistake.

28. Having reached that conclusion, I turn to the second question: whether I should order the Chief Land Registrar to alter the register to correct the mistake by substituting the Applicants (as IC's trustees in bankruptcy) as registered proprietors.

29. If there has been a mistake in the register, the registrar's power to alter the register to correct it is affected by the question whether the alteration qualifies as 'rectification'. It will do so if the alteration will prejudicially affect the title of a registered proprietor; see para. 1 of Sch. 5.

30. If the alteration would amount to rectification and the registered proprietor is in possession of the land, no alteration can be made without the proprietor's consent unless (a) the proprietor has by fraud or lack of proper care caused or substantially contributed to the mistake, or (b) it would for any other reason be unjust for the alteration not to be made. See para. 6(1),(2) of Sch. 4 to the 2002 Act. I refer below to this restriction on the Registrar's power to order alteration as the Proprietor in Possession Limitation.

31. If the registrar does have the power to rectify the register, that power must be exercised unless there are exceptional circumstances justifying the registrar in not doing so; see para. 6(3) of Sch. 4.

32. Curiously, there is nothing in Sch. 4 to indicate under what circumstances the registrar should exercise the power to order an alteration of the register which does not qualify as rectification. There is a similar gap in Sch. 4 regarding the court's power under paras. 2 of Sch. 4 to order alteration which does not amount to rectification, but that gap is filled by rule 126 of the Land Registration Rules 2003. Rule 126 is to the effect that the court must exercise its power to order a non-rectification alteration of the register unless there are exceptional circumstances. Rule 126 does not apply to alteration by the Chief Land Registrar directed by the FTT as opposed to alteration ordered by the court but there is no good reason for the FTT to take a different approach to that which the court is required to take. It would produce uncertainty and a risk of inconsistency if the Tribunal were to refuse to order alteration in circumstances in which the Court would be obliged to order it. So, I consider that if the alteration of the register sought by the

Applicants does not amount to rectification I should order the alteration unless there are exceptional circumstances justifying me in not doing so.

33. It was the Applicants' case that alteration to correct this mistake does not amount to rectification and hence I have the power to order alteration, and there are no exceptional circumstances justifying me in not doing so. If I am against them on that and conclude that the alteration would amount to rectification, they contend that the Proprietor in Possession Limitation does not apply, and I should order rectification as there are no exceptional circumstances, for any one of three reasons: (1) the Respondent is not in possession of the Property, or (2) the Respondent has by fraud or lack of proper care caused or substantially contributed to the mistake, or (3) it would for any other reason be unjust for the alteration not to be made.

34. The Applicants contend that the alteration sought does not amount to rectification because, they say, it does not prejudicially affect the Respondent's title. On the face of it that is a counter-intuitive submission but the basis of it is that the Respondent's registration was always subject to IC's right to have the Transfer set aside. IC was in occupation of the Property at the date of the Transfer and its registration and so his right to have it set aside was an overriding interest with priority over the Respondent's interest. Consequently, they submit, the Respondent's title will not have been prejudiced when, in effect, the Transfer is set aside and the Applicants are substituted as registered proprietors, merely giving effect to IC's interest with an existing priority.

35. Strictly speaking, it is wrong to talk about the Transfer being set aside. As it was void, on my findings above, there was nothing to set aside. However, if IC's right is rephrased in terms of the right to seek rectification of the register, the Applicants' argument finds support in the Court of Appeal's decision in *Malory Enterprises Ltd v Cheshire Homes (UK) Ltd* [2002] Ch 216. In that case it was held that the right to seek rectification of the register to reverse a fraudulent transfer was an overriding interest.[1] That decision concerned the Land Registration Act 1925. When it came to be considered in *Swift 1st v Chief Land Registrar* [2015] Ch. 602 in the context of the 2002 Act, it was not followed in whole. However, the Court in *Swift 1st* did not depart from the finding in *Malory* that a right to seek rectification of the register was an overriding interest. That said, the

[1] Strictly speaking this aspect of the decision was obiter - see [66] in *Malory*

parties in *Swift 1st* did not challenge the point - see para. 37 of *Swift 1st* - with the consequence that *Swift 1st* is not binding authority on the point as it was conceded in that case.

36. This aspect of the decision in *Malory* has been heavily criticised by academics and the Law Commission. As there is no right to rectification/alteration as such but merely a right to apply for rectification/alteration which can be refused in the event of exceptional circumstances, I find it difficult to see that the fact that a registered title is subject to a right to apply for rectification, even one very likely to succeed, can deprive it of all value. If it has any value at all, then alteration to reverse the registration will, I consider, prejudicially affect the title of the proprietor. As Patten LJ observed in *Swift 1st* at para. 51:

> "the reference in the footnote to para 10.31(2) to section 69 of the 1925 Act [in the Law Commission's report giving rise to the 2002 Act] strongly suggests that the Law Commission considered paragraph 1(2)(b) [of Sch. 8 to the 2002 Act] to be consistent with the principle that registration confers substantive rights on the proprietor even under the forged disposition and that its loss is to be regarded as prejudicial to the title notwithstanding that the transfer or charge was void".

37. Although there was no valuation evidence before me, that seems intuitively to be correct. Would a speculative investor purchase a registered title knowing that it was subject to an application for alteration of the register on the ground that it was based on a void transfer which had a good chance of succeeding? Possibly, at a very heavy discount. If so, it must surely follow that alteration to remove the registered proprietor (and putative vendor on my hypothetical scenario above) prejudicially affects his title.

38. I do not have to decide the point, however, because in my view the register can and should be altered to substitute the Applicants as proprietors even if the alteration will qualify as rectification. I reach that conclusion for the following reasons:

(1) There is no evidence before me that the Respondent was in possession of the Property when the application for alteration was made (the relevant date for the Respondent to be in possession, in my judgment). The burden of proof on the question whether the registered proprietor is in possession must lay on the proprietor - it is not for the applicant to prove a negative. There is no evidence from the Respondent at all. And it was not the Respondent that sought and obtained a possession order in respect of the Property. It was Fortune Investments which I take

to be a reference to Fortune Investment Group Limited. So, what evidence there is about possession of the Property suggests that Fortune Investment Group Limited, not the Respondent, is in possession of it.

(2) Accordingly, the Respondent has not established on the balance of probabilities that the Proprietor in Possession Limitation applies.

(3) If I were wrong on the question of possession, I would consider that I had the power to order alteration either because the Respondent has by fraud or lack of proper care caused or substantially contributed to the mistake, or because it would for any other reason be unjust for the alteration not to be made.

(4) While I am reluctant to make findings of fraud against a particular individual or company when the Respondent called no evidence and RG was neither a party nor a witness, it follows from my findings above that the Transfer was obtained by someone's fraud. On the evidence that I heard, it is more likely than not that the fraud was perpetrated by or on the instructions of RG. The precise nature of RG's relationship with the Respondent was not made clear to me by the Respondent but given the power of attorney granted to RG by the Respondent his knowledge of any fraud can be attributed to the Respondent. If it were necessary to do so, therefore, I would have found that the Respondent caused or substantially contributed to the mistake by fraud or lack of proper care.

(5) However, I do not need to reach a conclusion about whether the Respondent was involved in the fraud because I consider that it would for other reasons be unjust for the alteration not to be made. It is clear that the Respondent knew that it was purchasing the Property at an undervalue. It was advised of such by its solicitors. In those circumstances, it would be unjust to refuse the alteration, depriving IC's estate of a property likely to be worth well over £200,000. The Respondent may be able to claim for its lost £40,000 in the bankruptcy. It may also be able to claim the value of the Property from the Land Registry indemnity fund, if it can satisfy the Land Registry or a court that it acted in good faith and that its loss was not caused as a result of its own fraud or wholly as a result of its lack of proper care. The Land Registry is not a party to these proceedings so there is nothing in my paragraph 38(4) above that could give rise to an issue estoppel preventing the Respondent from

asserting in an indemnity claim that in fact it was not guilty of fraud or a lack of proper care.

(6) However, my primary reason for concluding that I have the power to order the alteration is that the Respondent has not satisfied me on the balance of probabilities that it was in possession of the Property at the relevant date, and hence the Proprietor in Possession Limitation does not apply.

(7) Having concluded that I have the power to order alteration of the register, I do not consider that there are any exceptional circumstances justifying me in refusing to order that the alteration be made.

Decision

39. For the reasons that I have sought to explain above, I will direct that the Chief Land Registrar give effect to the Applicants' application of 8 June 2018 to alter the title to the Property by substituting the Applicants as registered proprietors. I will direct the Chief Land Registrar to reject the Respondent's application of 16 May 2018 to cancel the unilateral notice in favour of the Applicants. The usual rule in this jurisdiction is that costs follow the event: the loser pays the winner's costs since referral to the Tribunal. However, that is not the invariable rule. By para. 9.1 (b) of the Practice Directions, Property Chamber, First-Tier Tribunal, Land Registration I can make a different or no order as to costs. I have not yet heard any submissions on costs, which I propose to decide with reference to written submissions. So, if either party wishes to apply for costs they should make a reasoned application in writing, accompanied by a schedule of costs within 28 days. Such an application should be served on the other party who will then have 21 days to respond to the application by way of written submissions sent to the Tribunal, copying any submissions to the applying party or parties. Any response to such submissions should be provided to the Tribunal and the other party or parties within 14 days of receipt of the submissions.

Daniel Ga

JUDGE DANIEL GATTY

Dated: 13 September 2019