



[2019] UKFTT 0722 (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 2018/0918
BETWEEN

STEPHEN WILKINS

Applicant

and

QUN MUNDS

Respondent

Property: 34 Dalmeny Road, Erith DAB 1JX

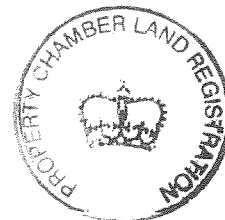
Title number: K101154

ORDER

The Chief Land Registrar is ordered to give effect to the application dated 4 July 2018

BY ORDER OF THE TRIBUNAL
Ann McAllister

Dated this 30th day of October 2019





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STEPHEN WILKINS

Applicant

and

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Respondent

Property: 34 Dalmeny Road, Erith, Kent DA8 1DZ

Title number: K101154

Before: Judge McAllister

Alfred Place London

3 October 2019

Representation: Antonia Halker of Counsel instructed by Haslaw & Co Ltd appeared for the Applicant; the Respondent appeared in person

DECISION

Introduction

1. The Respondent, Ms Munds, is the registered proprietor of 34 Dalmeny Road, Erith ('the Property'). The Property was purchased on 26 March 2006 for £175,000 and Ms Munds was registered as the owner on 5 May 2006.
2. By an application dated 4 July 2018 the Applicant, Mr Wilkins, applied to enter a restriction in Form A against the Property, that is to say that no disposition by a sole

proprietor of the registered estate under which capital money arises should be registered unless authorised by an order of the court.

3. The application was supported by a statutory declaration dated 18 May 2018. In essence, it is Mr Wilkin's case that the purchase of the Property was a business venture between himself and Ms Munds, the terms of which were that the Property would be retained for a relatively short period, during which Ms Munds would receive the rental income. On sale, Ms Munds was to receive the sum of £20,000; Mr Wilkins would recoup his initial capital investment and cost of labour; and whatever was left would be split equally between them. The capital investment was said to be in the sum of £25,000. There is no written evidence of this agreement.
4. The claim, therefore, rests on a common intention constructive trust, alternatively a resulting trust, or, again, a claim by way of proprietary estoppel.
5. In the event that Mr Wilkins does have a beneficial interest, I am not asked to quantify this. The issue for me is simply whether Mr Wilkins can bring himself within section 42 and section 43(1) (c) of the Land Registration Act 2002.
6. For the reasons set out below, I am satisfied that Mr Wilkins has a beneficial interest and accordingly I will order the Chief Land Registrar to give effect to the application.

Background and evidence

7. There are a number of issues on which the parties have given conflicting accounts. However, the following facts are agreed. Mr Wilkins and Ms Munds began a relationship in or about 2001/2002 at a time when Ms Munds was married. Ms Munds divorced her husband in 2006, but at some point returned to live with him when he was ill and in need of care. Her former husband died in 2016.
8. Mr Wilkins re-mortgaged his house in 2005 and released at least £55,000 (on his case, £65,000). Of that sum, Mr Wilkins gave Ms Munds £25,000 towards the deposit.
9. It is also common ground that the Property required at least some repairs and renovations, and that, at least for a period, the Property was let.
10. Ms Munds denies that the Property was purchased as a business venture, and her evidence is that the £25,000 given to her by Mr Wilkins was not a contribution to the purchase of the Property, but the repayment of monies owed to her. The amount allegedly due to her is set out in her Statement of Case.

11. The evidence given by Mr Wilkins regarding the circumstances of the purchase of the Property is as follows. He drove past the Property one evening and saw that it was for sale by auction. It had in fact already been sold, but he nonetheless contacted the new purchaser and agreed a price. In order to finance the purchase he re-mortgaged his own property for £135,399.
12. Mr Wilkins further gave evidence that, as he was not able to obtain a further mortgage to purchase the Property, he suggested to Ms Munds that she should obtain a mortgage in her name only. In March 2006 Birmingham Midshires advanced the sum of £149,249 to Ms Munds on an interest only mortgage. On his case, Ms Munds first saw the Property after the purchase was completed: she told him that had she realised what state it was in, she would never have got involved.
13. The Property needed major works. Mr Wilkins is a qualified plasterer, plumber, electrician and carpenter and has built new houses under his NHBC registration. I have seen a notice of approval from Bexley Council approving the relocation of a staircase and ancillary works. The notice was addressed to Mr Wilkins. Mr Wilkins has also prepared a list of extensive works carried out by him to the Property, albeit that this is not supported by any documentation. He was not earning whilst doing works on the Property, and so, on his evidence, he rented out his own property and lived in a shed in the garden of the Property. His evidence was that the kitchen and bathroom needed to be replaced, and other work done.
14. Following the completion of the works Ms Munds let out rooms in the Property. This was not always a straightforward process. In due course, when the tenants moved out, Ms Munds moved in.
15. In 2017 Mr Wilkins' evidence is that he carried out further works at a cost of some £13,000, plus the cost of his labour. I have seen some invoices and receipts relating to these works. It was about this time that Ms Munds moved into the Property (having been asked to leave her ex husband's house). Shortly after this, again on Mr Wilkins' evidence, she changed the locks and excluded him from the Property. Mr Wilkins denied that the further money he spent in 2017 was a gift to Ms Munds in return for the care she had given to his mother, who was unwell for some time before she died.
16. In short, Mr Wilkins' evidence is that he spent a great deal of money on the Property, both by contributing to the deposit, and on repair and renovation works. This was done the basis of the agreement made with Ms Munds as set out above. In cross examination he agreed that he had not been asked by her to carry out the post 2107

works, but stated that he did them in order to make the Property a quality property which could be easily sold. Ms Munds denied that there was ever an agreement to sell the Property.

17. Ms Munds case is that she decided to buy the Property in March 2006 following her divorce to provide a home for herself and her son. The £25,000 given to her by Mr Wilkins was not the deposit for the Property but was the repayment of loans made by her to him from 2001 onwards. Asked where her money had come from to lend money to Mr Wilkins she stated that she had borrowed some from her sister, some from her ex employer, and that she had savings of some £15,000. There is no documentary evidence on this point (and indeed, as I have said, there is very little documentation of any kind).
18. Ms Munds also maintained that she was aware of the sale by auction, and had seen the Property before the purchase was completed. She accompanied Mr Wilkins to the estate agents. As she was still married, she could not live with Mr Wilkins. The Property was in a very poor state, but Mr Wilkins said he would help her redecorate it. She was aware that Mr Wilkins could not get a mortgage in any event because of the mortgage he already had on his own property. The cost of the renovation was borne by her, partly from her divorce settlement, and partly by loans. She denied that Mr Wilkins had paid £30,000 or anything like that sum to renovate and repair the Property, although she accepted that he had redecorated the Property. It was her case that whilst he did spend time on doing works to the Property, he paid for the material and other people helped.
19. Ms Munds denied that there was any agreement that Mr Wilkins would contribute £25,000 or that she would retain the rental income and the first £20,000 on any sale. In 2006 Mr Wilkins moved into the Property as her boyfriend. She agreed that she did not live there between 2008 and 2017, although she maintained that her son sometimes lived in one room. There was no plan to rent it out from the outset. She maintained that any works done to the Property after 2017 were in recognition of the fact that Ms Munds had looked after his mother when she was terminally ill with cancer.
20. However, at one point, Ms Munds stated that she happy to leave the renovation and repair of the Property to Mr Wilkins because she trusted him and because she knew it was his property. Ms Munds also added that she would be willing to repay the costs Mr Wilkins incurred in 2017 so long as he can produce receipts. She also stated that she knew that he was not in a position to obtain a mortgage in his own name.

21. I also heard evidence from Mr Bettel, who has known and been a friend of Mr Wilkins for over 25 years. He stated that he had viewed the Property with Mr Wilkins. Although he did not help with the renovation, he knew that Mr Wilkins had spent a great deal of time and effort on renovating the Property.

Conclusion

22. The relevant legal principles are well known and not in dispute. The starting point is that equity follows the law. The burden of showing that the beneficial interest is to be held in some other way is on the person asserting an interest. The task of the court or tribunal is to ascertain the parties shared intentions in the context of the whole course of dealing in relation to the property (see, generally, *Stack v Dowden* [2007] UKHL 17 and *James v Kernott* [2011] UKSC 53).

23. These principles apply also to properties purchased for investment purposes, although in such cases, absent any other evidence, the principles of resulting trust come into play (see *Laskar v Laskar* [2008] EWCA Civ 347 and *Marr v Collie (Bahamas)* [2017] UKPC 17).

24. A further point to note is that, in the context of an application for a restriction, I do not have to decide each and every point raised or determine every factual dispute, but merely have to be satisfied, on a balance of probabilities, that the parties agreed that Mr Wilkins would have an interest in the Property, or that, in any event, that he did contribute financially to the initial purchase of the Property or to the renovations carried out to the Property, such that a resulting trust arises or a claim can be made under the principles relating to proprietary estoppel.

25. As stated above, there is little conclusive documentary evidence. However, I am satisfied that the parties agreed that the Property would be purchased as a joint venture, and further satisfied that Mr Wilkins contributed to the cost of the purchase. I found Ms Munds evidence to be at times inconsistent and confused. Part of her evidence was given for the first time in cross examination.

26. It is significant, it seems to me, that Ms Munds accepted that Mr Wilkins was not in a position to obtain a mortgage. I do not accept that the money Mr Wilkins paid at the outset by way of deposit was a repayment of loans made by her, nor do I accept that the renovations and repairs carried out by him after 2017 were in some way a

recompense for the help Mrs Munds had given his mother (or as a birthday gift, which was another explanation put forward by her).

27. I found Mr Wilkins to be more credible and reliable witness. I accept, of course, that where, as here, the parties' relationship has broken down, recollection of events can be influenced by the breakdown itself. But standing back, and taking the evidence as a whole, I am satisfied that both parties had an interest in the Property and that it was purchased with a view to renovating it, and then letting it, and ultimately selling it.
28. Accordingly, the application for a restriction succeeds. As to costs, Mr Wilkins is, in principle, entitled to his costs. A schedule in Form N260 or the like is to be filed and served within 14 days of the date of this decision. Ms Munds may make such representations as she deems appropriate within a further 14 days, and I will decide the matter thereafter.

BY ORDER OF THE TRIBUNAL

Ann McAllister

Dated this 30th day of October 2019.

