



[2019] UKFTT 0372 (PC)

REF/2016/0825

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

LAND REGISTRATION ACT 2002

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

BETWEEN

Parveen Akhtar

APPLICANT

and

Mobin Akhlaq

RESPONDENT

**Property Address: 67 Gowan Road, Saltley,
Birmingham, West Midlands B8 3JL**

Title Numbers: (1) WM184000 (Freehold) (2) WK171189 (Leasehold)

**Before Judge Nigel Gravells
Sitting at Birmingham Employment Tribunal
On 15-16 April 2019**

ORDER

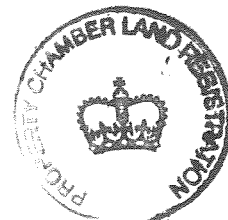
IT IS ORDERED as follows:

- (1) The Chief Land Registrar is to give effect to the application to change the registers made by the Applicant on 24 November 2016 as if the objection to that application had not been made.
- (2) The Chief Land Registrar is to cancel the applications to cancel unilateral notices on the registers made by the Respondent on 12 February 2016.

Dated 9 May 2019

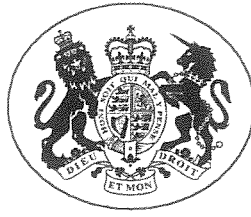
Nigel Gravells

By order of the Tribunal





11/11/11



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Applicant Representation: Mr Nathan Smith of Counsel instructed by Chancellors
Respondent Representation: Mr Lewis Perry of Counsel instructed by Lawrence Kurt

DECISION

Application for the alteration/rectification of register on grounds that signature on transfer document was forged - whether signature forged and transfer void – whether alteration/rectification should be ordered

Introduction

- 1 This case concerns a family property dispute. From 22 November 1994 until around October 1996 the Applicant, Parveen Akhtar, was the registered proprietor of 67 Gowan Road, Saltley, Birmingham, West Midlands B8 3JL ('the subject property'). Around October 1996 – the transfer document is undated - the subject property was apparently transferred from the Applicant to Zarina Begum (the Applicant's mother); and there were two subsequent transfers - from Zarina Begum to Shaida Kassaur (the Applicant's sister) on 10 April 2007 and then from Shaida Kassaur to the Respondent, Mobin Akhlaq (the Applicant's niece) on 26 May 2009. The Respondent is currently the registered proprietor of the subject property.
- 2 The Applicant asserts that she did not sign the transfer to Zarina Begum and that the signature on the transfer was forged. On that ground she seeks the alteration/rectification of the register against the Respondent and the reinstatement of herself as registered proprietor of the subject property.
- 3 The central issues for me to determine are (i) whether the signature on the transfer from the Applicant to Zarina Begum was forged and the transfer was void; and, if so, (ii) whether alteration/rectification of the register should be ordered.
- 4 A hearing was held at the Birmingham Employment Tribunal on 15-16 April 2019. The Applicant was represented by Mr Nathan Smith of Counsel and the Respondent was represented by Mr Lewis Perry of Counsel.

Witnesses

- 5 The witnesses for the Applicant were the Applicant herself, two of her brothers, Ajmal Khan and Mazamal Khan, and Jamila Begum.
- 6 The witnesses for the Respondent were the Respondent herself, Shaida Kassaur (the Respondent's mother), and Amjad Ali (the Respondent's uncle).
- 7 The hearing bundle also included a witness statement of Zarina Begum; but she died in December 2018.

Ownership of the subject property

- 8 The Land Register records two titles to the subject property. The freehold title is registered under title number WM184000. The leasehold title is registered under title number WK171189. The lease, which is stated to comprise land in addition to the subject property, was granted for a term of 99 years less three days from 25 December 1913. Although there is no note on the register indicating any extension of the lease beyond its original term (which would have expired on 22 December 2012), the Land Registry

documentation refers to both the freehold and leasehold titles. I shall therefore refer simply to the ownership of the subject property as embracing both the freehold title and any extant leasehold title.

- 9 The subject property was owned by the Applicant's father, the late Abdul Majid Ahmed. Around 1989 he transferred the property into the joint names of the Applicant and Shaida Kassaur. It appears that the purpose of the transfer, for which the transferees provided no consideration, was to confer on them property ownership and thereby to facilitate the entry into the United Kingdom of the sisters' husbands, who were then living in Pakistan.
- 10 On 22 November 1994, following the arrival of Shaida Kassaur's husband in the United Kingdom, the property was transferred into the sole name of the Applicant for no consideration.
- 11 Around October 1996 the property was apparently transferred to Zarina Begum for no consideration. As noted, the transfer document is undated. The document includes a stamp duty certification signed by Frances T Burke (solicitor), a signature alleged to be that of the Applicant as transferor and a signature of Mary Burke as witness of the transferor's signature. The Applicant denies that the signature on the transfer document is her signature. Moreover, she denies any knowledge of Frances Burke or Mary Burke; and she denies having attended any solicitor's office in connection with the transfer of the subject property to Zarina Begum. She asserts that the signature of the transferor that purports to be hers is a forgery and that Shaida Kassaur was responsible for that forgery.
- 12 The Applicant states that in October 1996 she was alerted to the transfer of the subject property to Zarina Begum and that she consulted solicitors. On 30 October 1996, the Applicant applied for the entry of a caution against the subject property on the ground of the alleged forgery; but on 1 July 1997 she agreed to withdraw the caution. She explained that she made that decision reluctantly but for a number of reasons: she herself was pregnant, she was having matrimonial problems and generally she was under severe mental pressure; she was reluctant to put Zarina Begum through what she referred to as the pressure and humiliation of any court proceedings; Shaida Kassaur was being prosecuted for serious offences against one of her own children – she was subsequently convicted and sentenced to a term of imprisonment; and she was under pressure from her family not to compromise (further) the reputation of the family in the community.
- 13 As noted, on 10 April 2007 the subject property was transferred from Zarina Begum to Shaida Kassaur and then on 26 May 2009 the property was transferred from Shaida

Kassaur to the Respondent. As with all the transfers detailed above, these two transfers were made for no consideration.

HM Land Registry references to the Tribunal

- 14 The Applicant asserts that in 2015 she discovered that the Respondent was in the process of selling the subject property and she consulted solicitors. On 23 September 2015 unilateral notices were entered against the freehold and leasehold titles to the property to protect the Applicant's claimed interest in the property. On 12 February 2016 the Respondent applied to cancel the unilateral notices. On 23 March 2016 the Applicant objected to those applications and, since the parties were unable to resolve their dispute by agreement, on 4 October 2016 HM Land Registry referred the dispute to the First-tier Tribunal under section 73(7) of the Land Registration Act 2002 (under reference number 2016/0825). In fact, it appears that the reference made on 4 October 2016 related to the leasehold title only; and the dispute relating to the freehold title was referred to the Tribunal on 5 July 2017 (under reference number 2017/0643).
- 15 On 24 November 2016 the Applicant made a further application to the Land Registry for the alteration/rectification of the register relating to the subject property. By Order dated 8 December 2016 Tribunal stayed the proceedings on the assumption that the Respondent would object to the application and that the Land Registry would make a further reference to the Tribunal. As anticipated, on 6 April 2017 the Respondent objected to the further application and, since the parties were unable to resolve their dispute by agreement, on 5 July 2017 HM Land Registry referred the dispute to the Tribunal (under reference number 2017/0644).
- 16 All three references to the Tribunal were consolidated (under reference number 2016/0825); and the usual Directions were issued on 7 July 2017, 16 January 2018 and 19 September 2018.

Issues for determination

- 17 As noted above, the central issues for me to determine are (i) whether the apparent transfer from the Applicant to Zarina Begum was forged and void; and, if so, (ii) whether alteration/rectification of the registered should be ordered.
- 18 There was a good deal of cross-examination on the circumstances and motivation behind the subsequent transfers from Zarina Begum to Shaida Kassaur and from Shaida Kassaur to the Respondent and, in particular, on the issue whether the first of those transfers was tainted by undue influence on the part of Shaida Kassaur; but I find it unnecessary to make any formal determination on that issue. If the transfer to Zarina Begum was void,

the registration of that transfer was a mistake (see paragraph 51 below) and it is unnecessary to establish that the subsequent transfers themselves were void or voidable; and, if the transfer to Zarina Begum was not void, it does not assist the Applicant to establish that the subsequent transfers were void or voidable.

Comment on evidence

- 19 It is appropriate at the outset to comment on the written and oral evidence of the parties and their witnesses.
- 20 I am bound to say that I found the evidence of all witnesses to be less than wholly reliable, although some of the witnesses were less reliable than others. Their witness statements omitted important corroborative detail. While I hesitate to conclude that any of them was deliberately dishonest, in cross-examination, they all seemed to be more concerned to give evidence that would support the case of the party that called them than to provide (full and accurate) answers to specific questions.
- 21 The Applicant was rather defensive; and her evidence on dates was sometimes vague or inconsistent. Ajmal Khan was also rather vague when pressed on matters of detail. Mazamal Khan seemed to have poor recollection of details and was occasionally aggressive. (For the sake of completeness, the evidence of Jamila Begum provided no assistance to the Tribunal.)
- 22 The Respondent was also vague on dates and matters of detail. Some of her evidence appeared to be 'rehearsed' but at other times she was evasive and defensive. Shaida Kassaur could also be evasive and defensive; her recollection was somewhat selective; and some of her evidence was verging on the implausible. Amjad Ali was aggressive when pressed on matters of detail; and some of his evidence appeared to be 'rehearsed'. The unreliability of the Respondent and her witnesses was exacerbated by inconsistencies between their respective versions of events and circumstances.
- 23 Fortunately, since most of the witnesses' evidence related to the later transfers of the subject property and subsequent events (and not to the key transfer from the Applicant to Zarina Begum), the general unreliability of the witnesses did not create an insurmountable obstacle to the determination of the central issues that I have identified.

Determination of the Tribunal

Transfer from the Applicant to Zarina Begum

- 24 I set out in the following paragraphs my observations and conclusions on the evidence relevant to the Applicant's allegation that her signature on the transfer of the subject property to Zarina Begum was forged.

Transfer document

25 The transfer document itself does not have the appearance of a professionally drafted document: it is undated and, although the document has been customised for the signature of the transferee, there is no signature. To the untrained eye, the signature purporting to be that of the Applicant as the transferor ('the questioned signature') looks significantly different from all the Applicant's signatures that appear on other documents in the hearing bundle.

Forensic science report

26 The Applicant commissioned a forensic science report on the questioned signature. The report was prepared by Elizabeth Briggs, a forensic document examiner with 14 years' experience. Ms Briggs notes that eight specimen signatures of the Applicant from the period 1991 to 2016 show the normal degree of variation of one person; but she records a number of significant differences between the specimen signatures and the questioned signature. She concludes –

In my opinion, it is more likely that the differences noted are due to the questioned signature having been written by someone [other than the Applicant], rather than it being a genuine signature by [the Applicant]. That is, in my opinion, there is strong evidence that the questioned signature [on the transfer document] was not written by [the Applicant] and on the basis of the material available I consider it unlikely that she was responsible.

27 Although Ms Briggs was only able to examine a photocopy of the transfer document and the questioned signature, which meant that it was not possible to examine the signature for some of the common signs of forgery, her conclusion is the second strongest in the range of opinions normally used by handwriting experts.

28 Mr Perry, on behalf of the Respondent, submitted that the report was only the writer's opinion. Moreover, he pointed out that, in a letter to the Applicant's solicitor, dated 25 April 2017, the Respondent had herself suggested that the questioned signature might be examined by a handwriting expert; and he submitted that that suggestion would not have been made if the Respondent had something to hide.

29 Mr Smith, on behalf of the Applicant, observed that the expert report had been put in evidence in accordance with the Order of the Tribunal dated 7 July 2017; that the Respondent had not sought to put in evidence her own expert report in answer to the report relied upon by the Applicant (as expressly provided for in the Order of the Tribunal dated 5 October 2017); that the Respondent had not challenged the conclusions of the report; and that the Respondent had not requested the attendance of Ms Briggs at the hearing for cross-examination.

Witness statement of Zarina Begum

- 30 Zarina Begum was the only member of the family who claimed to be present when the transfer document was signed.
- 31 In her witness statement she states that the subject property was gifted to her by the Applicant and that it was the Applicant who signed the transfer documents.
- 32 However, I have a number of concerns about Zarina Begum's witness statement. First, the statement is very similar to the witness statement of Amjad Ali. In a number of paragraphs the wording is identical (except for differences to reflect the relationships between the various parties referred to). Such similarity might have been unsurprising if both statements had been drafted under the guidance of a solicitor. However, Amjad Ali was adamant that he had drafted his witness statement 'his own words'. It is therefore difficult to avoid the conclusion that Zarina Begum's witness statement was largely copied from Amjad Ali's witness statement. Second, the signature 'Z Begum' bears no resemblance to the signature 'ZBR' on the transfer document from Zarina Begum to Shaida Kassaur. Third, there was a good deal of contradictory evidence about the mental health of Zarina Begum and her understanding of the English language. While I reach no conclusion on the former issue, I do have significant doubts as to Zarina Begum's understanding of the English language in general and of the relevant legal issues.
- 33 For those reasons I am unable to attach any significant weight to Zarina Begum's witness statement.

Witness statement of the Applicant

- 34 The Applicant asserts that she did not instruct anyone to transfer the subject property to Zarina Begum or anyone else, that she did not attend the office of Frances T Burke or Mary Burke or any other solicitor and that the signature on the transfer document is not her signature. (Although the Applicant further states her belief that the transfer was effected by Shaida Kassaur impersonating the Applicant and forging the Applicant's signature, it is unnecessary for me to determine that allegation: it is sufficient to determine simply whether the Applicant's signature was forged.)
- 35 The Respondent sought to undermine the claim of forgery on the basis that the Applicant had pursued her claim to the subject property nearly 20 years after the transfer to Zarina Begum. However, as noted, and contrary to the apparent assertion of the Respondent, the Applicant did seek to assert her claim very shortly after she discovered that the property had been transferred to Zarina Begum in October 1996; and to that end she applied for the entry of a caution on the register. It is true that she subsequently agreed to withdraw

the caution, although she offered a number of reasons for doing so, which, in my view, constitute a plausible explanation. She took no further legal steps until September 2015 but there is some evidence that she sought to resolve the dispute within the family and without recourse to legal action. Although it is perhaps surprising that the Applicant did not revive her legal action until September 2015, when she was concerned that the subject property might be transferred out of the family, in my view that does not undermine the evidence supporting the Applicant's allegation of forgery.

Witness statement of the Respondent

36 The Respondent was only six years of age at the time of the transfer from the Applicant to Zarina Begum in 1996; and on her own admission she has no clear recollection of events prior to 1997 or 1998.

Witness statement of Shaida Kassaur

37 Shaida Kassaur denied any allegation of fraud on her part and simply stated that the subject property was legitimately transferred from the Applicant to Zarina Begum and that the signature on the transfer document was that of the Applicant. She provided no detail of the circumstances in which the transfer was executed.

Other witness statements

38 As I have indicated, most of the other witnesses' evidence related to the later transfers of the subject property and subsequent events (and not to the key transfer from the Applicant to Zarina Begum). None of them could give first hand evidence of the signing of the transfer. Mazamal Khan stated that 'it came to [his] notice' that Shaida Kassaur had impersonated the Applicant and forged her signature on the transfer document. Ajmal Khan repeated those allegations, having 'informed by Mazamal Khan and Amjad Ali', although Amjad Ali in fact supported the Respondent's version of events.

Other considerations

39 Although the alleged forgery of the Applicant's signature and the validity of the transfer from the Applicant to Zarina Begum was clearly at the centre of the dispute, the Respondent did not seek to advance any evidence - independent of the family - to rebut the allegation or to corroborate the Respondent's version of events; nor did she explain the absence of any such evidence. There was apparently no attempt to contact the solicitors stated to have dealt with the transfer; nor to produce any correspondence with the solicitors or other documentation.

Conclusion

- 40 On balance, I find the arguments and supporting evidence of the Applicant more persuasive. I attach particular weight to the forensic science report, which the Respondent did not seriously challenge. The evidence of the parties and their witnesses was to a considerable extent irrelevant to the issue of the alleged forgery and, in so far as it was potentially relevant, I found it generally unreliable. However, of the principal witnesses I found the Applicant the least unreliable.
- 41 I therefore find that the signature purporting to be that of the Applicant on the transfer of the subject property from the Applicant to Zarina Begum was forged and for that reason that the purported transfer was void.

Application for alteration/rectification of the register

- 42 I turn therefore to the Applicant's application for the alteration/rectification of the registers relating to the freehold and leasehold titles to the subject property.
- 43 The relevant statutory provisions are set out in Schedule 4 to the Land Registration Act 2002 ('the 2002 Act'). Paragraphs 5 and 6 of that Schedule make provision for the alteration of the register by the registrar. The outcome of a reference to the Tribunal is a direction to the registrar either to cancel the application for alteration or to respond to the application as if the objection had not been made. Accordingly paragraphs 5 and 6 are relevant rather than paragraphs 2 and 3, which are concerned with orders of the court for alteration of the register.
- 44 Paragraphs 1, 5 and 6 provide (so far as relevant) -
- 1 In this Schedule, references to rectification, in relation to alteration of the register, are to alteration which—
- (a) involves the correction of a mistake, and
 - (b) prejudicially affects the title of a registered proprietor.
- 5 The registrar may alter the register for the purpose of—
- (a) correcting a mistake,
 - (b) bringing the register up to date,
 - (c) giving effect to any estate, right or interest excepted from the effect of registration, or
 - (d) removing a superfluous entry.
- 6 (1) This paragraph applies to the power under paragraph 5, so far as relating to rectification.
- (2) No alteration affecting the title of the proprietor of a registered estate in land may be made under paragraph 5 without the proprietor's consent in relation to land in his possession unless—
- (a) he 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.
- (3) If on an application for alteration under paragraph 5 the registrar has power to make the alteration, the application must be approved, unless there are exceptional circumstances which justify not making the alteration.

45 The skeleton argument of the Applicant provided a systematic analysis of the above provisions and their application to the present case. The Respondent did not question that analysis – nor, it seems, its application to the present case.

46 However, the Respondent drew attention to HM Land Registry Practice Guide 39 on rectification and indemnity. In respect of applications for rectification based on alleged forgeries, paragraph 3.1.1 of the Practice Guide states –

As well as applying to HM Land Registry for rectification of the register, the alleged forgery should be reported to the police. Full details, including the crime reference number and contact details of the officer in charge, should be supplied to HM Land Registry as we may want to liaise with the police.

47 It is not disputed that the Applicant did not report the alleged forgery to the police; but the Applicant explained that she refrained from doing so for the same reasons that she withdrew her initial application to the Land Registry.

48 In any event, it is not suggested that it is mandatory to report the alleged forgery to the police; and the Land Registry does not appear to have referred to the Practice Guide in correspondence with the Applicant or to have sought the information required to enable liaison with the police.

49 In my view, the failure of the Applicant to report the alleged forgery to the police does not preclude her claim for rectification of the register.

50 I turn therefore to the application of Schedule 4 to the 2002 Act.

51 There is recent and clear authority that a forged transfer is a void disposition and that the registration of a void disposition is a mistake for the purposes of paragraph 5(a) of Schedule 4 to the 2002 Act: see *NRAM v Evans* [2017] EWCA Civ 1013 per Kitchin LJ at [49]-[53] and *Antoine v Barclays Bank UK Plc* [2018] EWCA Civ 2846 per Asplin LJ at [44].

52 There is recent and clear authority that the power of the registrar under paragraph 5(a) to correct mistakes extends to correcting the consequences of such mistakes ('derivative mistakes'). In *Dhillon v Barclays Bank Plc* [2019] EWHC 475 (Ch) HH Judge Pelling QC stated (at [54]) -

The further issue is the extent to which so-called 'derivative' mistakes come within the scope of Sched 4, para 2(1)(a). This problem arises where there is a void disposition by a fraudster to B of a registered property registered in the name of A. In those circumstances, the legal estate is deemed vested in B even though it is a void disposition – see LRA, s 58. B then grants a legal charge over the property to C. The charge by B to C is valid. Although the effect of LRA, s 58 might be thought to preclude the registration of the charge by B to C being a mistake, it is now recognised that the power to correct mistakes includes the power to remove the registration of such derivative dispositions – see *Barclays Bank Plc v Guy* [2010] EWCA Civ 1396, [2011] 1 WLR 681 per Lord Neuberger MR at [35]-[36], where he identified the underlying rationale as being either that (a) the removal of A's name from the proprietorship register was a void

disposition and thus a mistake and in order to correct that mistake it was necessary to remove not merely the registration of B as proprietor but also C's charge from the charges register, or (b) the registration of C's charge flowed from the mistake in registering B as proprietor and thus should be treated as part and parcel of the same mistake; and *Macleod v Gold Harp Properties Limited* [2014] EWCA Civ 1084, [2015] 1 WLR 1249 per Underhill LJ at [85], where, having conducted a comprehensive review of all the relevant authorities including a number of decisions of Land Registry adjudicators, he concluded that '... it is established by the decisions to which I have referred that the power [to correct mistakes] extends to correcting the consequences of such mistakes.'

- 53 I therefore find that the power of the registrar under paragraph 5(a) extends to correcting the registration of the subsequent transfers from Zarina Begum to Shaida Kassaur and from Shaida Kassaur to the Respondent.
- 54 Since the alteration of the register to reinstate the Applicant as registered proprietor of the subject property would deprive the Respondent of her registered titles, it is clear that that alteration would constitute the rectification of the register as defined in paragraph 1 of Schedule 4.
- 55 Paragraph 6 of Schedule 4 is therefore engaged.
- 56 Paragraph 6 contains two presumptions which govern the rectification of the register. First, there is a presumption under paragraph 6(3) that if the register can be rectified it should be rectified. The general presumption in favour of rectification is subject to the specific presumption in paragraph 6(2) that rectification is not to be ordered against a proprietor in possession of the relevant land. Neither of the two presumptions is irrebuttable. There is no absolute right to rectification; the registrar retains a discretion to decide whether rectification should take place. Where no relevant party is in possession of the land, the registrar can nevertheless refuse rectification if there are exceptional circumstances which justify refusal. If rectification would prejudice a registered proprietor who is in possession of the land, the registrar can nevertheless grant rectification if it would be unjust to refuse.
- 57 Against the background of that analysis, the first issue is whether the Respondent can rely on the presumption of protection against rectification as a registered proprietor in possession under paragraph 6(2).
- 58 Section 131 of the 2002 Act provides (so far as relevant) -
- (1) For the purposes of this Act, land is in the possession of the proprietor of a registered estate in land if it is physically in his possession, or in that of a person who is entitled to be registered as the proprietor of the registered estate.
- (2) In the case of the following relationships, land which is (or is treated as being) in the possession of the second-mentioned person is to be treated for the purposes of subsection (1) as in the possession of the first-mentioned person—
- (a) landlord and tenant;

- 59 It appears that the subject property is currently in the possession of a tenant; and, although there was some dispute as to who collected and/or received the rent, the Respondent must be the landlord. It follows that, by virtue of section 131(2)(a), the Respondent is a registered proprietor in possession and can rely on the presumption of protection against rectification under paragraph 6(2).
- 60 The second issue is whether the Applicant can rebut the presumption of protection by reason of either of the conditions in paragraph 6(2)(a) and (b).
- 61 In my view, the Applicant cannot establish the condition in paragraph 6(2)(a) - that the Respondent 'has by fraud or lack of proper care caused or substantially contributed to the mistake.' The mistake that the Applicant seeks to have corrected is the registration of the void transfer from the Applicant to Zarina Begum; and it is clear that the Respondent, who was only six years old at that time, did not contribute to that mistake.
- 62 However, in my view the Applicant has established the condition in paragraph 6(2)(b) - that 'it would for any other reason be unjust' for the mistake not be corrected. First, the Applicant was deprived of the subject property by virtue of the forgery of her signature on the purported transfer to Zarina Begum. Second, the property was subsequently transferred – within the family - to Shaida Kassaur and then to the Respondent, both of whom were fully aware of the Applicant's claim to have the property restored to her – and the circumstances and the basis of that claim. Indeed, I am satisfied that the Respondent and Shaida Kassaur were in collusion, that they were scheming to defeat the Applicant's claim to the subject property and that the transfer to the Respondent was the final step in that scheme. Third, none of the three transferees provided any consideration for the property. Fourth, none of the transferees claimed to have spent money, time and effort on the property such that they could claim to be prejudiced by the rectification of the register in favour of the Applicant.
- 63 Although the Applicant did not pursue her legal remedy for nearly 20 years, she had asserted her claim soon after the forged transfer and the dispute over the property was common knowledge within the family. In any event, there is authority that delay is not of itself a reason to deny rectification. In *Macleod v Gold Harp Properties Limited* [2014] EWCA Civ 1084 Underhill LJ stated (at [104]) –
- [I]t is not axiomatic that delay in advancing such a claim constitutes an exceptional circumstance which would justify not making an order that the Court would otherwise be obliged to make. On the contrary, it seems to me that it would be very unlikely to do so unless the delay had given rise to some substantial identifiable prejudice. No such prejudice was alleged.

- 64 I therefore determine that, notwithstanding that the Respondent is a registered proprietor in possession, the presumed protection against rectification is rebutted so that the registrar may rectify the register in favour of the Applicant.
- 65 Having decided the paragraph 6(2) issue in favour of the Applicant – specifically on the basis of paragraph 6(2)(b) - there seems to be some uncertainty as to the whether I must also consider paragraph 6(3). As noted above, under that provision, where the registrar has power to rectify the register, there is a presumption that the register should be rectified unless there are exceptional circumstances which justify not doing so.
- 66 It is arguable that paragraph 6(3) is only engaged where paragraph 6(2) is not, especially since it has been suggested that the ‘exceptional circumstances’ test is less demanding than the ‘unjust not to rectify’ test in paragraph 6(2)(b) (and by implication paragraph 6(2)(a)) of Schedule 4 to the 2002 Act.
- 67 However, on the assumption that paragraph 6(3) is engaged, for the reasons set out in paragraphs 62-63 above, I determine that in the present case there are no exceptional circumstances that justify not rectifying the register in favour of the Applicant.

Conclusion

- 68 For the reasons set out above, I determine –
- (i) that the transfer of the subject property from the Applicant to Zarina Begum was void;
 - (ii) that the registration of that transfer was a mistake;
 - (iii) that the registration of the subsequent transfers from Zarina Begum to Shaida Kassaur and from Shaida Kassaur to the Respondent were derivative mistakes;
 - (iv) that the registers relating to the freehold title (WM184000) and the leasehold title (WK171189) to the subject property should be rectified by reinstating the Applicant as the registered proprietor.

Order

- 69 I direct the Chief Land Registrar –
- (i) to give effect to the application to change the registers made by the Applicant on 24 November 2016 as if the objection to that application had not been made;
 - (ii) to cancel the applications to cancel unilateral notices on the registers made by the Respondent on 12 February 2016.

Costs

70 In this Tribunal costs normally follow the event and in principle the Applicant, as the successful party, is entitled to have its costs paid by the Respondent. If the Applicant wishes to apply for its costs incurred since the date of reference from HM Land Registry it must within 28 days of the date of this Order provide to the Tribunal and to the Respondent a schedule of its costs. The Respondent will have a further 28 days to make any representations about liability or about the amount claimed. The Applicant will then have a further 21 days to respond.

Dated 9 May 2019

Nigel Gravells

By order of the Tribunal

