

[2017] UKFTT 0882 (PC)

REF/ 2015 /0346

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

LAND REGISTRATION ACT 2002

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

BETWEEN

ALAN BATES

APPLICANT

and

**(1) CURTIS GUY
(2) LEONA TEBB**

RESPONDENTS

**Property Address: Plot 398, Waterside Holiday Park, Main Road, St. Lawrence,
Southminster**

Title Number: EX525780

ORDER

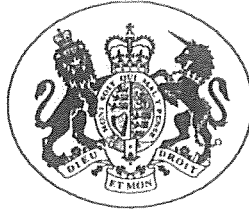
The Tribunal orders that the Chief Land Registrar do cancel the application of the Applicant dated 5th August 2014 for the entry of a restriction on the title to 398, Waterside Holiday Park, Main Road, St. Lawrence, Southminster being title number EX525780

Dated this 20th November 2017

Michael Michell

BY ORDER OF THE TRIBUNAL





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Southminster**

Title Number: EX525780

Before: Judge Michell

Sitting at: Alfred Place, London

On: 14th November 2017

Applicant Representation: Mr Alan Day, lay representative

Respondents Representation: In person

DECISION

***APPLICATION TO REGISTER A RESTRICTION- APPLICANT INFORMALLY
AGREED TO PURCHASE AND TOOK POSSESSION—NO WRITTEN CONTRACT –
FIRST RESPONDENT NOT REGISTERED- REGISTERED PROPRIETOR
SUBSEQUENTLY TRANSFERRING TITLE TO FIRST RESPONDENT- WHETHER***

APPLICANT HAVING AN INTEREST IN THE LAND CAPABLE OF BEING PROTECTED BY RESTRICTION

Law of Property Act 1925 s. 53(1)

Law of Property (Miscellaneous Provisions) Act 1989 s.2

Land Registration Act 2002 s.25

Land Registration Rules rule 58

1. This case concerns a plot of land on a caravan park (“the plot”). The plot provides a site to park a holiday caravan. It was formerly part of Beacon Hill Farm. The conveyance of this and of other plots making up the Waterside Holiday Park, included a covenant by the purchaser to pay a proportion of the costs of the vendors in operating, maintaining and repairing certain facilities at the holiday park. Title to the plot was first registered on 3rd January 1995. On 30th July 2004, the Second Respondent, Mrs Leona Tebb became the registered proprietor. The First Respondent, Mr Curtis Guy was registered as proprietor on 18th March 2014 on the registration of a transfer of the plot to him by Mrs Tebb. On 5th August 2014 the Applicant, Mr Bates applied to enter a restriction on the title to the plot. Mr Guy objected and the matter was referred to the Tribunal for determination. Mrs Tebb was added as a party by the Tribunal of its own motion.

The Facts

2. There is no real dispute as to the facts. In June or July 2006, Mrs Tebb agreed informally to sell the plot to a Mr Jimmy Gumble. She was paid the sum of £1,200 in cash by Mr Gumble and handed over what she described in her evidence as “the title deeds”. There was no contract in writing for the sale and purchase of the plot. Law of Property (Miscellaneous Provisions) Act 1989 s. 2 provides that a contract for the sale of land can only be made in writing and only by incorporating all the terms which the parties have expressly agreed in one document, or where contracts are exchanged, in each. Section 2(3) provides that the document incorporating all the terms must be signed by or on behalf of each party to the contract. As the provisions of section 2 of the 1989 Act were not satisfied there was not as a matter of law any contract for the sale of the plot by Mrs Tebb to Mr Gumble.

3. The effect of Land Registration Act 2002 s.25 and Land Registration Rules rule 58 is that title to registered land can only be transferred by using a prescribed form of transfer. Under Land Registration Act 2002 s.27 a transfer of title to registered land does not take effect in law until it is registered. Mrs Tebb did not execute any transfer of the plot to Mr

Gumble and no transfer was registered. Mrs Tebb therefore remained the registered proprietor. Mrs Tebb's evidence was that she left it to Mr Gumble to register the plot in his name. He could not have done that without having a transfer to him in the prescribed form and executed by Mrs Tebb.

4. At the end of the summer 2006 Mr Gumble informally agreed to sell the plot to Mr John Wood. Mr Wood paid a sum of money to Mr Gumble for the plot. There is no evidence as to how much Mr Wood paid except that Mr Gumble said that he sold the plot at a profit. Mr Gumble and Mr Wood did not sign a written contract as required by section 2 of the 1989 Act. Accordingly, there was no legally binding contract for the sale of the plot by Mr Gumble to Mr Wood. Legal title to the plot remained registered in the name of Mrs Tebb.

5. Mrs Tebb received an invoice for maintenance charges in respect of the plot from the company providing and maintaining the services at the holiday park, Park Resorts Ltd. Mrs Tebb telephoned Park Resorts Ltd. and said that she had sold the plot to Mr Gumble. Mrs Tebb said that Park Resorts Ltd. told her it would cancel the invoice. In 2008 Mrs Tebb received a further invoice for maintenance charges from Park Resorts Ltd. She contacted Park Resorts Ltd and says that she was assured she would hear no more from the company concerning liability for maintenance charges.

6. In October 2011 the Applicant, Mr Bates agreed informally with Mr Wood to buy the plot and Mr Bates paid Mr Wood £3,000. Mr Wood signed a typed letter addressed to Mr Bates dated 5th October 2011. The letter stated "Thank you for the money on my plot at St. Lawrence. I'm pleased you have bought it as we have enjoyed many stays there over the years. Accept this as a receipt in full payment for plot 398". That document was not a written contract for the sale of the plot signed by both parties. Mr Wood and Mr Bates did not sign a written contract as required by section 2 of the 1989 Act. Accordingly, there was no legally binding contract for the sale of the plot by Mr Gumble to Mr Wood. Legal title to the plot remained registered in the name of Mrs Tebb.

7. On about 12th September 2013 Park Resorts Ltd. issued proceedings in the County Court against 48 defendants claiming unpaid maintenance charges for the period 1st December 2005 to 30th November 2012. One of the defendants was Mrs Tebb, who was alleged to owe £7,273.07 in arrears of maintenance charges in respect of plot 398. It is

common ground that neither Mr Gumble, nor Mr Wood nor Mr Bates paid any maintenance charges to Park Resorts Ltd or to anyone else. The proceedings were served on Mrs Tebb at 8 Whitehall Road, Grays, Essex, an address from which Mrs Tebb had moved some years prior to the service of the proceedings. As Mrs Tebb did not respond to the service of the summons, judgment was entered in default against her on 2nd December 2013 for the debt of £7,273.07 and £138.50 costs.

8. Mr Guy, in some way not apparent from the evidence, came to hear of the claim being made for arrears of maintenance charges. He sent a circular letter to the defendants to the action brought by Park Resorts Ltd. expressing an interest in acquiring their plots. Mrs Tebb received the letter in November 2013 and telephoned Mr Guy to discuss his offer. Mrs Tebb and Mr Guy then met at some time later in a public house. Mr Guy brought with him a draft contract prepared by his solicitors. The special conditions of the contract included a condition that the property was sold with vacant possession and special condition 6 setting out what the consideration was to be for the contract; it stated

“The consideration for this contract shall be the transfer from the Seller to the Buyer of the liability to pay the annual park charges payable to Waterside Holiday Park including accrued arrears which stand at the date of this contract in the sum of £7,228.00.”

Mrs Tebb signed the contract. I do not know the date of the contract. Subsequently, Mrs Tebb executed a transfer of the plot to Mr Guy. It appears from the proprietorship register that the transfer was dated 19th March 2014 and the value of the consideration given for the plot was said to be £7,228.

9. It is common ground that Mrs Tebb told Mr Guy before she executed the transfer that she had “sold” the plot to Mr Gumble in 2006. Mrs Tebb said that both Mr Guy and his solicitor, Mr Nigel Broomhead informed her that the sale to Mr Gumble was of no concern and that as she was still the registered proprietor, she could transfer the plot to Mr Guy. Mrs Tebb said that she signed the transfer “in desperation”. Mr Guy said that Mrs Tebb told him that she had sold the plot to Mr Gumble but that she could not recall how much he had paid and she did not have a copy receipt for the sum Mr Gumble had paid. Mr Guy said that Mrs Tebb said that as Mr Gumble had not paid the maintenance charges, she regarded herself as the rightful owner.

10. It is apparent that Mr Guy informed Park Resorts Ltd's solicitors some time before 10th March 2014 that Mrs Tebb had transferred the plot to him. On 10th March 2014 the solicitors wrote to Mrs Tebb saying that Mr Guy had informed them that she had transferred the plot to him but they went on to say that as the debt related to the period prior to the transfer, Mrs Tebb remained liable for the judgment debt.

11. Mrs Tebb produced in evidence some of the email exchange she had with Mr Guy in March 2014. The entire email exchange was not in evidence. On 12th March 2014 Mrs Tebb emailed Mr Guy saying that she was worried and stressed as she had never had a county court judgment made against her before and asking if the bailiffs could come and take her possessions. Mr Guy replied saying that if the solicitor for Park Resorts Ltd would not agree to remove the judgment, Mrs Tebb could contact the court herself to have the judgment set aside as it was not her debt. Mrs Tebb replied asking if Mr Guy and his solicitor could have the judgment set aside. Mr Guy replied saying he would be seeing his solicitor on the next day and would ask if he could apply to set aside the judgment and if the solicitor said this was possible, Mr Guy would instruct his solicitor to do so.

12. On 31st March 2014 Mr Guy sent an email to Mrs Tebb saying that he had been contacted by a man named "Blue" who said that he had a "bill of sale" for the plot dating back a number of years and who was going to try to dispute the fact that Mr Guy was the new owner. Mr Guy wrote that if "Blue" could prove he was the owner, Mrs Tebb would again be liable for the debt to Park Resorts Ltd and would have to sort out the debt with Park Resorts and with "Blue". "Blue" is Mr Bates.

13. Mr Bates did not say in his evidence how he came to learn of the agreement for Mrs Tebb to sell the plot to Mr Guy. It appears from his Statement of Case that he became aware of the sale in November 2013 and asked Mr Day to investigate. Mr Day is not a lawyer. He is a farmer and retired land agent. Mr Day carried out a land registry search and found Mrs Tebb was still the registered proprietor. Mr Day said that he spoke to Mrs Tebb on a number of occasions, that Mrs Tebb was upset because the claim had been made against her for the maintenance charges and that Mrs Tebb did not say she had sold the land to Mr Guy. Mr Day also said that Mr Bates came to see him in May 2014 and said that someone was "trying to steal his holiday plot". Mr Day said that he made a further land registry search and then discovered Mr Guy had been registered as proprietor on 18th March 2014.

14. Mr Day sent an email to Mr Guy's solicitor on 22nd May 2014 asking him to confirm the facts of the land purchase that had resulted in "your client registering the land knowing my client owned the land and has occupied it for the last eight years". Mr Broadhead replied by email on the same day saying that Mr Guy was entitled to rely on the information held at Land Registry as to the ownership of the plot and on representations from Mrs Tebb that she was the owner. He went on to state that Mr Guy would co-operate with rectification of the register if the purported owner could prove his ownership, accepted responsibility for the debt owing on the plot and paid Mr Guy's legal expenses in connection with the original transaction and any subsequent rectification.

15. Mr Bates made the application to register a restriction on the title to the plot in August 2014. At this time Mr Guy was proposing to transfer title to the plot back to Leona Tebb.

16. At some date prior to September 2015 Park Resorts Ltd. brought proceedings against Mr Guy for the maintenance charges for a number of plots. It obtained judgment against Mr Guy dated 4th September 2015 for £60,319.27. Mr Guy made some payments of instalments towards the judgment debt and applied to vary the rate and date of payment of the judgment sum. On 9th December 2015 Mr Guy consented to an order that he pay the outstanding balance of £55,486.58 in specified instalments. Mr Guy had made an agreement with Park Resorts Ltd., the terms of which were set out in a draft Tomlin order and attached schedule dated 13th November 2015. The terms included Mr Guy's agreement to transfer back title to two plots, to give security for the judgment in the form of charges over a number of properties and to take all reasonable steps to further his position in these Tribunal proceedings and to demonstrate his ownership of the plot. The parties also agreed that if the Tribunal should decide that Mr Guy was "not the correct legal proprietor" of the plot then the judgment sum would be reduced by the amount of the maintenance charge due in respect of the plot.

17. In November 2016 Mrs Tebb applied to set aside the County Court judgment made against her on 2nd December 2013. Her stated grounds for the judgment to be set aside were that she had "sold the land in 2006 and made the claimant aware of the sale". Park Resorts Ltd. consented to an order setting aside the judgment. At that time they already had an order for the debt against Mr Guy and security for that debt.

Decision

18. Mr Bates may only apply for the entry of a restriction on the register if he has “a sufficient interest in the making of the entry” – Land Registration Act 2002 s.43(1)(c). Land Registration Rules Rule 93 lists the categories of persons who are to be regarded as included within s. 43(1)(c). Mr Bates claimed in his application to have a beneficial interest in the plot and so to fall within the category in Rule 93(a).

19. Mr Bates does not have a beneficial interest in the plot. There was no legal contract between Mrs Tebb and Mr Gumble for the sale of the plot. Had there been a legal contract, Mr Gumble would have been able to bring an action for specific performance of the contract to force Mrs Tebb to execute a transfer of the plot to him. A person who has the right to bring an action for specific performance of the contract and who has performed his obligations under the contract by paying the purchase price will be regarded as the beneficial owner of the land the subject-matter of the contract. This means that the court will regard the legal owner, i.e. the registered proprietor, as holding the land on trust for the purchaser. However, there is no such trust if there was no contract binding in law. If there is no legally binding contract, there can be no action for specific performance of the contract. It is possible that someone in the situation of Mr Gumble might have had a claim against Mrs Tebb under the law of proprietary estoppel or constructive trusts but unless and until such a claim succeeds and the court awards him a remedy in such a claim, he has no beneficial interest in the plot.

20. As Mr Gumble had no interest in the plot, he had no interest to pass to Mr Wood. Even if he had a beneficial interest, he could only have passed on that interest to Mr Wood by a written assignment under section 53(1) of the Law of Property Act 1925. There was no such assignment. As no interest was passed to Mr Wood, he had no interest to sell or pass to Mr Bates. It follows that Mr Bates does not and has never had a beneficial interest in the plot. He is not and has never been the legal owner or the beneficial owner. His application to register a restriction must be cancelled.

21. Mr Day spent much time in his submissions and in cross-examination in seeking to impugn the transfer by Mrs Tebb to Mr Guy. He said that the transfer was “illegal”. He also said that as Mr Guy had not discharged the debt of Mrs Tebb to Park Resorts Ltd. at the time of the transfer, Mr Guy had failed to comply with his obligations and so the transfer was of no effect or could be set aside. These criticisms were irrelevant to the issue to be determined by

the Tribunal, which was whether Mr Bates had an interest in the entry of a restriction. That turned on the events of 2006 and 2011 and not on what happened in 2013 and 2014 when Mrs Tebb sold and transferred the plot to Mr Guy. In any event, the criticisms were misconceived. As is clear on the face of the contract, Mr Guy did not agree to discharge Mrs Tebb's debt on the date of completion of the transfer or on any other specified date. What he agreed to do was to assume liability for the past and future maintenance charges. If Mr Guy did not pay the debt then Mrs Tebb's remedy would have been to have brought an action against Mr Guy for an indemnity in respect of the debt. It does not follow that if Mr Guy did not discharge the debt that the transfer of the plot to him was of no effect. Mr Guy is the registered proprietor of the plot and remains so unless and until the register is altered. There is no application before me to alter the register by removing Mr Guy as registered proprietor.

Conclusions

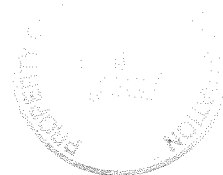
22. Mr Bates has not established that he is entitled to the entry of a restriction on the title to the plot. Accordingly, I must direct the Chief Land Registrar to cancel his application to register the restriction.

Costs

23. My preliminary view is that Mr Bates must pay the costs of Mr Guy of these proceedings. His application has been unsuccessful and it is just that he should pay Mr Guy's costs. If Mr Bates wishes to submit that he should not be ordered to pay Mr Guy's costs then he must serve written submissions on the Tribunal and on the other parties by 5pm on 4th December 2017. It is less clear whether Mr Bates should pay Mrs Tebb's costs. Her position in the proceedings was not entirely clear. She appeared at times to be supporting Mr Bates's application. If Mrs Tebb wishes an order for costs to be made in her favour then she should serve written submissions on the Tribunal and on the other parties by 5pm on 4th December 2017.

BY ORDER OF THE TRIBUNAL

Michael Michell



DATED this 20th November 2017