[2019] UKFTT 0505 (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 2018/0307

BETWEEN

(1) PETER ROY CRIX
(2) MATTHEW DAVID BOAST

Applicants

and

ROBERT IAN MAIN

Respondent

Property addresses: 38 Grays Road, Slough SL1 3QG, Bridge Barn, Coggleshall Road, Feering, Colchester CO5 9QE and Flat 4, Quayside Court, The Quay, Harwich CO12 3HH
Title numbers: BK163515, EX888152 and EX443188

Before: Judge Gary Cowen

ORDER

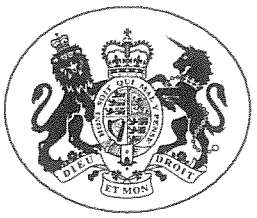
1. The Chief Land Registrar is hereby directed to accede to the Applicants' applications dated 28 November 2017 in respect of each of the properties referred to above.

2. The parties shall be entitled to make written representations concerning the costs of this reference or any other consequential application. Any such representations should in the first instance be submitted by 4pm on 16 August 2019 following which further directions shall be given as necessary.

Gary Cowen

Judge Gary Cowen

Dated this 18th day of July 2019



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Before: Judge Gary Cowen

DECISION

1. The Applicants, Mr Crix and Mr Boast, are the court-appointed administrators of the estate of the late John Farmer ("JF") who died intestate on 8 April 2017. They have applied to register restrictions against the title of each of three properties registered at the Land Registry under Title Nos. BK163515, EX888152 and EX443188 to protect what they allege is the estate's beneficial interest in each of the properties. The registered proprietor of each of the properties, the Respondent, Robert Main, objects to the registration of the restrictions.

2. For the reasons which follow, the Applicants' claim is clearly well-founded and I shall direct the Chief Land Registrar to accede to the Applicants' applications to register the restrictions against the title to the three properties as if no objection had been made to those applications.

3. On 22 November 2008, JF wrote a letter to a Mr Davies of RDP Partnership of Colchester concerning his tax affairs. JF was seeking advice concerning whether certain legal expenses that he had incurred were deductible against income tax. In the course of that letter, JF set out some background to his position. I have no way of telling whether JF was putting a slant on the information being provided but much of the background material does not appear to be in issue. In 1983 JF qualified as a solicitor and in 1987, worked for a firm called Owen White in Slough in Berkshire. In 1992, the firm found what JF refers to as irregularities in his conveyancing files and in the firm's client account. It appears that he was dismissed from the firm and an injunction (probably a freezing injunction) was obtained against him. In 1995, JF was convicted of various counts of theft and false accounting and was imprisoned for a term of three years of which he served eighteen months. I heard evidence from JF's former partner, Hayley Carter (with whom he had a daughter, Chloe), in which she told me that JF had set up over 250 bank accounts and had stolen over £1m from various clients.

4. This reference concerns JF's career as a property owner following that conviction, a career in which, it became plain from the evidence, JF continued to use false and misleading documents for his own personal gain. By the time of his death, JF owned 61 properties in his sole name and a further 17 properties in the joint names of JF and his wife, Antonina (with whom he had two children). According to Antonina's evidence, some of the properties owned by JF were registered using aliases and some were registered in the names of nominees.

5. In this Reference, the Respondent is the registered proprietor of three properties registered under Title Nos. BK163515, EX888152 and EX443188. Those properties are, respectively, 38 Grays Road in Slough, a freehold property, Bridge Barn,

Coggeshall Road, Feering, another freehold property and a leasehold interest in 4 Quayside Court, The Quay, Harwich.

6. As noted above, the Applicants are the court-appointed administrators of JF's estate. The Applicants contend that in relation to each of the three properties referred to above, the Respondent holds the property on a bare trust for JF's estate. The Respondent's case as set out in his Statement of Case is that the properties are held by himself, subject to oral agreements between himself and JF whereby
   (i) In relation to 38 Grays Road and Bridge Barn, the properties would be rented out and JF would pay the mortgage on the properties and be entitled to the income from them but that both properties would be sold when the Respondent reached the age of 65 (in approximately 3 years' time) and the "equity" or "profit" realised by the sale would be the property of the Respondent.
   (ii) In relation to 4 Quayside Court, the property would be rented out and JF would pay the mortgage and be entitled to the rental income but the property would be sold when the Respondent reached the age of 65 and the Respondent would re-pay the sum of $23,000 to JF and be entitled to retain the remainder of the proceeds of sale.

7. It will be readily apparent from the case being advanced by the Respondent, therefore, that even on his own case, the Respondent appears to accept that JF and, therefore, his estate, presently has an interest in the three properties; it is accepted, on that version of events, that the estate is currently entitled to some part of the value of each of the three properties. That by itself would be sufficient to dispose of this application as it is clear that on the Respondent's own case, the estate has a beneficial interest in the properties sufficient to enable the estate to register a restriction on the titles of the three properties.

8. The Applicants do not accept the Respondent's version of events and invite me to find that the Respondent held the properties as bare trustee for JF and now holds them as bare trustee for JF's estate.

9. The first of the properties to be acquired by the Respondent was 4 Quayside Court which was registered in the name of the Respondent on 4 August 2003, some ten years

earlier than the other two properties. The TR1 for the Respondent's purchase indicates that the vendor was Hayley Carter, formerly Hayley Barnett, JF's ex-partner. JF and Hayley Carter's relationship came to an end in October 2003, shortly after this property was transferred to the Respondent. The TR1 states that the price paid on the transfer was £23,000. The Respondent said in evidence that he had no recollection of paying £23,000 to Hayley Carter and that he would have remembered if he had done Hayley Carter, the money can only have come from JF. There is no suggestion that the Respondent paid any sum towards the purchase of this property or towards its maintenance or upkeep thereafter.

10. The Respondent's own Statement of Case states that the reason for the transfer of this property into his name was that JF, who already owned a number of flats within the block at Quayside Court, wished to widen the pool of supportive 'owners' of the flats so that he could increase his chances of succeeding in voting on issues arising relating to the management of the block. Why any voting would be organised on the basis of the number of individuals rather than on the number of flats supporting a proposition was never explained to me but it appeared to be common ground, supported by the evidence of Hayley Carter who had, of course, been the previous legal owner as well as JF's partner at that time, that that was the reason for the change in legal ownership.

11. All of the subsequent documentary evidence shows that it was JF who was involved in the management of the property. Ground rent demands are addressed to the Respondent and JF jointly but at JF's address and the documentary evidence of lettings of the property shows that the property was let by JF under his trading name Property Connection. On 17 June 2010, a possession claim was made against a tenant of the property, Penny Boxall. The claim was made by JF trading as Property Connection. Of course, the fact that the letting and management of the property was carried out by JF is consistent with the Respondent's case that that was part of the agreement between them.

12. The second property registered in the name of the Respondent was Bridge Barn. This property was registered in the name of the Respondent on 30 January 2013. The sale completed on 25 January 2013 and the purchase price was £250,000. Once again, there is no suggestion on the part of the Respondent that he paid any part of this sum.

Garry Anderson, JF's assistant says in evidence that JF scraped the sum of £250,000 together to purchase Bridge Barn. In the case of this transfer, we have some correspondence taken from JF's files which demonstrates how the transfer came about.

13. Bridge Barn was one of two properties, Bridge Barn and Bridge Cottage, being sold by Evelyn Wright, another friend of JF (and the mother of his other child). It appears from the correspondence that it was initially JF's intention to purchase both properties in the joint names of himself and Antonina. On 31July 2012, JF's solicitors EJ Moyle, noted in a letter that their previous understanding had been mistaken and that the properties would now be purchased in JF's sole name. However, the solicitor at EJ Moyle who usually dealt with JF, Alan Dunks (who, it appears from the evidence, purported to witness signatures for individuals who did not exist), was on holiday and a different partner in the firm insisted that the two transactions to purchase Bridge Barn and Bridge Cottage were linked and should be so treated for the purposes of SDLT, something which JF was not prepared to accept.

14. JF therefore instructed EJ Moyle to exchange contracts only in relation to Bridge Cottage and to return the papers in relation to Bridge Barn. Not surprisingly, perhaps, JF then merely went to a different firm of solicitors, Taylors Legal and resurrected the deal for Bridge Barn whilst transferring the benefit of the contract in relation to Bridge Cottage into Antonina's name. There is in the bundle of documents a client care letter from Taylors Legal dated 20 September 2012 in relation to the purchase of Bridge Barn taken from JF's files. It is addressed to JF but his name has been crossed out and the Respondent's name written in manuscript in its place. The letter purports to have been countersigned by the Respondent although the Respondent denied that that was his signature. A client identification form from JF's files notes that the source of funds for the purchase was a gift from the Respondent's parents and JF's files also contained two draft letters dated 6 January 2013 addressed to Birmingham Midshires Building Society, both purportedly signed (in identical fashion) by the Respondent's parents. The first version of the letter has manuscript amendments which are then incorporated into the second version. The letters are purportedly notifying the Building Society that the Respondent's parents have gifted him the sum of £62,500 towards the purchase of Bridge Barn. It seems almost certain that none of these documents was genuine. The

Respondent was adamant that the signatures of his parents were forged and that details of, for instance, his mother's middle name, would have been obtained by JF otherwise than with the Respondent's assistance. However, where the Respondent's evidence was considerably less strident was in attempting to explain how JF had obtained copies of the Respondent's passport and pay slips which were faxed on 6 January 2013 to a fax number in Slough at around the time that JF was making an application for mortgage finance in the Respondent's name to Birmingham Midshires. I will return to consider the Respondent's evidence below but should comment at this stage that his evidence on this issue was wholly unsatisfactory. He could not explain how JF had access to his payslips other than with his own assistance and whilst he accepted that they were indeed his payslips, told me that he had no recollection of providing them to JF. His evidence then shifted by 180 degrees and in his next answer, he told me that he had indeed provided the payslips because JF was "assisting" him in obtaining the mortgage. It is clear that no gift of £62,500 was made by the Respondent's parents and that again, JF was prepared to use manufactured documents to raise finance to purchase properties. In the event, it appears from an email dated 18 January 2013 from JF to Taylors Legal that the deposit to purchase Bridge Barn was ultimately raised by the sale of another property at 112 Garlands Road.

15. On 23 January 2013, Taylors Legal emailed a TP1 and a TR1 in relation to Bridge Barn and Bridge Cottage to JF, asking him to execute them. On 24 January 2013, JF pointed out that the "attestation clause is for Antonina, not Robert. Is it too late to get another one to me?" A new document was sent to JF with the Respondent's name included and JF asked whether he, JF, could attend Taylor Legals' offices that afternoon, presumably to hand over executed documents.

16. Once again, there is no suggestion by the Respondent that he paid anything towards the purchase of this property. Indeed, in his Statement of Case, he contends that it was part of his agreement with JF that he would not be required to pay anything towards the purchase of the property. Whilst the mortgage with Birmingham Midshires was in the Respondent's name, the mortgage instalments were paid from an account in the name of Property Connection, JF's trading name and which had JF's home address as its address. All subsequent lettings of the property were organised by JF who also paid

electricity bills in his own name and signed off the gas safety certificates for the property.

17. The third property to be registered in the Respondent's name was 38 Grays Road. That property had been registered in the name Antonios Lagouderis on 24 March 1997 and, then, in the name Mark Davies on 31 May 1997. Both of these names were fictional aliases of JF. On 18 March 2013, the transfer of 38 Grays Road to the Respondent was completed with a "purchase price" of £178,500. The Respondent was registered as proprietor of the property on 21 March 2013. Money to "purchase" the property was raised from Aldermore though it seems clear that no purchase money changed hands. There is an unsigned letter which was in JF's files (as well as a blank page containing the Respondent's signature which the Respondent was adamant had not been provided by him) which purported to be from the Respondent to Taylors Legal asking for part of the proceeds of the transaction to be paid to a firm of solicitors in Scotland in relation to the purchase of a property there with the balance to be paid into "his" [i.e.. the Respondent's] bank account with Lloyds TSB. The Respondent did not have any connection with the Scottish solicitors who were later instructed to purchase further properties in the joint names of JF and Antonina. The bank account mentioned is not the Respondent's account but rather, belongs to Property Connection, JF's trading name. What is even more remarkable, perhaps, is that the Respondent, by this letter, was purporting to direct his solicitors to distribute the proceeds of a transaction which, on the face of it, should have had no proceeds because they ought to have been paid to Mark Davies. That there were "proceeds" is a result of JF's deception in raising finance for a purely fictional transaction. Once again, JF was seemingly prepared to use deception to raise funds for his business.

18. I have also seen an engineer's report relating to 38 Grays Road. It was dated 19 February 2013 and prepared by a company called NFM Engineering Limited and concerned the stability of a chimney breast in the property. One copy of the report taken from JF's files shows the report addressed to JF. A further copy shows that JF's name has been changed to the Respondent's name.

19. Like the other properties, it is clear that once the property was purchased, JF took sole responsibility for letting the property. Perhaps because the mortgage lender was more

fastidious in this case about the source of the mortgage payments, an account with Nationwide was established in the Respondent's name from which direct debit payments to Aldermore were made in respect of the mortgage payments for 38 Grays Road. Into that account, money was paid on a monthly basis from JF's Property Connection account to meet the mortgage payments. The Respondent, however, did not have access to this account and Garry Anderson, JF's assistant, was able to transfer money from that account without the consent of the Respondent. It was not, in any real sense, the Respondent's account despite it being in his name.

20. I turn then to consider the witnesses who gave oral evidence before me. For the Applicants, I heard evidence from Antonina, Garry Anderson, Paul Valentine who was a lettings agent and friend and associate of JF and Mark Pater, a gas engineer and contractor who carried out work for JF on his portfolio of properties who referred to the significant work which he carried out to improve both Bridge Barn and 38 Grays Road, work for which he was paid by JF.

21. I formed the view that the Applicants' witnesses were trying their best to assist the Tribunal. There was a degree of inconsistency to Garry Anderson's evidence. He insisted that if JF had reached an agreement with the Respondent in relation to the sale of some of the properties in the manner alleged by the Respondent, JF would have told him about it. Later in his evidence, however, whilst never changing his position on that point, he revealed that his role was really more an organisational one, ensuring that paperwork was in order, that the properties were maintained and let and that any documents were properly filed. It did not strike me from Mr Anderson's evidence that, despite his protestations to the contrary, he would necessarily have been privy to JF's high-level plans for every property in the portfolio and whilst I formed the view that he genuinely believed it to be the case that he would have been informed had such an agreement been reached, I am somewhat more sceptical.

22. The Respondent called Hayley Carter and also gave evidence himself. Hayley Carter assisted the Respondent (who represented himself very ably without the benefit of legal representation) throughout the hearing and she was obviously not a wholly impartial witness. That said, I formed the view that she too was doing her best to assist the Tribunal. Notably, she did not say anything in her evidence about any agreement

reached between JF and the Respondent, although as she was at pains to point out, only 4 Quayside Court was purchased at a time when she and JF were still in a relationship.

23. The Respondent's evidence was more troubling. Like many litigants in person, he had a tendency to focus on small factual issues around the periphery of the case (such as whether he had ever held himself out as a police officer and whether a particular telephone call to which I shall return was conducted on speakerphone) rather than engaging on the important issues but the problems with his evidence went further than that. In cross-examination, his evidence was contradictory, bombastically defensive and, at times, evasive. I have already commented on one contradiction in his evidence concerning the manner in which his passport details and payslips had come to rest in JF's files along with the mortgage application for Bridge Barn. There were other examples. One concerned the Nationwide bank account opened in his name. In cross-examination, he was adamant that he, personally, had set up this account by going into the Southall branch of Nationwide. Yet in a letter dated 4 August 2017, he wrote "It has come to my attention that John Farmer had obtained a Nationwide Bank account in my name, as you are well aware, that I have had no control over this account. Had I been aware and in control over this account, then £75,922.19 that was credited to this account on the 20 March 2017 from EJ Moyle solicitors would have still been there to cover the mortgages". When challenged on this letter, he said that he was mistaken when he wrote this letter. When challenged as to why he had not mentioned that the Nationwide account was actually his account in an email to Antonina dated 23 July 2017, he became very defensive, saying that he wasn't aware that he had to set out his case. Indeed, on several occasions during cross-examination, when pressed on why he had not provided details of the alleged agreements at any time before lodging his Statement of Case, he reverted to contending that because he was a litigant in person, he did not realise that he had to set out his case. Naturally, whilst there is no requirement on any litigant, whether represented or not, to set out in pre-action correspondence the case which is later relied upon, the fact that that case is not immediately advanced to seek to persuade the other side to desist can only be looked upon with suspicion. Of course, if it was true that the Respondent opened the account himself, it shows an incredible level of naivety that she should open an account and

then effectively hand the running of the account in his name over to JF to enable JF to pay the mortgage on 38 Grays Road.

24. I was left with the clear impression, listening to the Respondent's evidence, that the Respondent had made up his mind that, having established through correspondence that no deeds of trust for the properties existed, he would seek to benefit from JF's inability to contradict him by contending that he had reached oral agreements in relation to the properties with JF and that he then sought to tailor his evidence to fit. So, for instance, the Respondent took the view that it would be consistent with his case if he had created the Nationwide account and so, despite saying in recent correspondence that JF had set up the account, he now remembered clearly that he had set up the account himself.

25. Perhaps the most obvious example of this strategy led to the Respondent changing his case even in the course of his evidence. In 2004, JF had brought proceedings against Hayley Carter in the Chancery Division of the High Court relating to the division of their properties at the end of their relationship. The Respondent made two witness statements in those proceedings. There appear to be two versions of the second witness statements taken from JF's files. In the first, the Respondent refers to being approached by JF and Hayley Carter in 2002 to take a transfer of the legal interest in 4 Quayside Court. He says "For some reason relating to the management of the building the parties wished to transfer the property into my name, it being understood that I held the property on trust for them both in equal shares absolutely … In 2005 I was surprised to receive a County Court claim form issued by Countrywise Property Management Limited in relation to alleged arrears of service charge owing on 4 Quayside Court … Since I have no interest in this property, I filed a defence. I subsequently received a vituperative telephone call from the Defendant asking why I have defended the claim. I explained that this was a matter between herself and the Claimant and I wanted no part of it", The second version of the Respondent's witness statement is in similar terms and includes the passage "I understood that the transfer was on the basis that I held the property for Hayley Belinda Barnett and John Farmer in trust in equal shares and that I had no claim on the property whether stated or implied. This was on exactly the same basis that the apartment 3 The Dower House,

Rocky Lane, Gatton Park, Reigate, Surrey was and is held in my name. Accordingly I rejected any liability in the County Court claim …".

26. Of course, this runs contrary to the Respondent's case. Faced with this difficulty, the Respondent said in cross-examination that whilst what was written in the Witness Statement was true, he "became aware later that [JF] had transferred it over to me permanently. Originally, it was transferred for the purposes of voting. That was a short-term thing … He said you might as well have it. It wasn't worth much. Having me on board served his interests". It was not clear from the Respondent's evidence how this two-stage process worked other than that the agreement which was originally said to have been reached on the transfer of the legal interest in the property was now being said to have been reached at some unspecified later time. This new position was certainly not mentioned in his Statement of Case or any of his correspondence and was a good example, in my judgment, of the Respondent saying anything which he believed might assist his case.

27. I have no hesitation in rejecting the Respondent's evidence in relation to the alleged oral agreements with JF. I find as a fact that there were no such agreements. I do so for a number of reasons.

28. First, there is no documentary evidence to support the Respondent's case that oral agreements were reached with JF. As I have already noted, there is a large amount of material which is in the Tribunal's bundles which came from JF's files. Whilst it is clear that JF was disorganised and relied on assistance to keep his portfolio in order, it is also clear from the documentation, some of which I have already described, that JF was a very shrewd businessman and was prepared to bend, if not break, the rules to advance his own business interests. It seems unlikely in those circumstances that JF would not seek to protect his position by documenting, somewhere, even if informally, the nature of the arrangements which the Respondent claims they entered into. On the Respondent's case, when the properties were sold, the Respondent was to be entitled only to "the equity" in the properties; any deposit funded by JF would be reimbursed to him. On his own case, JF accepted that when 4 Quayside Court was sold, JF was to be repaid the whole of the purchase price of £23,000 before the remaining proceeds

went to the Respondent. It seems very unlikely that JF would not have documented these arrangements anywhere simply in order to protect his own interests.

29. Second, the very fact that there is no documentary evidence to corroborate the Respondent's account of these alleged agreements places an even greater burden on the Respondent's own evidence of the agreements. Yet the Respondent's evidence was extremely vague when it came to the agreements themselves. I heard no evidence about the manner in which the agreements were said to have come about, when and where discussions leading to the alleged agreements were alleged to have taken place or any evidence other than relatively bare assertions that the agreements were reached with JF. The nature of the agreements, one might have thought, would be relatively complex given that JF was retaining responsibility for maintaining and letting the properties notwithstanding that they were in the Respondent's name. There was apparently no agreement about who would be responsible for insuring the properties, about what would happen if the Respondent died before he reached the age of 65 or about any other of the myriad contingencies which one might have expected to have been documented or at least discussed. Instead, the evidence was, at best, vague; the agreement was either that the Respondent would receive "the equity" in the properties when they were sold when he reached 65 or that he would receive "the profit" from the sale. Those are not the same concept yet were used interchangeably by the Respondent. As I have already noted, in the case of 4 Quayside Court, the Respondent's evidence was even less credible, altering during the course of his evidence when confronted with documents which contradicted his case. It is far from clear from the Respondent's evidence what, if any change, took place on the occasion of the alleged conversation with JF at some indeterminate time following the acquisition of the property. In short, the Respondent's oral evidence concerning the alleged agreements was unconvincing.

30. Third, the Respondent was aware of JF's background and the fact that he had a criminal past. I also consider it to be clear that in the case of Bridge Barn, the Respondent was well aware that JF was applying for a mortgage in his (the Respondent's name). There is no other way to account for the Respondent's payslips and passport details being found along with the mortgage application form on JF's files. As I have noted above, the Respondent's initial reaction in cross-examination

was to say that he could not recall supplying the payslips and passport to JF but he then changed his mind and said that he allowed JF to apply for the mortgage on his behalf. In my judgment, the Respondent was correct about this; he allowed JF to apply for the mortgage in his name. Given that that was the case, it seems hard to believe, if what the Respondent says about the agreement between them, that the Respondent was prepared simply to trust JF's word that the agreement would be honoured without the terms of the agreement between them being recorded anywhere.

31. Fourth, this point is all the more startling when one considers that prior to the "new" agreement allegedly reached in relation to 4 Quayside Court and the agreements allegedly reached in relation to 38 Grays Road and Bridge Barn, the Respondent accepted that he had held properties as nominee for JF without any agreement in place that the Respondent should benefit from that arrangement. In the case of 4 Quayside Court, the Respondent's case, ultimately, was that he was content for JF to purchase 4 Quayside Court in his (the Respondent's) name simply to assist JF with voting arrangements for the block and with no benefit to the Respondent. The same was true of 3 The Dower House in Reigate which the Respondent admitted in his Witness Statement in the proceedings in the High Court in 2004 was held in the Respondent's name even though the Respondent "had no claim on the property whether stated or implied". If the Respondent was, as he clearly was, prepared to hold property as a bare trustee or nominee for JF or for JF and Hayley Carter, that suggests that he would be prepared to do so again. If, on the other hand, his position was that he was not prepared simply to hold property as a nominee or bare trustee once again, one might have expected him to insist upon some documentation being prepared, even informally, so as to differentiate this new situation from the Respondent's previous dealings with JF. There is, of course, no such documentation. That leads me to the conclusion which I have reached that whilst the Respondent knew about the mortgage application for Bridge Barn and was content for JF to make a mortgage application in his name, he did not know about the application in relation to 38 Grays Road which was acquired without the Respondent's knowledge or co-operation.

32. Fifth, in none of the correspondence following the death of JF when these matters were being canvassed did the Respondent mention any alleged agreements between himself and JF. I have already noted that in his Witness Statement in the proceedings

in the High Court between JF and Hayley Carter, the Respondent, dealing only with 4 Quayside Court, was at great pains to point out that he had no claim on the property at all. On 3 July 2017, Antonina sent an email to the Respondent in which she referred to a telephone conversation between herself and the Respondent after JF's funeral. I will return to that alleged conversation below. The gist of Antonina's email was that the Respondent was now claiming that the properties were his whereas both during the telephone conversation and in a letter from solicitors acting for JF's daughter Chloe to Antonina (to which I shall also return), the Respondent had admitted that he held the properties on trust for JF's estate absolutely and that he would transfer the legal interest in the properties to the estate.

33. On 13 July 2017, the Respondent wrote to the tenants at the three properties in question requiring them to pay their rents direct to him. On 22 July 2017, Sarah Holdsworth of Prime Property Management who were managing agents for the three properties registered in the Respondent's name emailed the Respondent, possibly prompted by the Respondent's letter to each of the tenants. In that email, Ms Holdsworth repeats the gist of the alleged telephone conversation between Antonina and the Respondent, the gist being that the Respondent had no beneficial interest in the properties and that he would transfer the legal interest in the properties to the estate. The email continues "I am more than happy to continue to pay the mortgages, as John [Farmer] did, in the interim if you would like to forward the details to me, which is what I am doing on all the other mortgages in order to protect the portfolio for John's beneficiaries". Instead of taking Ms Holdsworth up on that offer, the Respondent questioned her authority to make such payments and continued to accuse JF's estate of diverting rent from him.

34. That email seems to have prompted the Respondent's response, on 23 July 2017, to Antonina's email of 3 July 2017. In his response, the Respondent makes a number of points regarding the alleged telephone call and concerning the letter received from Chloe's solicitors. He also refers to the monies removed from the Nationwide account by Garry Anderson. Nowhere in the letter does the Respondent mention that he reached an agreement with JF that the properties would be sold when he reached 65 or, indeed, that he reached any agreement with JF at all about the properties. On the contrary, he says "I am 100% behind you on this but I feel because I have 3 houses in

my name (as they are in arrears and I am being contacted to make restitution – I am being dragged in on this – I wish they never existed". When questioned about why he had not mentioned his case in that correspondence, his answer was that he "wasn't aware that I had to set out the agreement" and that his email was rushed and he was stressed. Whilst I can understand that the Respondent was stressed, especially as he was being chased by the various mortgage lenders who were no longer receiving mortgage instalments following JF's death, he certainly wasn't rushed, having almost three weeks to think about his response to Antonina's email before he sent it.

35. By the start of January 2018, the Respondent was writing to the Applicants' solicitors seeking disclosure of deeds of trust in relation to the properties. I pause to note that if the Respondent's contentions were correct, he would have known that no such deeds existed. I see the force in the Applicants' submission that by repeatedly asking to see deeds of trust relating to the properties, the Respondent was testing the water to see whether any such deeds existed before advancing the case which he now advances concerning oral agreements with JF. In an email dated 20 January 2018, the Respondent requires the Applicants to "cease and desist in intercepting the rents on my 3 houses. Pay back all the rents of all of them since May 2017 … then withdraw all activity involving myself and my 3 properties". On 30 January 2018, the Respondent emails the Applicants' solicitors again saying that "I am very concerned that you continue to retain rents of my properties. I am of the view that you have actively encouraged and allowed the interception and retention of the rents to continue …". He required all rents to be repaid to his account. This, of course, is inconsistent with his case that it was the responsibility of the estate to collect rents and pay the mortgage on the properties until he reached the age of 65. When asked about this in cross-examination, he said merely that he was a litigant in person, the implication being that he did not fully understand the position. When asked why he had written to the tenants requiring them to pay rent to him, he asked in reply "How else do you expect me to pay the mortgages". The answer to that, of course, is that if his case was correct, it was the estate which should have been paying the mortgages as the Applicants' managing agents had offered to do back in July 2017.

36. Sixth, I place significant weight upon a letter dated 24 May 2017 from Ellisons Solicitors addressed to Grosvenor Law. Ellisons were acting for Chloe, JF's daughter

with Hayley Carter, and Grosvenor Law was acting for Antonina. In the course of that letter, Ellisons wrote "*It would seem that the deceased was registering some of the properties which in reality he beneficially owned, in 'alias' names. Mortgages were also obtained for these properties on this basis. Even more worryingly, John Farmer was seemingly purchasing properties in the names of people known to him, without their knowledge or signatures, and furthermore obtaining mortgages in the relevant individuals' names ... In addition, it would seem that the deceased purchased three properties in the name of Robert Main. Robert is a Police Office and had, until our involvement, no knowledge of the properties whatsoever and certainly no knowledge of the mortgages connected thereto. It is our understanding that your client has already approached Robert Main to request that he sells the properties to her. Obviously, Robert Main pointed out to your client that on the basis the properties do not legally or beneficially belong to him, he is not in a position to enter into these transactions*".

37. That last sentence was, of course, not correct and was inconsistent with the previous reference to the properties being bought in the Respondent's name; he was indeed the legal owner of the properties. Hayley Carter was cross-examined about this letter. She said that she had spoken to the Respondent for the first time in years at the hospital when JF died. She said she spoke to him again at JF's funeral. She said "at some point, this came up and he told me what the situation was. I didn't disbelieve it". She went on to say that the Respondent had also told her about agreements he had reached with JF but that that conversation had been after the funeral and she could not remember when that conversation had taken place. When the Respondent was asked how Chloe could have known about these matters in order to instruct Ellisons to write this letter, the Respondent said that he had no recollection of speaking to Hayley Carter about it and that any questions should be directed to Ellisons and not to him. He then said that he had no recollection of speaking to anyone about the telephone conversation. This is a good example of the Respondent's defensive and unhelpful attitude in cross-examination. In my judgment, the only way in which this information could have come to Chloe was from the Respondent through Hayley Carter. How else would Chloe have known about the alleged telephone conversation between Antonina and the Respondent? The Respondent relied heavily on the assertion that the information could not have come from him because the letter states that he (the Respondent) is a

police officer whereas, in fact, he works for the police force in a civilian capacity and has never held himself out as a police officer. I pause to observe that in an undated document supplied to the Tribunal by the Respondent to attempt to explain the adjournment of this trial on medical grounds, the Respondent provides background to his medical condition by saying "In 2008, whilst in the police, I took a 15 month career break … I was unable to return to front line policing for about 20 months". The document does not state expressly that the Respondent was a police officer but that is the clear inference from the language used by the Respondent in that document; it is hard to see what else might have been meant by "front line policing". I therefore place very little weight on the Respondent's assertion that this information could not have come from him because he is not a police officer. At the very least, he uses language ambiguous enough for someone reasonably to infer that he was.

38. Seventh, I take into account the disputed telephone conversation which took place on a date shortly after JF's funeral. In the Applicants' Statement of Case, the Applicants pleaded that a telephone conversation had taken place between Antonina and the Respondent in which the Respondent accepted that the properties belonged beneficially to JF's estate and that he would transfer the legal interest in the properties to the estate. No estoppel is based on these alleged representations; they are said merely to constitute evidence of the Respondent's change of position. In his Statement of Case, the Respondent pleaded that "I have no recollection of any such conversation ever taking place". In her Witness Statements in support of the reference, Antonina stated that she called the Respondent from the offices at 1 Quayside Court and that, having placed the call on loudspeaker so that it could be overheard by Garry Anderson and Paul Valentine who were also present, the Respondent accepted that the properties were "nothing to do with me" and that he would transfer them to JF's estate. This evidence was corroborated by Mr Anderson and Mr Valentine. Each of the witnesses was cross-examined by the Respondent who appeared to suggest to Antonina that a conversation had taken place between them but that it had been in the evening and not during the day. According to the Respondent's version of events, given in cross-examination, there was a short conversation between himself and Antonina which took place in the evening in which she asked him about signing the properties over to her and the Respondent had said that he was not prepared to do so because they were his properties. When asked whether all three of the Applicants' witnesses were lying

about this issue, he said they were. When asked what motivation Mr Valentine might have for lying about this issue, the Respondent was unable to answer.

39. I do not accept the Respondent's version of events in relation to this issue. His answers in cross-examination were at odds with his assertion in his Statement of Case (which, in the absence of a witness statement stood as his evidence in chief) that he could not recall any conversation with Antonina. I accept the evidence of Antonina, Mr Anderson and Mr Valentine on this issue. Their evidence is corroborated by the Ellisons letter written shortly after the conversation took place and by Antonina's email dated 3 July 2017 to which I have referred above. Indeed, in his response to that email dated 23 July 2017, the Respondent does not state that no conversation took place, merely that it was not on loudspeaker "because I know when a conversation is being held by loudspeaker – this was NOT one of them". The substantive content of the conversation is not challenged by the Respondent.

40. Finally, there was insufficient evidence concerning a relationship between the Respondent and JF which would have explained the alleged arrangements. It is true to say that the Respondent gave evidence that he had known JF for a long time and that they had been good friends, often exchanging text messages. There is no doubt that they were sufficiently friendly that the Respondent was prepared to allow JF to buy properties using his name as a nominee. However, what the Respondent struggled to explain was why JF should have effectively gifted any equity or profit in these properties to the Respondent. Indeed, there was evidence from Mr Pater that JF spent significant sums improving the properties, seemingly for the financial benefit of the Respondent by increasing the equity in the properties due to go to the Respondent when he reached the age of 65.

41. Putting all of those factors together without placing undue weight on any particular factor, I conclude that there was no agreement between the Respondent and JF of the type asserted by the Respondent. In my view, JF used the Respondent (as he had done before) to purchase properties with the benefit of mortgages. The extent to which the Respondent knew what JF was doing is more difficult to assess but I have strong suspicions that the Respondent knew what JF was doing; the Respondent provided payslips and his passport so that JF could make a mortgage application in his name in

relation to Bridge Barn but there is no such evidence in relation to 38 Grays Road. Whether the Respondent knew the full extent what was going on or not, I consider that the Respondent had no beneficial interest in these properties. The properties were put into his name as a nominee for JF and I find that he held them on a bare trust for JF and now holds them on a bare trust for his estate.

42. I raised with the Applicants at the hearing the effect of the decision in Patel v Mirza [2016] UKSC 42 and in particular whether I should, if I found in favour of the Applicants, nonetheless deprive the Applicants of the relief which they seek on the grounds that the transactions with which we are concerned may be tainted by illegality. Mr Learmonth, Counsel for the Applicants reminded me of the principles set out at Paragraph 120 of the judgment of Lord Toulson (with whom Lady Hale, Lord Kerr, Lord Wilson and Lord Hodge agreed) that

"The essential rationale of the illegality doctrine is that it would be contrary to the public interest to enforce a claim if to do so would be harmful to the integrity of the legal system (or, possibly, certain aspects of public morality, the boundaries of which have never been made entirely clear and which do not arise for consideration in this case). In assessing whether the public interest would be harmed in that way, it is necessary a) to consider the underlying purpose of the prohibition which has been transgressed and whether that purpose will be enhanced by denial of the claim, b) to consider any other relevant public policy on which the denial of the claim may have an impact and c) to consider whether denial of the claim would be a proportionate response to the illegality, bearing in mind that punishment is a matter for the criminal courts. Within that framework, various factors may be relevant, but it would be a mistake to suggest that the court is free to decide a case in an undisciplined way. The public interest is best served by a principled and transparent assessment of the considerations identified, rather by than the application of a formal approach capable of producing results which may appear arbitrary, unjust or disproportionate".

43. In relation to 4 Quayside Court, the Applicants submitted that there was no hint of illegality. The Respondent had been asked to hold the property as a nominee and he had agreed to do so. The legal interest in the property was then transferred to him. I

accept the Applicants' submission that there is no suggestion of illegality which would call into question the decision which I would otherwise have made.

44. The purchase of Bridge Barn was a purchase for value where the purchase price of £250,000 appears to have been paid to Evelyn Wright. It was suggested that there might be illegality in the manner in which JF attempted to avoid SDLT but, the Applicants submitted, there is a significant doubt whether this was a potential case of tax evasion or tax avoidance and, moreover, nor do we know whether JF actually paid SDLT and at what rate. It is not for this Tribunal to jump to conclusions concerning the illegality of transactions without a proper examination of the evidence. Even if this was tax evasion, the Applicants submitted, the remedy sought has nothing to do with the tax evasion; the remedy concerns the beneficial ownership of the property. The transaction itself was perfectly valid; any illegality is incidental. To use Lord Toulson's phrase, the denial of the Applicants' claim will not enhance the purpose of the prohibition which has, potentially been transgressed. Finally, it was submitted, to give the Respondent a windfall by refusing the Applicants' application would be disproportionate to the seriousness of the potential offence, given that the SDLT in issue would be 3% of the purchase price or, approximately, £7,500. I accept the Applicants' submissions in relation to this property.

45. Finally, in relation to 38 Grays Road, the Applicants submitted that there was no firm evidence that a criminal offence had been committed (and it would not be the function of this Tribunal to express a view on that issue) and that in so far as the mortgagee for the property had been misled, the grant of the remedy sought was, in fact, a step towards regularising the position by ensuring that the property can be sold and the mortgagee can recover the sums which it lent. The Applicants also submitted that, again, it would be disproportionate, where the mortgagee retains the security of the property, to deny the Applicants the remedy they seek and thereby provide a windfall to the Respondent. Once again, I accept the Applicants' submissions in that regard.

46. On a final note, I should add that one of the Respondent's chief concerns was that he had expended monies from an inheritance on paying the mortgages of the properties to prevent them from being repossessed. Whether he should ever have got himself into that position in the first place is a different issue but be that as it may, I record in my

judgment the concession made on behalf of JF's estate by the Applicants that the estate would reimburse the Respondent with any sums paid by the Respondent towards the mortgages of the properties.

47. For the foregoing reasons, I will order that the Chief Land Registrar should accede to the application as if the objections to the application had not been made.

48. The usual order for costs which would follow this judgment would be that the Respondent should pay the Applicants' costs of the reference on the standard basis to be the subject of a detailed assessment if not agreed. At present, that is the order which I am inclined to make. If any party wishes to make submissions in relation to the costs of this reference, they should do so to the Tribunal by 4pm on 16 August 2019, remembering to copy any correspondence to the other party. If no submissions are received by that time, I will make the costs order which I am inclined to make.

Judge Gary Cowen

Dated this 18th day of July 2019.