[2018] UKFTT 574 (PC)

REF/2016/0210

PROPERTY CHAMBER, LAND REGISTRATION
FIRST-TIER TRIBUNAL

LAND REGISTRATION ACT 2002

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

BETWEEN

Glenice Rosemary Lawson

APPLICANT

and

Executors of John Wheatley Wilson Todd deceased

RESPONDENTS

Property Address: Mount Pleasant Long Newton Stockton-on-Tees TS21 1BX
Title Number: CE25146

ORDER

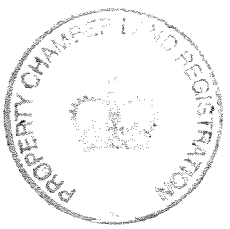
IT IS ORDERED as follows:

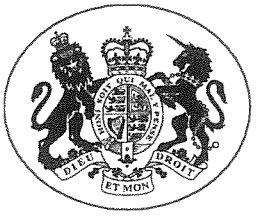
The Chief Land Registrar is to give effect to the original application dated 24 March 2014 for the removal of a restriction as if the Applicant's objection had not been made.

Dated this 15 August 2018

Elizabeth Cooke

BY ORDER OF THE TRIBUNAL





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Title Number: CE25146

Before Judge Elizabeth Cooke
Sitting at: Darlington in 28 and 29 June 2018
And at Newcastle-upon-Tyne on 2 August 2018

Applicant Representation:	Mr Henry Stevens instructed by Jacksons
Respondent Representation:	Mr Simon Goldberg instructed by Ward Hadaway

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DECISION

Keywords: restriction, fraud, forgery.

Cases referred to:

Goodman v Gallant [1986] Fam 106

Hunter v Chief Constable of West Midlands [1982] AC 529

Rochefoucauld v Boustead [1897] 1 Ch 196

Taylors Fashions Ltd v Liverpool Victoria Friendly Society [1982] QB 133

1. I have to decide whether Mrs Glenice Lawson, the Applicant, has an interest in her late brother's house, Mount Pleasant in Stockton-on-Tees, or whether the restriction that is currently on the register to protect her claimed interest should be removed in accordance with an application made in 2014, purportedly by her brother.
2. The Applicant's brother was Mr John Todd; he died of bladder cancer in July 2014. The Respondents to this application are his sons and personal representatives, James and Richard Todd.
3. The Applicant objected to the application to remove the restriction and the matter was referred to this tribunal pursuant to section 73(7) of the Land Registration Act 2002. I heard the matter in Darlington Magistrates Court on 28 and 29 June 2018. I am grateful to the parties for their patience on the first day of the hearing on which unsuitable facilities were provided, and to learned counsel for their assistance with tasks that would ordinarily have been carried out by the clerk. I heard closing submissions in Newcastle on 2 August 2018.
4. The Applicant was represented by Mr Henry Stevens of counsel and the Respondents by Mr Simon Goldberg of counsel. I am grateful to both for their helpful arguments in a difficult case.
5. I have directed the registrar to give effect to the application to cancel the restriction as if the Applicant's objection had not been made. In the paragraphs that follow I explain my reasons.

The factual background

6. The facts insofar as they are not in dispute are as follows.
7. Mount Pleasant was purchased in 1982 by Thomas Wheatley Todd and his son John Todd – the Applicant's father and brother - as freehold tenants in common. They bought as sitting tenants, Thomas Todd and his wife Rhoda having rented the property before then for many years. Thomas and John were in business together in partnership.
8. In 1982 Thomas Wheatley Todd died. He left his half share in Mount Pleasant to his two children, the Applicant and her brother John Todd, in equal shares, subject to a life interest for Rhoda Todd his widow. Mount Pleasant was John and Rosa's home, and Rhoda lived there with them.
9. On 14 December 1983 the Applicant executed a deed of variation. The parties to the deed were (1) the executors of Thomas Todd's will being Rhoda Todd and Rhoda's sister Doris Kipling, (2) Rhoda Todd as a beneficiary of the will, (3) John Todd and (4) the Applicant. The parties recited their wish to vary the will, and in the operative part

of the deed they agreed and declared that the will was to be read as if Thomas Wheatley Todd had given his share in Mount Pleasant to John Todd absolutely, again subject to Rhoda's life interest.

10. Legal title to Mount Pleasant was not transferred by the executors to John Todd until 1993.
11. In 2009 Rosa Todd petitioned for divorce. John Todd was represented initially by Hewitts but for most of the proceedings by Punch Robson. That firm's extensive file has been disclosed in this litigation; it includes detailed attendance notes as well as correspondence.
12. On 1 July 2010 a restriction was entered against the title to Mount Pleasant. The Applicant applied for the restriction to protect the interest she claims to have in the property; John Todd was notified of the application by HM Land Registry and signed a form to say he agreed to the entry of the restriction on 2 July 2010.
13. A decree nisi was pronounced in the divorce. John Todd argued in the financial provision proceedings that the Applicant owned a quarter share in Mount Pleasant. He was being assisted in the divorce proceedings by the Applicant's husband, John Lawson; it is clear from Punch Robson's file that Mr Lawson was asked to ask the Applicant if she wished to be joined in to the divorce proceedings so as to defend her entitlement. She did not do so – I say more about this later – and the District Judge found that she had no interest in Mount Pleasant and made a financial provision order on that basis.
14. No decree absolute was ever pronounced and accordingly John and Rosa Todd remained married until his death in 2014 but did not live together; according to Rosa they were reconciled shortly after the decree nisi but found it easier to live apart because of John's drink problem.
15. In 2011 an application was made by John Todd on form RX3 for the removal of the restriction. The Applicant objected and no reply was made to the objection, so the application was cancelled. On 22 March 2014 a further form RX3, signed "John Todd", was submitted, and that is the application referred to this Tribunal.

The issues

16. The Applicant has made two objections to the removal of the restriction.
17. One is that she has an interest in Mount Pleasant and is entitled to have the restriction remain on the register. The other is that she says John Todd's signature on the RX3 was forged.

18. In answer to the second objection the Respondents (who, as I said, are John Todd's executors) have made a further application to HM Land Registry for the removal of the restriction, without prejudice to their contention that John signed the application made in 2014. The Respondents' own application has not yet been referred to this tribunal. Accordingly there have been three applications to HM Land Registry for the removal of the restriction, and I refer in what follows to the 2011 RX3, the 2014 RX3 and the 2018 RX3
19. By letter before the hearing I was asked on behalf of the Applicant to treat the hearing as a trial of a preliminary issue, namely the claim that the 2014RX3 was forged, on the basis that if the 2014 RX3 was a forgery the Tribunal must direct the registrar to cancel the restriction and there would be nothing else that the tribunal had to hear.
20. That would be a pointless outcome. The 2018 RX3 has yet to be referred to the tribunal and if I were to find that the signature on the 2014 RX3 was forged and dismiss the Respondents' case, proceedings would have to start afresh on the eventual referral of the 2018 RX3 and the Applicant's objection to it.
21. Moreover, it was clear at that stage that there was a conflict of expert evidence and that it was far from inevitable – despite the protestations of the Applicant's solicitors – that I would find the signature on the 2014 RX3 had been forged. So, were there to be a split trial, the parties would be at serious risk of having to fund a further hearing on the substantive issue between them.
22. Therefore, in the interests of both parties I made a case management decision to hear the parties on both objections so that the Applicant's substantive case could be heard in full and the dispute as to her entitlement resolved.
23. At the hearing I pointed out to the parties that if I were to find that the signature on the 2014 RX3 had been forged, but that the Applicant had no interest in the property, my direction to the registrar would be two-fold: first, I would direct the registrar to cancel the application of 22 March 2014; second, pursuant to Rule 40(3)(a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and as a condition of that cancellation, I would direct the registrar to remove the restriction. In the event, that is not my finding; but both counsel agreed that that would be an appropriate way for me to proceed if I were to find that the 2014 RX3 was not a valid document but that, nevertheless, the Applicant had no entitlement to a restriction.
24. Accordingly the issues I have to decide are, first, was the Applicant entitled to a restriction and, second, was the 2014 RX3 forged?

The Applicant's case on her entitlement to a beneficial interest

The evidence given by and for the Applicant about her claimed interest

25. The Applicant's evidence, set out in her Statement of Case and her witness statement, is that in 1982 when her father died the family was in a difficult financial situation. The partnership borrowings of Thomas and John Todd were secured on Mount Pleasant, and (I quote from her Statement of Case) "Midland Bank were foreclosing on a loan to John which would force the sale of Mount Pleasant and John needed to borrow further monies to be secured on Mount Pleasant". The sale of Mount Pleasant, she claims, would have meant that her mother would be homeless as well as her brother. John had no job and his only source of income was selling the occasional second-hand car. Mount Pleasant comprised 4 acres of land and could not generate an income. The bank would only hold its hand if the whole property were transferred to John so that he was sole legal and beneficial owner. In paragraph 9 of her witness statement she says "Midland Bank would only consider the loan of monies to John if there were no other parties involved with the ownership of Mount Pleasant. They would not accept another joint owner who could potentially stop or slow down the sale of the property if it became necessary in the future."

26. She explained in cross-examination that she was told this by her mother and brother, who put a lot of pressure on her. She therefore executed the Deed of Variation. But her case is that she did so on the basis of a promise made by John at the time and repeated often afterwards. In her Statement of Case she says "John promised the Applicant that he would treat the transfer of the Applicant's share in Mount Pleasant as a loan and would repay the Applicant when he was able to do so." In her witness statement she says: "It was agreed that I would transfer my share of Mount Pleasant to my brother, to enable him and, very importantly, my mother to continue to occupy Mount Pleasant. In return, my brother confirmed that he would repay me my one quarter share in the future, as soon as he was able, as he was not in a financial position to presently buy out my share." She says that she would not have transferred her share if that promise had not been made.

27. In cross-examination the Applicant was unable to say what was the value of Mount Pleasant in 1983, and expressed uncertainty as to whether she was supposed to get back a quarter of its value as at that date or as at the date repayment was eventually made.

28. In her witness statement (at paragraph 61) the Applicant says that her mother also gave up her life interest, but that is not what the deed of variation says. To jump ahead a little,

John Lawson and Rosa Todd said the same so I think that may have been a misconception on the part of the family as a whole.

29. The Applicant instructed her own solicitors, Latimer Hinks Marsham and Little, who acted for her in connection with the deed of variation and corresponded with the family solicitors Fawcett and Faber. She said in cross-examination that she told Latimer Hinks about John's promise. She was then shown a letter from Fawcetts to John dated 21 November 1983. In that letter Fawcetts said that they had that day received a letter from Latimer Hinks suggesting that John should pay the Applicant's legal costs since she was giving away her share; the Applicant said she had not known about Latimer Hinks' letter and had wanted to pay her own costs.

30. There were put to the Applicant in cross-examination a number of other letters. One was from Fawcett and Faber, addressed to her mother and dated 23 May 1983, explaining that the bank was content for the property to be put into the names of Rhoda and her sister as trustees so long as it was still subject to the charge. The second was from the bank to John and Rosa Todd 4 November 1982, declining to lend them any money for the purchase of new property because of the level of business drawings and because, said the bank, Mr Todd might be needing to borrow in order to buy out his sister's share in Mount Pleasant. The third was a letter to John from his solicitors Martin L Cohen and Co in 1993 relating to the transfer of legal title in Mount Pleasant to him, which refers to his instructions that the Applicant's half share in the property was transferred to him in 1983. A further letter from Martin L Cohen and Co to Durham District Land Registry in 1996 refers to John Todd as being legally and beneficially entitled to the whole property. The Applicant said she knew nothing of these letters and could not comment.

31. Turning to the divorce proceedings., the Applicant says that John Todd told his solicitors and the court that she had inherited, and still held, a 25% interest in Mount Pleasant – and it is clear from the correspondence and evidence she quotes that that is indeed what he said. He mentioned the deed of variation but described it as an agreement that the Applicant would retain a 25% interest in the property but that the legal title would be transferred to him. The Applicant says that John was advised that she should join in the proceedings to defend her interest, but she says that she was never informed of this at the time. Naturally it was put to the Applicant that the entry of the restriction in 2010 was a deception, a transparent attempt to claim an interest in the property so as to keep it out of Rosa's hands in the divorce proceedings. She denied this, and insisted that John had consistently maintained his promise.

32. There was put to the Applicant a letter dated 27 March 2009 to John Todd from Hewitt's, whom he instructed initially in the divorce, which referred to his instructions to the effect that his sister had transferred her share in Mount Pleasant to him for no consideration by the deed of variation.
33. There was also put to the Applicant an attendance note on Punch Robson's file dated 22 April 2010 recording a call from a Mr Hogg from Close Thornton's solicitors saying that they had been instructed by the Applicant in connection with John Todd's divorce proceedings and asking for a call back after the hearing. The Applicant said she had had nothing to do with that firm, although her son was buying a house and had instructed them in that regard. I note that on 27 June 2018 Close Thornton wrote to the Applicant's present solicitors to confirm that they had not been instructed by the Applicant and that no file was ever opened for her by them.
34. When she was asked why the restriction had been entered in 2010 the Applicant replied "because of the divorce ...", and then seemed to stop herself and added "well it was my quarter share".
35. The Applicant's witness statement also mentions property owned by her mother Rhoda, who died intestate in 1995, at 8, Castlereagh Close, and a house owned by her father at Chapel Row, Sadberge. She complains that she is entitled to a half share in each of these properties. She does not accept that Castlereagh Close was bought by her brother for her mother; and she says that the land at Chapel Row was sold, but that her mother's signature was forged and that the proceeds were paid to Rosa Todd.
36. So far as the Applicant is concerned, therefore, the dispute about Mount Pleasant is part of a larger dispute and of an extensive pattern of deception and forgery.
37. The Applicant's husband John Lawson also gave evidence. He recalls the "panic" in the family in 1982 and 1983 over the financial situation and the pressure from the bank, and he notes that the Applicant was under "a great deal of emotional pressure" from both John and Rhoda. He too says that John had no income apart from an occasional car sale. He (Mr Lawson) was not involved in discussion with the bank but remembers the bank manager, Mr Temple, and says that John persuaded Mr Temple not to force a sale if he (John) were to become the sole owner and Rhoda gave up her life interest. He recalls the deed of variation and says "John promised to repay to Glenice her quarter share as soon as he was able and in return John would be named as legal owner on the deeds." He adds "The promise that John would repay to Glenice her quarter share was agreed, but for obvious reasons it could not be documented as Midland Bank would have

objected and it would also have had tax implications." Why the bank would have objected to the informal loan described is not explained, nor what the tax implications would have been.

38. John Lawson goes on to describe relationships between John and his family. He says he was called to Mount Pleasant on several occasions after incidents of domestic violence; he says the police attended but that it became clear to the police that it was "Rosa who was the source of the trouble". He recalls an incident in 2010 when John called him in having left the house and hidden in a field, after James had attacked him and smashed up the house; Mr Lawson exhibits photographs of the interior of the house with furniture in disarray. He says that John was the victim of verbal and physical abuse from both Rosa and his sons.
39. Mr Lawson recalls an incident in 2010 when he paid a council tax debt for John; he also recalls a conversation in 2013 when the Applicant met John and his son James and James made, he says, threatening comments.
40. In cross-examination he was asked about his involvement in the divorce proceedings, It is clear that he gave John considerable moral support and assistance. He was present when legal advice was given but not at the hearings themselves. He agrees that he was asked, and agreed, to explain to the Applicant that it was open to her to join in the proceedings so as to defend her interest in Mount Pleasant, but that he did not do so because he did not wish to quarrel with her. She had made it very clear that she wanted nothing to do with the divorce and he was not going to go past that.

The evidence for the Respondents about the Applicant's claimed interest

41. Rosa Todd said that in the early 1980s she and John were in no financial difficulties. Her husband had "a wonderful business" in welding, although they ran into difficulties later when he took to drink. They owned another freehold property outright so that even if they had lost Mount Pleasant – which she says was not a danger – they and Rhoda had somewhere else to live. She explained that the Applicant and Rhoda Todd were happy for John to have all his father's share since he had put work into the small-holding whereas the Applicant, who had her own family and a job, had not; another reason was that John was looking after Rhoda whereas the Applicant was not.
42. Rosa was challenged about this in cross-examination on the basis that Rhoda Todd at this stage was only 59 and surely did not need looking after. Both Rosa and James gave evidence that Rhoda was vulnerable after a bereavement and serious illness.

43. Rosa was also asked about the financial arrangements. It is accepted for both parties that Mount Pleasant was subject to a mortgage at this point; Rosa said it was not, but her answers in cross-examination on this point make it clear that she did not have a clear understanding of the question.

44. As to the other properties referred to in the Applicant's witness statement, Rosa said that 8 Castlereagh Close was bought by John, and she produced evidence of this at the hearing. She said that the sale of the Sadberge property was genuine, and that the Applicant had furniture from it; and she added that if the Applicant was unhappy about the destination of the sale proceeds she should have tackled John about it at the time. The rest of Rosa's evidence is relevant to the forgery question and I revert to it later.

45. James Todd, John's son, gave evidence but of course has no recollections of the early 1980s when he was about 4. The other witnesses for the Respondents gave evidence relevant only to the forgery question.

Conclusions on the Applicant's claimed interest

46. It has already been held, by the District Judge in the divorce proceedings in 2010 between John and Rosa, that the Applicant has no beneficial interest in Mount Pleasant. However, the Applicant was not a party to those proceedings. Whatever the reason why she did not participate, it is agreed that there is no issue estoppel preventing her from making this claim. The Respondents say that it is an abuse of the process of the court for her to do so, citing *Hunter v Chief Constable of West Midlands* [1982] AC 529 where it was said that there is an abuse of process where proceedings are initiated for the sake of making a collateral attack on a final decision already made against the claimant. This was not explored at the hearing; it would be a difficult argument to mount in view of the Applicant's not having had any involvement in the financial provision proceedings. In the event it is not necessary for me to consider the point. I reject the Applicant's case that she has an interest in Mount Pleasant, for the following reasons.

47. First, her story is wholly implausible as a matter of law. Her explanation of the bank's requirement that John be sole owner of Mount Pleasant makes no legal sense. If the bank was willing to lend to John on the security of Mount Pleasant (on which the partnership borrowings by John and his father were already secured), all it needed was for the Applicant – and of course Rhoda as life tenant – to postpone her interest to the bank's loan.

48. Second, the Applicant's evidence is contradicted by cogent evidence to the contrary.

49. The Applicant and the family were represented by solicitors in connection with the deed of variation. In the unlikely event that the bank manager really was asking for the beneficial title in Mount Pleasant to be transferred to John as a condition of further lending, the family solicitors, Fawcett and Faber, would have been able to advise John and his mother that that was not necessary and could have resolved matters easily with the bank by the postponement of Rhoda and the Applicant's interest. The Applicant's own solicitors, Latimer Hinks, would have explained this to her. But instead, the correspondence from both solicitors makes it clear that so far as they were concerned the Applicant wanted to make a gift. Particularly significant is Latimer Hinks' suggestion that John pay the Applicant's costs (paragraph 29 above), which makes it crystal clear that so far as they were concerned this was a gift.
50. Further correspondence makes it clear that far from being unable to buy out the Applicant's share, John was likely to have been able to borrow from the bank in order to do so (see the bank's letter of 4 November 1982 referred to in paragraph 30 above). It is clear from Fawcett and Faber's letter of May 1983 that the bank was not imposing any requirement that the property be owned by John alone.
51. I note also the significant absence of any evidence that the bank did in fact lend money to John Todd after the deed of variation. The bill presented by Fawcett and Faber for the work done on Thomas Todd's estate refers to the preparation of a new charge to Midland Bank, but as that is part of the probate account it would appear simply to be the re-arrangement of the existing business loan and mortgage following Thomas' death rather than any new borrowing by John or by John and Rosa together.
52. Furthermore, the deed of variation leaves Rhoda's life interest intact. Had the bank been requiring that John Todd be the sole beneficial owner, it would not have been satisfied with the presence of the life interest.
53. I take the view, as did the District Judge in the divorce proceedings, that the restriction was entered by agreement between John and the Applicant in order to safeguard at least a quarter of the property from Rosa. I note that John's story to his solicitors about the reason for the deed of variation was the same as the one that the Applicant now gives, namely that it was a requirement of the bank that he be the sole owner (Applicant's statement of case paragraph 34, quoting Punch Robson's attendance note of 7 July 2010). Up until then John had maintained to his advisers – Martin L Cohen in 1993 and Hewitts in 2009 – that he was the sole beneficial owner. I find that the story about the bank's requirements was adopted by John at this time as a way of defending the property

from Rosa. I find that John and the Applicant conspired to have the restriction entered in order to keep the property away from Rosa, and that the Applicant was nowhere near so uninvolved in the divorce as she now professes. I find that she was in touch with Close Thornton with a view to their acting for her in the divorce proceedings, although not for long enough for a file to be opened.

54. I have considered carefully whether it might be the case that the Applicant believes the truth of the evidence she has given, and in particular whether that it may have been John who told her the story about the bank in order to pressurise her and then adopted it himself in the divorce proceedings. I conclude reluctantly that the Applicant's evidence is not consistent with her having been deceived in this way. I say that because if that was the basis of her participation in the deed of arrangement she would surely have told her solicitors so – and indeed it is her evidence that she did. If that was true it is inconceivable that Latimer Hinks would have failed to advise her to protect her interest if indeed she felt that she was going to retain one, or have failed to advise her to document the loan if there was a promise to repay as she now says, or indeed have failed to explain to her that the story she had been told about the bank could not be true (because all that was needed was for her to postpone her interest to the bank's).
55. On the Applicant's account the solicitors failed to do these things, which I find implausible. Moreover the evidence is clear that Latimer Hinks' understanding was that the Applicant was making a gift, and therefore that must have been what she told them. That is inconsistent with her having been deceived by John and I conclude that he did not make the promise he is said to have made to her. The story about the bank dates from the divorce proceedings and not before.
56. It follows that I reject the Applicant's and her husband's evidence, and accept the truth of what Rosa says about the family's agreement and intentions in 1983.
57. That is the end of the matter so far as the Applicant's claim to an interest in Mount Pleasant is concerned. But it is important that I should make clear that even if the Applicant's story were true it would be impossible to draw from it the foundations of a beneficial interest in the property.
58. The deed of variation is not said to be void. It is not said to be forged, there is no plea of *non est factum*, and although pressure has been mentioned there is no case made for misrepresentation, duress or undue influence. The deed does what it purports to do, namely a transfer of the Applicant's interest to John. I note that of course at this stage, before the estate was administered, neither the Applicant nor John had a fully-fledged

beneficial interest but rather a lien until the estate was administered and the trust of the property properly constituted. But the deed is nevertheless effective to give the Applicant's interest, whatever it was at that stage, to John.

59. If John made the promise that it is said he made (and that is the case only if I am wrong in my assessment of the evidence), could that promise have given rise to a constructive trust, so that he later held the legal estate upon trust for himself as to 75% and as to the Applicant for 25%? Or could the promise he is said to have made give rise to an equity by estoppel?

60. The Applicant says that John promised to repay her. I quoted her evidence above at paragraph 26, and it is crystal clear. There is no basis in that evidence for a claim either in constructive trust or in proprietary estoppel. There is no agreement or representation that the Applicant has or will have an interest in the property. It is simply a promise to pay. The Applicant cannot say what amount she was to be paid (see paragraph 27 above), so as a foundation for a claim in debt it does not go very far, and it is certainly a long way from being a representation or promise about an interest in land.

61. However, the exact words of the promise are not in evidence. If (contrary to my findings) a promise was made, and (contrary to the Applicant's evidence) the promise was of an interest in land then could the Applicant's case succeed? This is a hypothetical situation, of course, because I have found that the Applicant gave her share away as a gift as the deed of variation says she did. But for completeness: even if the promise was of an interest in land rather than of repayment, the Applicant's claim must fail. The situation can be analysed as follows:

    a. If a promise of an interest in land was made before the deed of variation was executed (along the lines of "your share will still be yours whatever the deed says") then that promise cannot found a constructive trust in the face of *Goodman v Gallant* [1986] Fam 106. It is trite law that it is not possible to set up a constructive trust in the face of a deed that sets out the beneficial interest in land.

    b. If reliance is placed upon the repetition of the promise after the deed of variation was executed, as Mr Stevens sought to argue in closing – so that the legal estate was transferred to John Todd in 1993 subject to a common intention constructive trust then the claim must fail because there is no detrimental reliance taking place *after* the promise now relied upon. Mr Stevens cites *Rochefoucauld v Boustead* [1897] 1 Ch 196 where it seems that no detriment was required; but

the facts here are very different in that John Todd took the legal estate following an express transfer, by deed, of the Applicant's interest to him. That was not the case in *Rochefoucauld* and the case is not on point.

c. Any claim in proprietary estoppel fails for the same reasons.

62. Mr Goldberg also argued that the Applicant is estopped by her deed from claiming an interest in Mount Pleasant. Estoppel by deed is the principle that a party to a deed is estopped from contradicting a statement of fact therein; I have been referred to the Second Edition of *Estoppel by conduct and election* by K.R. Handley, chapter 7. It is generally applicable to statements in recitals – whose purpose is to present the background facts – but occasionally it may arise from a statement in the operative part of the deed (*Taylors Fashions Ltd v Liverpool Victoria Friendly Society* [1982] QB 133, 159).

63. Certainly the Applicant could, strictly speaking, be estopped from denying the truth of her statement in the recital to the deed of variation "The parties hereto are desirous ... of varying the terms of the Will". She has nevertheless been allowed to give evidence to the contrary, so that the Tribunal can make findings of fact. In any event that estoppel would not take things very far. Mr Goldberg seeks to go further and points out that the operative part of deed is expressed as an indicative statement "the parties hereto hereby agree and declare". But what the parties agree and declare is that "the Will of the Testator *shall take effect* and *shall be read and construed at all times as if* [John took Mount Pleasant absolutely, subject to the life interest]". That is my emphasis; the word "shall" is an imperative. The operative part of the deed is just that; it operates. It changes things. Accordingly a challenge to that part of the deed is prevented not by estoppel by deed, but by the doctrine expressed in *Goodman v Gallant* which prevents the Applicant, and the courts, from going behind the terms of a deed that sets out the beneficial interests in land.

64. Accordingly even if I am wrong on the facts and John Todd made a promise to the Applicant, and even on the further hypothesis that it was a promise of an interest in land and not, as the evidence is, of repayment, then it could not operate to confer upon the Applicant an interest in Mount Pleasant.

65. That was rather a long journey through the facts and the law but it is important that it is appreciated that the Applicant's case must fail not only on the facts but also in law.

The forgery claim

66. It follows from what I have already found that the Applicant is not entitled to the protection of a restriction on the title to Mount Pleasant as she has no interest in it. However, she says that John Todd's signature on the 2014 RX3 was forged and that the application purportedly made in 2014 to remove the restriction should be cancelled.
67. As I have already explained, this submission if found to be true should not be allowed to derail the proceedings nor to nullify the effect of the finding that I have already made. Had I found that the RX3 was a forgery then I would have directed the registrar to cancel the application, but also and as a condition of that direction to cancel the restriction.
68. However, I find that the 2014 RX3 was not forged.

The Applicant's evidence of forgery

69. The Applicant says that the signatures on the 2014 RX3 and the covering letter sent with it were forged.
70. Allegations of forgery were made by John himself; the Applicant says in her witness statement that John said in his divorce proceedings that Rosa habitually forged his signature.
71. The Applicant also says that her mother's signature on the transfer of land at Sadberge was forged (paragraph 35 above). She does not say who did so but the terms of her statement make clear her suspicion of Rosa, to whom sale proceeds for that land were paid. In the Applicant's mind, forgery was part of a pattern. Consistent with that, John Lawson gave evidence of ill-treatment of John Todd by Rosa and his sons.
72. I have already made adverse findings about the credibility of the Applicant's evidence and her husband's. I have found that what they say about the deed of variation is not true and I therefore regard with considerable caution what they say about the relationship between John Todd and his wife and sons. Clearly John Todd had a serious drink problem and his relationships may well have been stormy as a result but in terms of the evidence about what went on in John's own home with his immediate family I have to prefer the evidence given by Rosa and James. Both gave evidence that John was a controlling man; James said he was afraid of no-one, and was "a bull of a man". I observe that Rosa is petite. James is not, and John Lawson's evidence was that John Todd said he had been assaulted by James; James, however, said that the incident to which Mr Lawson refers, but which Mr Lawson did not see, occurred when his father had him by the throat and he himself was afraid.

73. As I say, John Todd's relationships were clearly stormy, but I prefer the evidence of Rosa on this point to that of the Applicant and John Lawson and I do not find that John Todd was a victim of or under the control of his wife and sons.

74. I now turn to look in detail first at the expert evidence, and then at the evidence about the events of 22 March 2014 given by Rosa and James Todd (who alone were present when the RX3 is said to have been signed) and by Mr Andrew Evans, corroborated by Mr Thomas Bamlet.

The expert evidence

75. The Applicant adduces the report Robert Radley, MSc (etc) of the Radley Forensic Document Laboratory. He is a registered Forensic Practitioner and has extensive experience of giving expert evidence in legal proceedings.

76. He has compared the signatures on the RX3 and the letter of 22 March 2014 with 16 other signatures. They are mostly copies, and they date from 2009 to 2014. In his report he points out the progressive deterioration of the signature and says it exhibits "clear ataxia (loss of writing co-ordination)" over that period. He contrasts the two questioned signatures whose "superior quality of execution and lack of ataxia" sets them apart. He says that it is not possible for someone to recover from the deterioration in writing ability that John's signature exhibits, and therefore concludes that the two questioned signatures were forged. He surmises that they were copied from a much earlier signature.

77. I am very unhappy with the quality of this expert evidence for three reasons.

78. First, Mr Radley's report does not mention, and it is not clear therefore that he knew when he wrote it, that John Todd was an alcoholic. He attributes the deterioration in the signature to "ataxia", which he describes as "the result of the death of cells around the cerebellum [which] are not replaced". Mr Radley has not explained why he attributes the poor quality of the comparison signatures to illness rather than to drunkenness, although the answer may be that he was unaware of the alcohol problem at the time.

79. He was of course asked about this in cross-examination and was adamant that the deterioration in the signature over the years was the result of illness which, in 2014, was terminal. Nothing that Mr Radley says tells me why he is so sure of that.

80. The lack of explanation of Mr Radley's conclusion is the more troubling because it became clear at the hearing that the deterioration in the signature is not wholly consistent. Number 8 is firmer and clearer than number 7 (they are numbered in date order) and number 14 is better than number 13.

81. The second and third reasons why I cannot rely on Mr Radley's evidence arise from his correspondence with Mr Edgar Lawson, the Applicant's son, prior to making his report.
82. The documents disclosed and the hearing bundle did not include, and should have included, the instructions given to Mr Radley. He was asked at the hearing about this – of course, the non-disclosure is not down to him. He agreed to look for the correspondence he had been sent before he wrote his report, and produced it after he had finished giving evidence; Mr Goldberg addressed me about it in closing. The instructions written by the Applicant's solicitors are not included, but there are a number of letters from Edgar Lawson enclosing sample signatures and asking him to disregard the documents sent by the solicitor. Two, dated 23 and 24 May 2017, are lengthy. They set out the Applicant's and the writer's opinions ("it is our opinion that the signature on Form RX3 dated 22/3/2014 is far too neat and noticeably different to the known genuine signatures") and also go into some detail about John Todd's health, the fact that he always had shaky hands, and the fact that John's father had Parkinson's Disease. In the letter of 23 May Mr Edgar Lawson asks Mr Radley to disregard document FS2 which is a blank undated cheque, saying that he and the Applicant believe it to be a forgery provided by the Respondents to mislead the expert.
83. My second concern is therefore obvious; the expert was clearly being steered so as to focus his mind on ill-health. There is no mention in any of Edgar Lawson's letters of alcoholism. Information is therefore being provided selectively to the expert and his report is flawed as a result.
84. Equally obvious is the other reason why I cannot accept Mr Radley's evidence, which is that he is specifically asked in this correspondence to disregard some of the samples. The result is that the sample discussed in the report is incomplete and relevant evidence is excluded on the basis of the Applicant's own opinion. The undated cheque is omitted, as is a letter of 5 July 2014 with a much firmer signature. This is a manifestly unsatisfactory procedure. It assumes the truth of the forgery alleged. It fails to explain why the two eliminated comparison signatures might not be evidence for the Respondents' case, which is that John's signature was sometimes shaky and was due to the fluctuating effects of alcohol addiction.
85. Mr Radley said in cross-examination that he would not be influenced by anything that a client said. However, in this case he seems to have sought information about John's medical condition and therefore he obviously regarded it as relevant. Moreover there is

no mention in his report of the correspondence with Edgar Lawson, nor of his having been asked to disregard certain of the sample signatures, which is very troubling in itself.

86. I would have taken a very different view of Mr Radley's evidence had he been able to put forward some scientific evidence, in the form of empirical data, for his certainty that John's shaky signatures were the irreversible result of illness rather than the fluctuating effects of alcohol. Faced only with his assertion, I have to conclude that his evidence derives either from gut feeling or from the influence of those instructing him, and I am unable to attach any weight to it.

87. I have to add that I am equally unable to attach any weight to the report of Kate Strezelczyk, produced for the Respondents. She too is a Forensic Document Examiner with a master's degree in science. She was unable to attend the hearing because of illness and therefore could not be cross-examined. Her report indicates that she has examined a wider range of signatures than has Mr Radley, dating from 1983 and the 1990s as well as recent years. Her sample includes the undated cheque and the letter of 5 July 2014 which Mr Radley fails to mention. She does say that she was told about John Todd's drink problem. She notes similarities between the questioned signatures and the sample signatures. She says that those visual similarities have not occurred by chance. She concludes that "there is a distinct possibility that Mr John Todd wrote out the questioned signature in his own name on the RX3 form."

88. What the report does not do is to point out the deterioration in the sample signatures over time. Just as I would have expected Mr Radley to consider intoxication, so too I would have expected Ms Strezelczyk to consider declining health. Her report in that sense is as incomplete as his. That omission, combined with her absence for the hearing, means that I can attach no weight to her report.

89. Accordingly I derive no assistance from the expert evidence in this case.

The Respondents' evidence in response to the allegation of forgery

90. The evidence given by the Respondents on this point is as follows

91. Rosa's evidence was that in 2011 she and John – now reconciled after the divorce proceedings – went with James to see a solicitor to sort out their wills. They also raised with the solicitor the presence of the restriction on the property, and John signed at the solicitor's office a form RX3 which was sent to the Land Registry.

92. After that, Rosa, says, she gave no further thought to the restriction. She was not aware that it might not have been removed. However, in March 2014 she discovered, tucked behind John's microwave with other neglected items of post, the letter from the Land

Registry informing him that the Applicant had objected to the removal of the restriction. He had not answered it. Obviously as a result of his failure to respond the 2011 RX3 lapsed. On sight of the letter Rosa says that they immediately made an appointment to go and see their solicitor on the following Monday. They went together. The solicitor advised that a fresh RX3 should be sent, but suggested that they obtain the form and do it themselves rather than paying him to do so. Rosa and John did not have a computer and they used to ask their friend Mr Andrew Evans when they wanted a document typing. On this occasion he took down a letter at John's dictation on the telephone, and obtained the form; then he produced the letter and the form and took it to John to sign. He arrived in the morning when they were in the dining room; Rosa met him outside, took the letter and form in, and saw John sign.

93. Rosa's evidence is that at this stage John had been diagnosed with cancer but was not debilitated by his illness as he was later when he was in hospital. She also says that he was not drinking at this stage because of urinary problems.

94. Mr Evans himself gave evidence, and his account is consistent with Rosa's. He recalls delivering the form and the letter to John for his signature. He did not speak to John, but saw him at the window drinking a cup of tea or coffee with his breakfast. Rosa answered the door, and took the form and letter in.

95. The 2014 RX3 was witnessed by James, John's son, who also gave evidence. He too said that the document was signed over breakfast. He was feeding his dogs in the kitchen when he heard his mother say "Andrew's here"; he went in to the breakfast room to see what Andrew had brought, and saw his father sign it. He had also been present at the 2011 meeting with the solicitor, so James saw both forms being signed.

96. It is right to mention that Mr Evans was cross-examined on another letter, which he agrees he may well have typed, sent by John to the Land Registry and dated 2 March 2014. It is identical to the letter of 22 March sent with the RX3, except that one paragraph is omitted; both letters refer to a letter received from the Land Registry (which must be the letter discovered behind the microwave), both say that the Applicant has no interest in the property and express the wish for the restriction to be removed. Why there are two letters in such similar form with different dates is unknown and Mr Evans does not recall. It seems to me that it is possible that the first letter was sent to Land Registry on the discovery of the objection to the 2011 RX3, and that the text was re-used but extended when the letter of 22 March was sent with the RX3. There does not seem to me to be anything sinister about the duplication of text.

97. The clear evidence of Mr Evans was that the letter of 22 March 2014, and the 2014 RX3 sent with it, were prepared by him and delivered to Mount Pleasant for signature. The evidence of Rosa and James is consistent with that, and sets out what happened afterwards. It is right to observe that Rosa was outside the court while James gave evidence, and so gave her evidence without having heard James'.

98. Evidence was also given by Mr Thomas Bamlet, who was a cousin of John Todd and used to spend time with him, walking the dogs and talking, regularly from 2010 onwards. He said that John told him that he had been pressurised by the Applicant and her husband into agreeing to the entry of the restriction, and had then regretted it. He also said that John had told him, while in hospital with his last illness, that he had sent off an RX3 and that this was a weight off his mind.

Conclusions on the forgery claim

99. The evidence put forward by the Applicant in support of her claim that the 2014 RX3 was forged is not credible. I have explained why the expert evidence is of no assistance.

100. On the other hand, a consistent account is put forward by the Respondents' witnesses. Importantly, what they say is consistent with what happened in 2011, namely the visit to the solicitor and the 2011 RX3. No-one has suggested that the 2011 RX3 was forged. John Todd clearly wanted the restriction to come off and there was no reason why Rosa would have needed to forge it. Nor is there any evidence that she did.

101. I conclude that the 2014 RX3 was signed by John Todd.

Conclusion

102. I have therefore directed that the registrar should give effect to the application to cancel the restriction as if the Applicant's objection had not been made.

103. In this Tribunal costs follow the event. If the Respondents wish to make a claim for costs they may do so within 28 days; the Applicant will then have 28 days to respond, whether on liability or on quantum, and the Respondents may make submissions in reply with a further 21 days.

Elizabeth Cooke

Dated this 15 August 2018

BY ORDER OF THE TRIBUNAL