



[2019] UKFTT 0725 (PC)

REF NO 2018/0537

PROPERTY CHAMBER
FIRST-TIER TRIBUNAL
LAND REGISTRATION DIVISION

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY
LAND REGISTRATION ACT 2002

BETWEEN:

SABRINA KHAN

Applicant

And

MOHAMMAD ANWAR

Respondent

Property address: 19B Charles Street, Newport NP20 1JU

Title number: CYM716000

Before: Judge David Taylor
Newport (South Wales) Immigration and Asylum Tribunal
12th & 13th November 2019

Representation: the parties appeared in person

ORDER

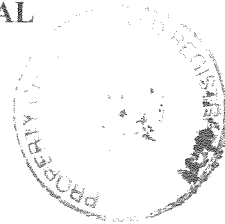
THE TRIBUNAL ORDERS AS FOLLOWS:

1. The Chief Land Registrar shall cancel the Applicant's application dated 14th July 2017 to register a Transfer of Part out of WA319775 dated 22nd February 2017 between (1) Sabz Ali Khan and (2) the Applicant.

BY ORDER OF THE TRIBUNAL

David Taylor

Dated this 29th November 2019





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DECISION

Introduction

1. The Respondent, Mr Mohammed Anwar, is the registered proprietor of the property which is registered under title number WA319775 ('the Property'). The Property is described in the property register as '*the property which is known as 20 Charles Street, Newport NP20 1JU*'. The Property was transferred to Mr Anwar by a transfer for valuable consideration, which was made under a power of sale, and which was dated 5th April 2017 ('the April transfer'). Mr Anwar was registered as proprietor of the Property on the 7th April 2017.
2. By an application dated 14th July 2017 Miss Sabrina Khan applied to alter the register relating to the Property, by removing from it a part of the Property which she said had been the subject of an earlier transfer in her favour. The transfer upon which Miss Khan relies is dated 22nd February 2017 ('the February transfer'). It is on form TP1, and it is a transfer of that part of title number WA319885 which is described in the TP1 as '19b Charles Street, Newport, NP20 1JU' ('19B'). The transferor under the February transfer was Miss Khan's father, Sabz Ali Khan ('Mr Khan'), and the February transfer was made by him at a time when he was the registered proprietor of the Property.
3. Mr Anwar objected to Miss Khan's application to alter the register of title relating to the Property on the ground that he '*purchased the Property for full value from the Mortgagee in Possession, with a TR2 overriding all outstanding interests.*' The resulting dispute has been referred to this Tribunal for determination.

The Adjourment Application

4. At the commencement of the hearing before me, Miss Khan applied for an adjournment of the hearing. Mr Anwar opposed the application, and I refused it. I indicated that I would give my reasons in writing.
5. There were two grounds for Miss Khan's application for an adjournment. The first was that she said that court proceedings had recently been commenced in the County Court, involving matters which overlapped with the issue that I have to decide, and that it was desirable that the County Court should deal with all issues relating to the Property. The second was that Miss Khan asserted that her former solicitors, Gabb & Co, had not

prepared properly for the hearing before me, as a result of which she said that she was at a disadvantage.

6. So far as the first ground was concerned, Miss Khan provided me with a copy of a Claim Form and Particulars of Claim in proceedings which she has brought against Mr Anwar in the County Court at Cardiff. It appears from those documents that the court proceedings were commenced on about the 24th October 2019 (the issue date is not shown on the Claim Form, but this is the date which appears on the Particulars of Claim). The issues which are raised in the Particulars of Claim overlap with the issues which I am required to determine, because the case which is advanced by Miss Khan in the County Court proceedings includes an allegation that *'[the February transfer] has priority, legally and equitably over [the April transfer] ... and should have been registered first at HM Land Registry ...'*. In addition, within the Particulars of Claim, Miss Khan advances an argument that the April transfer is vitiated by fraud.
7. Had the court proceedings been commenced at an earlier stage, the fact that they involved some of the same issues might have provided a sufficient reason to stay the proceedings before the Tribunal, to allow the court proceedings to run their course. But that is not what has happened. The present reference to the First-tier Tribunal was made on the 19th June 2018. Both parties were legally represented until a late stage of the proceedings before the Tribunal. Since the date of the reference, the parties have exchanged lengthy and detailed statements of case, they have provided disclosure of substantial volumes of documents upon which they wish to rely, and (at least in the case of the Respondent) they have prepared, filed and served detailed witness statements. A disposal hearing was originally listed to take place in May 2019, but was adjourned to due to the ill health of Miss Khan's father. The hearing which was listed before me for two days on the 12th and 13th November 2019 was notified to the parties in June 2019. The parties have prepared for the hearing, and arrangements have been made for the attendance of several witnesses. All of this will have involved the parties in significant expense, and of course the Tribunal's resources have been applied to case management and making arrangements for trial.
8. Miss Khan acknowledged during the course of her submissions for an adjournment that the central issue that is before the Tribunal is a narrow one which will turn upon factual evidence and legal submission relating only to the question of her actual occupation of the

Property at the time of the April transfer. My findings upon that issue will determine the question of actual occupation between the parties, and will therefore determine the question whether or not Miss Khan is entitled to alteration of the register of title relating to the Property on the particular ground that her interest under the February transfer enjoyed priority over Mr Khan's interest under the April transfer. The County Court will not need to revisit the same issue, and it does not seem to me that my decision on this issue will prevent Miss Khan from pursuing before the County Court her contention that the April transfer is vitiated by fraud.

9. Miss Khan suggested that the County Court's findings in relation to her fraud allegation might be relevant to the question whether, if the priority of her interest was protected by actual occupation, I should direct the Chief Land Registrar to alter the register by removing 19B from the title. She pointed out that paragraph 6(2) of Schedule 4 to the Land Registration Act 2002 provides that '*[n]o 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 ...*'. But, as I explained during the course of Miss Khan's submissions, paragraph 6(2) of Schedule 4 is only engaged in a case in which a proposed alteration of the register amounts to rectification (see paragraph 6(1)). If I find that the priority of Miss Khan's interest under the February transfer was protected by her actual occupation, then Mr Anwar's interest will always have been subject to it. The result of this will be that any alteration of the register to give effect to that overriding interest will not prejudicially affect Mr Anwar's title; it will simply result in the register being altered to reflect an interest by which Mr Anwar is already bound. It follows that the alteration would not amount to rectification (see paragraph 1(b) of Schedule 4). Accordingly, it does not seem to me that the County Court's eventual findings in connection with Miss Khan's allegation of fraud are relevant to the question that I have to decide.

10. The second ground upon which Miss Khan sought an adjournment involved criticism of her former solicitors, Gabb & Co. She complained that they had failed to forward to the Tribunal documents upon which she wished to rely in support of her claim that she had been in actual occupation of 19B, that they had failed to prepare witness statements

properly, and that they had failed to file a skeleton argument for the hearing. It goes without saying that I am not in a position to express a view about whether or not Miss Khan's criticism of her former solicitors is justified, because I know nothing of the instructions given by Miss Khan, or the advice given by her former solicitors.

11. So far as the first of these points is concerned, Miss Khan described to me several documents in the nature of licences and leases which she said would demonstrate that she and / or her father had been in receipt of rents and profits from tenants who had from time to time been in occupation of 19B. As I explained to Miss Khan at that stage in her submissions, it was not obvious to me that receipt of rents could be equated with actual occupation. But in any event, when I asked her about the whereabouts of the documents, she indicated that she would be able to collect them from her home over the short adjournment. I indicated that I would be prepared to take the documents into consideration in so far as relevant, notwithstanding that they had not been disclosed previously. Mr Anwar did not object to this course of action.

12. So far as the second point is concerned, Miss Khan did not suggest that there were any witnesses (other than herself) who she would have wanted to call to give evidence of her actual occupation, but she did indicate that she was concerned about the limited detail which had been provided in the statement of case which had been prepared by her former solicitors, about her actual occupation. I made clear that I would be happy for Miss Khan to elaborate upon this evidence during her oral evidence before me. Mr Anwar did not object to this course of action.

13. So far as the third point is concerned, in fact Gabb & Co did prepare a skeleton argument for the hearing which was due to take place in May 2019. But in any event I made clear to Miss Khan that I would ensure that she had a proper opportunity to address me on any legal matters which related to the question of actual occupation, both at the conclusion of the evidence, and (if she required it) through subsequent written submissions focussed upon the narrow question whether receipt of rents and profits could be equated with actual occupation.

14. I was satisfied, therefore, that Miss Khan's concerns that she may have been disadvantaged as a result of perceived deficiencies in her former solicitors' preparation of her case could be sufficiently addressed through proper case management.

15. In all of these circumstances, it seemed clear to me that to grant the requested adjournment would have been contrary to the overriding objective. It would have resulted in the parties having incurred very substantial abortive expenditure, the Tribunal's resources having been wasted, and still further delay in resolution of an entirely straightforward issue. For these reasons the requested adjournment was refused.

16. By way of postscript, I record that additional arguments were raised by Miss Khan in connection with the adjournment application following the hearing. At the conclusion of the hearing before me, I gave Miss Khan permission to file written submissions limited (as indicated above) to the narrow question whether receipt of rents and profits could be equated with actual occupation. Despite the limited permission given, Miss Khan filed much broader submissions relating to a variety of issues. One of the matters raised in those submissions was a suggestion that, once it was notified that court proceedings had been commenced, the Tribunal was bound by rule 39(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 to stay the Tribunal proceedings pending the final court order. That submission is wrong, and reflects a misunderstanding of the 2013 rules. As rule 39(1) makes clear, the provision upon which Miss Khan relies only *'applies where the Tribunal has directed a party under section 110(1) of the 2002 Land Registration Act to commence court proceedings for the court's decision on the whole or part of a matter.'* No such direction has been given in the present case. A stay (like an adjournment) is therefore discretionary, and for the reasons which I have given I consider that it would have been contrary to the overriding objective to stay (or adjourn) the proceedings.

Issues

17. The Tribunal is a creature of statute and, in so far as is relevant for present purposes, its jurisdiction (conferred by s.108 of the Land Registration Act 2002) is to determine matters which are referred to it under s.73(7) of the Act. For the purpose of identifying the scope of the matter which has been referred to the Tribunal for determination, I have considered

carefully the contents of the Applicant's application to HM Land registry, the Respondent's letter of objection, and indeed all of the contemporaneous correspondence (in so far as it has been provided to me) which passed between the parties' representatives and HM Land Registry between the date of the February transfer and the date of the reference to the Tribunal. It appears from that material:

- a) that the application which was made by Miss Khan to alter the register of title relating to the Property was made on the grounds that the February transfer had priority over the April transfer, and;
- b) that the objection that was made by Mr Anwar was made on the ground that the priority of Miss Khan's interest under the February transfer had not been protected at the time of the April transfer.

18. Miss Khan's interest under the February transfer was not protected by any entry in the register at the time of disposition in favour of Mr Anwar. Accordingly, by operation of the special priority rule in s.29 of the Land Registration Act 2002, Mr Anwar will have acquired his title free of her interest under the February transfer, unless her interest took effect as an overriding interest. This is a point which was identified by HM Land Registry following Miss Khan's application, and which was the subject of a requisition raised by HM Land Registry on the 26th November 2017, and repeated in a letter dated 30th January 2018. By a letter written by Gabb & Co to HM Land Registry on 30th January 2018, Miss Khan asserted that her interest under the February transfer did take effect as an overriding interest because, she said, she was in actual occupation of the property at the time of the disposition in favour of Mr Anwar. That claim was disputed by Mr Anwar in his solicitors' letter of objection.

19. It follows that the issue which needs to be decided in the matter which has been referred to the Tribunal for determination under s.73(7) of the Land Registration Act 2002 is a straightforward one. It is whether Miss Khan was in actual occupation of 19B on the date of the April transfer.

20. Notwithstanding the narrow scope of the issue which has been referred for the Tribunal's determination, Miss Khan has attempted to broaden the issues, by raising the following additional arguments:

a) that 19B is a property which is wholly distinct from the remainder of the Property, and that *'HM Land Registry incorrectly deemed 19b Charles Street as being part of 20 Charles Street which is a mistake which requires correction'*;

b) that HM Land Registry *'should have dealt with the [February transfer] first as the TPI was submitted to HM Land Registry earlier, on 22 February 2017'*.

21. It will be apparent from my observations (above) that I consider that these questions probably lie outside the scope of the matter which has been referred to the Tribunal for determination. But in case I am wrong about that, I will consider them.

Miss Khan's Argument Relating to The Extent of the Property

22. The first argument has not been very clearly articulated, but it appears from paragraphs 3 and 4 of the 'Skeleton Argument' that was filed by Miss Khan after the hearing that it is her case that:

a) errors were made in preparation of auction plans which were used in connection with the auction sale to the Property to Mr Anwar, and;

b) as a result of those errors there was an increase in the extent of the property comprised in title number WA319775, so that it came to include 19B.

23. If that is Miss Khan's case, I reject it. The extent of the property comprised in WA319775 was fixed when that title was first registered on the 20th December 1985. The April transfer was a transfer of the whole of the registered title. It was, therefore, a transfer of whatever was comprised in title number WA319775. The extent of the land comprised in WA319775 cannot have been altered as a result of any plans which were prepared for inclusion in the auction pack.

24. It is, I suppose, possible that Miss Khan's argument is a slightly different one. She might intend to submit that 19B has never formed part of the registered title to WA319775. If that is her case, I would have expected her argument to be supported by evidence concerning the application for first registration of the title, and the paper title documents which accompanied that application, from which the true legal boundaries could of the Property could be ascertained. None of that has been provided. On the information that is available

to me. I would conclude that 19B does form part of title number WA319775. Even allowing for the fact that boundaries which are shown on the registered title plan are only general boundaries, it appears clear from the title plan that 19B is included within the registered title to the Property. What is more, if 19B did not form part of the Property, then one wonders why Mr Khan would have attempted to give effect to the transfer of 19B to Miss Khan by using a TP1 which made clear that the intended transfer was a transfer of part of WA319775. In any event, if it were the case that 19B had never formed part of the Property, then the inevitable consequence of that would be the failure of Miss Khan's application in these proceedings. By her application she seeks to alter the registered title to the Property so as to remove 19B from it. But if 19B has never formed part of the Property, then there is no basis for making that alteration.

Miss Khan's Argument that HM Land Registry Should Have Dealt with the February Transfer before the April Transfer

25. The Property was sold at auction, by Mr Khan's creditors acting under a power of sale, on the 22nd February 2017. Mr Anwar was the successful bidder. On the same day as the auction, Mr Khan executed the February transfer in favour of Miss Khan.
26. Gabb & Co, acting on behalf of Miss Khan, applied for an official search with priority, pursuant to rule 147 of the Land Registration Rules 2003, to protect her interest as purchaser of 19B under the February transfer. An official search certificate with priority was issued on the 22nd February 2017, which conferred priority protection upon Miss Khan's interest as purchaser of 19B until expiry of the priority period 30 business days thereafter, on the 4th April 2017.
27. Also on the 22nd February 2017, Gabb & Co applied to register the disposition under the February transfer. The TP1 which was lodged by Gabb & Co incorporated a black and white transfer plan. This prompted HM Land Registry to request that a colour plan should be lodged. That request appears not to have been complied with. On the 22nd March 2017, HM Land Registry wrote to Gabb & Co to notify them that the application to register the disposition of 19B had been cancelled because of Gabb & Co's failure to reply to the

request to lodge the colour plan to the transfer. The letter warned that HM Land Registry would reject any renewal of the application if the original defect remained unresolved.

28. Coincidentally, on the same date (22nd March 2017), Mr Anwar's solicitors applied for an official search with priority to protect his interest as a purchaser of the Property. The official search certificate was issued on the same date, providing priority protection until the 5th May 2017.

29. On the 29th March 2017, Gabb & Co resubmitted their application to register the February transfer. The resubmitted application was made within the priority period in respect of which protection was provided to Miss Khan by the official search certificate which had been issued in her favour, and so the application was protected by s.72(1) of the Land Registration Act 2002. However, the application did not result in the disposition under the February transfer being registered. The reasons for that are not apparent from the information supplied to me by Miss Khan. It may be that the renewed application suffered from precisely the same defect as the original application (see, in this regard HM Land Registry's letter to Gabb & Co dated 26th November 2017 which records that, even by that time, the Transfer Plan which had been lodged with Land Registry was in black and white). Or there may have been some other reason why the application did not result in the disposition under the February transfer being registered.

30. Whatever the reason, the priority period afforded by the official search certificate issued in favour of Miss Khan ended on the 4th April 2017, without the protected disposition having been completed by registration. The April transfer was subsequently executed in favour of Mr Anwar, and he was registered as proprietor of the Property on the 7th April 2017.

31. On this limited information I cannot be satisfied that Miss Khan is correct when she says that the February transfer should have been completed by registration before the April transfer was processed by HM Land Registry. She has provided me with no explanation for the reason why her re-submitted application to register the February transfer was not completed by registration. She has adduced no evidence from Gabb & Co to demonstrate that the application of the 29th March 2017 was in order. Conspicuously absent from the documents supplied to me by Miss Khan is any correspondence passing between Gabb & Co and HM Land Registry in which Gabb & Co had asserted that a mistake had been made

by HM Land Registry in failing to register the February transfer following the re-submitted application on the 29th March 2017. On the incomplete evidence that is available to me, it seems highly likely that the resubmitted application of the 29th March 2017 suffered from precisely the same defect as her original application, viz. that the transfer plan was not coloured, or that it suffered from some other defect. There is no material from which I can conclude that HM Land Registry made a mistake in failing to give effect to the application.

32. It follows that I reject Miss Khan's argument that HM Land Registry made a mistake in its handling of her application to register the February transfer.

Actual Occupation

The Law

33. Section 29 of the Land Registration Act 2002 provides:

(1) If a registrable disposition of a registered estate is made for valuable consideration, completion of the disposition by registration has the effect of postponing to the interest under the disposition any interest affecting the estate immediately before the disposition whose priority is not protected at the time of registration.

(2) For the purposes of subsection (1), the priority of an interest is protected-

(a) in any case, if the interest-

(i) is a registered charge or the subject of a notice in the register, or

(ii) falls within any of the paragraphs of Schedule 3...

34. Schedule 3, paragraph 2 provides that the unregistered interests which override registered dispositions include:

'An interest belonging at the time of the disposition to a person in actual occupation, so far as relating to land of which he is in actual occupation, except for-

...

(b) an interest of a person of whom inquiry was made before the disposition and who failed to disclose the right when he could reasonably have been expected to do so;

(c) an interest-

(i) which belongs to a person whose occupation would not have been obvious on a reasonably careful inspection of the land at the time of the disposition and

(ii) of which the person to whom the disposition is made does not have actual knowledge at that time.'

35. It follows from these provisions that, in order to succeed in her application, Miss Khan must prove that she was in actual occupation of 19B at the time of the disposition, ie. at the time of the April transfer. Actual occupation means what it says, and the law is clear that a person who is not in actual occupation, but who is merely in receipt of the rents and profits from the land, can no longer protect their interest by that receipt (see *Megarry & Wade, The Law of Real Property, 9th Edn., para 6-095*). Although the law was formerly different (see s.70(1)(g) of the Land Registration Act 1925), the removal of protection for persons who were merely in receipt of rents and profits from land was quite deliberate. As the Law Commission made clear, in paragraph 583 of its commentary upon the new land registration bill,¹ one significant change which was made by the 2002 Act, when compared with its predecessor, was that *'overriding status has been removed from the rights of persons who are not in actual occupation but who are in receipt of the rents and profits of the land.'*

The Facts

36. Before this matter was referred to the Tribunal, at a time when Miss Khan was attempting to register the February transfer, HM Land Registry raised a requisition of her solicitors, on the 26th November 2018 asking (a) whether she had been in actual occupation of the premises at the time of the disposition and (b) for confirmation that none of the exceptions in paragraph 2 of Schedule 3 to the 2002 Act applied. Miss Khan's solicitors sought an extension of time within which to deal with that question (amongst others), before eventually providing their confirmation that Miss Khan *'was in occupation of the Property at the time of the Transfer'*. No further details were given. HM Land Registry wrote again, on 30th January 2018, relating their request for confirmation that none of the exceptions in paragraph 2 of Schedule 3 applied. That confirmation was given in a letter dated 30th January 2018, when Gabb & Co wrote to HM Land Registry saying *'[w]e confirm that the applicant was in actual occupation of the Property at the time of the disposition of title*

¹ Law Com No 271: Land Registration for the Twenty-First Century - A Conveyancing Revolution - Land Registration Bill and Commentary.

WA319775 and none of the exceptions listed in paragraph 2 of Schedule 3 of the LRA 2002 apply. Beyond those bald assertions, Miss Khan's claim that she had been in actual occupation of 19B on the date of the April transfer was wholly unparticularised.

37. After the dispute between the parties had been referred to this Tribunal, Miss Khan prepared a Statement of Case which, again, contained the bald assertion that she was in actual occupation of the Property at the time of the April transfer. Mr Anwar's Statement of Case, filed in response, made clear that this assertion was disputed. In paragraph 28 of Mr Anwar's Statement of Case his advisors pointed out, correctly, that *'the Applicant has failed to plead any particulars regarding her alleged occupation, and the Respondent is therefore unable to give any meaningful response.'* In subsequent paragraphs of his Statement of Case Mr Anwar made clear that *'[t]he Respondent saw no signs of the Applicant's presence in any part of the Property at the time of the disposition.'*

38. One might have expected those aspects of the Mr Anwar's Statement of Case to focus the mind of Miss Khan and her advisors upon how she would prove the actual occupation which she had alleged. Yet, when documents came to be exchanged, she produced no documents which were relevant to the issue of actual occupation. And when witness statements came to be filed, Miss Khan's witness statement simply confirmed the truth of the Statement of Case which she had previously filed.

39. The Respondent's disclosure and witness statements, in contrast, focused closely upon the allegation of actual occupation and (at least on paper) appeared to demonstrate entirely convincingly that Miss Khan could not have been in actual occupation of 19B at the time of the April transfer. All of those witness statements were filed and served as long ago as December 2018. Yet, despite the fact that this matter was listed for hearing in May 2019 (so that presumably minds were, once again, focussed upon the case at that time), Miss Khan made no attempt to develop her case on actual occupation.

40. It was only on the morning of the hearing before me that Miss Khan indicated, for the first time, that she did not assert that she had personally been in actual occupation of 19B at the time of the April transfer, but rather that she relied upon the occupation of her father's tenants as a form of vicarious occupation, together with her receipt of rents paid by tenants of 19B at the time of the April transfer. It was in order to prove her factual assertion that

tenants had occupied 19B that she wished to have the opportunity to produce documents which would prove the existence of a succession of tenancies of (a) the ground floor commercial premises at 19B and (b) the residential upper floors at 19B. Miss Khan appeared taken by surprise when I suggested to her that receipt of rent and profits might not be equated with actual occupation, and she requested the opportunity to make written submissions on the issue after the conclusion of the hearing. I acceded to that request. And because I had indicated that she should have the opportunity to address me on that legal point, I admitted her evidence of the tenancies which had from time to time been granted in respect of 19B, even though I considered it to be of doubtful relevance.

41. The evidence that I heard from Miss Khan established (and I find) that the ground floor of 19B had been let on a series of commercial leases from the mid to late 1990s. The leases which she produced had all been granted by her father, Mr Khan. The most recent lease of the commercial parts had been a lease dated 15/4/13 to a Mr Nesor Ali, who had operated a shop known as 'Bangla store' from the ground floor of 19B. The lease was for a term of 5 years commencing on 15/4/13 and ending on 30/4/18.

42. It emerged that there was a dispute between the parties about whether Mr Ali was still in occupation of the commercial parts of 19B under the 2013 lease existence as at the date of the April transfer. Miss Khan said that Mr Ali's occupation had continued and that she and / or her father had continued to receive rent from Mr Ali until after the April transfer. At one point, she went so far as to suggest that Mr Ali had remained in occupation of the ground floor of 19B until expiry of the commercial lease on the 30th April 2018.

43. On this issue I heard evidence from Mr Anwar, as well as from his son (Zishan). Mr Zishan Anwar had been a commercial tenant of the ground floor parts of the premises which immediately adjoin the ground floor of 19B at the material time, and both he and his father had been on site on a daily basis. Both told me that Mr Nesor Ali had vacated 19B in about 2015. Mr Zishan Anwar told me that, after Nesor Ali vacated, he (Zishan) had cleared out the vacant shop premises, before being granted a short term licence by Mr Khan to store goods in it. Zishan also gave evidence that the ground floor of 19B had subsequently been occupied by a business called I-Spy which was operated by a Mr Yusif Khan. He told me that Mr Yusif Khan had traded as I-Spy for several months, before vacating the premises during the course of 2016. His evidence was corroborated by that of

a Mr Alun Cottam, who recalled that he had been engaged by Mr Yusif Khan to undertake some sign-writing work in October 2015. That sign-writing work involved the creation of a new shop sign and vinyl window decals in connection with the business which Mr Yusif Khan intended to operate from the ground floor of 19B. I was also referred to some company documents from which it appeared that Mr Yusif Khan's business, I Spy Tech Limited, had been incorporated in November 2015. Finally, Mr Cottam confirmed that it was his recollection that I-Spy had ceased carrying on business during the course of 2016.

44.As to the occupation of the ground floor of 19B after 2016, in his witness statement Mr Anwar described how the Property had been 'repossessed' by creditors of Mr Khan in late 2016, and he described how the gentlemen who were undertaking the repossession had installed a heavy duty metal shutter door in front of the entrance to 19B. This evidence was corroborated by the numerous time-stamped photographs which had been disclosed by the Mr Anwar, which were taken from March 2017 onwards. These photographs include various photographs of the exterior of the Property. It is noticeable that all of the photographs, taken on diverse dates, show that the roller-shutters on the front 19B were firmly closed during daylight hours, when one might have expected a shop (if it existed) to be open.

45.Miss Khan had no real answer to this overwhelming evidence, and yet even in her closing submissions she maintained her position that Mr Naser Ali had been in occupation as at the date of the April transfer. I reject that submission, and I have no hesitation in preferring the evidence of Mr Anwar and his witnesses over that of Miss Khan. It is abundantly clear from all of the evidence that I heard that the ground floor of 19B had been vacant and unoccupied for very many months prior to the April Transfer, and I find that no-one was in actual occupation of it on the date of that Transfer.

46.So far as concerns the residential parts of 19B, Miss Khan gave evidence that some part of this had been occupied by a Mr Juma Gul under a tenancy from 1st October 2014 to 30th September 2015, that a Mr Ali Resa had occupied at some time (no tenancy agreement was produced), and that a Mr Reza Haidari entered into occupation of the residential parts on Mr Gul's departure. A tenancy agreement was produced between Mr Khan and Mr Haidari which was for a term commencing on 1st March 2015 and ending on 31st March 2017. Again, however, there was a dispute between the parties over whether any of these

residential occupiers had still been in occupation by the time of the April transfer. Mr Anwar's position was that the whole of 19B (including the residential parts) had been vacant from the date of the 'repossession' by Mr Khan's creditors. He recalled attending an accompanied viewing of the Property (including 19B) on the 17th February 2017, prior to bidding for the Property at auction. At the time of the viewing he said that the residential parts of the Property were unoccupied and derelict. His evidence that 19B was unoccupied at this time is confirmed by Zishan, who recalled rumours of a police raid on a cannabis production plant in the upper floors of 19B during 2016, and who said that the residential parts had been vacant that time onwards. Both recalled that, after Mr Anwar obtained the keys to the Property following the April transfer, they entered the Property (including 19B) and found it obviously unoccupied and in a poor condition. Their evidence about the condition of the upper floors of the Property was again corroborated by the Respondent's date-stamped photographs. On the basis of this evidence I reject Miss Khan's assertion that residential tenants of Mr Khan remained in occupation of 19B at the time of the April transfer. I find that 19B had been vacant and unoccupied for many months before the date of the Transfer.

47. It follows that Miss Khan's case, in so far as it relies upon occupation by the tenants of Mr Khan, fails on the facts. None of the tenants who had from time to time occupied 19B were still in occupation of the April transfer, and nor had they been for many months. Even if my conclusions on the facts had been different, I fail to see how Miss Khan can succeed in a claim that the actual occupation of her father's tenants can be regarded as her own actual occupation.

48. The only other factors which were relied upon by Miss Khan in support of her claim that she was in actual occupation of 19B on the material date was her evidence that she and her father had at all material times held keys to 19B, and that on one occasion prior to the auction she had sat in her father's car, outside 19B, whilst her father tried his keys in the lock and found that they would operate it. She gave evidence that, having unlocked the door, her father had briefly entered 19B. I reject the suggestion that, either by holding keys to a property, or setting foot inside it, a person can be said to be in actual occupation of it. According to the totality of the evidence that I have heard, it is quite clear that the commercial and residential parts of 19B (and indeed the whole of the upper floors of the

Property) were unoccupied by the time of the April transfer, and that they had been unoccupied for very many months, having been quit by the tenants who had formerly occupied them.

49. It follows that Miss Khan's case that the priority of her interest under the February transfer was protected by her actual occupation of 19B on the date of the April transfer fails.

50. I will therefore direct the Chief Land Registrar to cancel her application.

Costs

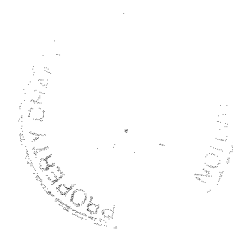
51. Rule 13(1)(c) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 makes clear that this Tribunal may make an order for costs in a land registration case, and paragraph 9 of the Practice Directions which apply to proceedings in land registration cases before this Tribunal provides that the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party.

52. Consistent with that general rule, I am provisionally of the view that Miss Khan should be ordered to pay Mr Anwar's legal costs of these proceedings. There may, however, be some good reason why the general rule should be departed from. If Miss Khan wishes to argue for a different order she must provide copies of her submissions to the Tribunal and respondent within 14 days. The respondent must within 14 days thereafter provide copies of any contrary submissions to the Tribunal and to Miss Khan.

53. If no submission are made within 14 days, I shall direct that Miss Khan shall pay the Mr Anwar his costs on the standard basis, and that Mr Anwar should provide a summary of costs in form N260, with supporting documents, to enable me to decide whether costs should be assessed summarily or be subject to a detailed assessment.

BY ORDER OF THE TRIBUNAL

David Taylor



Dated this 29th November 2019