



[2017] UKFTT 0234 (PC)

REF/2016/0291

**PROPERTY CHAMBER, LAND REGISTRATION
FIRST-TIER TRIBUNAL**

LAND REGISTRATION ACT 2002

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

BETWEEN

Phillip Bradlet Roberts

APPLICANT

and

Amy Elizabeth Roberts

RESPONDENT

**Property Address: Apartment 411, Cable House, 49 Cheapside, Liverpool, L2 2DY
Title Number: MS447125**

ORDER

IT IS ORDERED as follows:

1. The Chief Land Registrar is to give effect to the Applicant's original application dated 19 January 2016 to in form RX1 for the entry of restrictions, but
2. is to enter a form A restriction only.

Dated this 15 February 2017

Elizabeth Cooke

BY ORDER OF THE TRIBUNAL



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Title Number: MS447125**

Before: Judge Elizabeth Cooke

Sitting in Liverpool on 14 February 2017

DECISION

Introduction

1. The Applicant, Mr Philip Roberts, has applied to enter restrictions on the register of title to apartment 411, Cable House, Cheapside, Liverpool (“the property”) to protect his beneficial interest in it. He says that his interest arises from a declaration of trust dated 5 April 2007.
2. The Respondent is his sister, Ms Amy Roberts, who is the registered proprietor of the property. She says that he has abandoned his beneficial interest. She therefore objected

to his application, and the dispute has been referred to the Land Registration Division of the First-tier Tribunal pursuant to s 73 of the Land Registration Act 2002.

3. I conducted a hearing on 14 February 2017 in Liverpool. The Applicant was represented by his solicitor Mr Patel, and the Respondent by My Hynes of counsel; neither the Applicant nor the Respondent attended. I am grateful to both advocates for their succinct and helpful submissions.
4. The Respondent's case is that the Applicant has abandoned his interest in the property. Her objection must fail, and I have directed the registrar to give effect to the application as if the objection had not been made. I can give my reasons very briefly.

Reasons

5. It is not in dispute that when the declaration of trust was made on 5 April 2007 the legal owners of the property were the Respondent and her then partner Luci Bowers. They declared that they held the property on trust for sale, first to pay off the mortgage and the expenses of sale, then to pay the proceeds up to £275,000 to the Applicant, then to divide any surplus in equal shares between themselves on the one hand and the Applicant on the other. In the light of the existence of the trust, a Form A restriction was entered on the register.
6. By a Deed of Release dated 10 August 2007 Ms Bowers released her interest in the property. It is not in dispute that that document had no effect on the Applicant's beneficial interest.
7. For reasons that have not been explained the Form A restriction was then removed. The parties' solicitors, WCD Law – in which firm their father was a partner and the Applicant was a legal executive – sent to Land Registry a document headed "Statutory Declaration" purporting to be made by the firm and stating that the legal owner, the Respondent, was solely and beneficially entitled to the property. That document is basis of the Respondent's case at its highest, as Mr Hynes put it. The Applicant says in his witness statement that it is not a statutory declaration, and that it would have been made by the post-completion department of the firm in order to remove the restriction. He did not give instructions for it to be made, and it is not signed by him.
8. The Applicant did not attend the hearing before me and therefore has not been cross-examined on that point; nevertheless I accept his evidence. The "statutory declaration" was not made by him nor made on his instructions, and is not therefore a disposition of his equitable interest.

9. The other document on which the Respondent's case rests is an email from the Applicant on 21 July 2011 to the agents managing the property. By this time the parties had become embroiled in a bitter family quarrel, and the Applicant at this time did not wish to be involved in the management of the property. The agents had asked for proof of the Respondent's legal ownership, in order to take instructions from her having previously dealt with the Applicant. The email said:

I have no further interest in this property. Amy Roberts is the legal owner, please check official register entries at Land Registry if you are in any doubt.

10. This is a correspondence about legal ownership. I accept the Applicant's explanation that – despite his being a property lawyer – this was simply an instruction about management and legal ownership. It does not read like the disposition of an equitable interest and I find that it was not such a disposition.

11. Accordingly matters stand, so far as the Applicant's interest in the property is concerned, as they stood in 2005. He remains entitled to the proceeds of sale up to £275,000 after payment of the mortgage and expenses, and to half the balance.

12. That is not of course going to be the end of the story. The property currently suffers from “negative equity”; if sold now there will be a shortfall on the mortgage. So neither of its beneficial owners – the Applicant and the Respondent – stand to receive any money on sale at the moment. Even if it is eventually sold for a sum greater than the mortgage debt it there is bound to be equitable accounting to be done between them as a result of the making of mortgage payments and other expenditure. There is nothing I can say about that save to urge the parties, if at all possible, to reach an agreement now rather than storing up a dispute for the future.

The direction to the registrar

13. I have to direct the registrar to respond to the Applicant's application as if the Respondent's objection had not been made. However, the parties' representatives agreed before me at the hearing that he had applied for the wrong restriction; what is wanted is a restriction in Form A only. Both were content for me to make it a condition of my direction to the registrar that the restriction entered be in Form A.

Costs

14. The Applicant appears to be entitled to his costs of the reference to the Tribunal. If he wishes to make an application for costs he may do so in writing within 28 days of the date of this decision, his application to be accompanied by a schedule of his legal costs from the date of the reference. The Respondent may then make representations about

liability, or about the amount claimed, with a further 28 days, and the Applicant will then have 14 days in which to reply.

Dated this 15 February 2017

Elizabeth Cooke

BY ORDER OF THE TRIBUNAL