UPPER TRIBUNAL (LANDS CHAMBER)

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TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

LAND REGISTRATION – BENEFICIAL INTEREST – ESTOPPEL BY DEED

IN THE MATTER OF AN APPEAL AGAINST THE DECISION OF THE FIRST TIER TRIBUNAL PROPERTY CHAMBER (LAND REGISTRATION DIVISION)

BETWEEN:

MR GANGA BAHADUR BASNET **Appellant**

and

LINABEN PRAFULCHANDRA PATEL **Respondent**

Re: 176 Uppingham Avenue,
Stanmore,
HA7 2JT

Judge Elizabeth Cooke, sitting as a Deputy Judge of the Upper Tribunal

Sitting at: Royal Courts of Justice, Strand, London WC2A 2LL
on
24 April 2019

Mr David Sawtell of counsel, instructed by De Cruz Solicitors, for the Appellant
Mr Carlton Christensen, instructed by the Law Partnership, for the Respondent

The following case was referred to in this decision:
Goodman v Gallant [1985] EWCA Civ 15

Introduction

1. The Appellant, Mr Ganga Bahadur Basnet, applied on 23 January 2017 for a restriction to be entered on the title to 176 Uppingham Avenue, Stanmore ("the Property"), to protect the beneficial interest he claims to have in the Property. The Respondent is the registered proprietor of the Property and objected to the application. The dispute was referred to the Land Registration Division of the First-tier Tribunal ("the FTT") pursuant to section 73 of the Land Registration Act 2002 on 26 April 2017.

2. The matter was listed for hearing by the FTT on 10 July 2018. On that occasion the Appellant did not attend. The judge refused an application made by a Mackenzie friend on his behalf to transfer the matter to the County Court, and directed the registrar to cancel the Appellant's application, but in its written reasons the FTT gave no reason for that direction other than the Appellant's absence.

3. I gave permission to appeal that decision, on the basis that it appeared that medical evidence presented on the Appellant's behalf should have been given greater consideration. I directed that the appeal be by way of re-hearing.

4. The appeal was heard before me on 24 April 2019 in the Royal Courts of Justice. The Appellant was represented by Mr David Sawtell of counsel and the Respondent by Mr Carlton Christensen of counsel, and I am grateful to both for their helpful arguments. I have dismissed the appeal, so the FTT's direction to the registrar stands. In the paragraphs that follow I first set out the factual context very briefly, and then discuss the agreement of 8 January 2009 and its legal significance. I set out the evidence relating to that agreement, and finally evaluate that evidence and explain my conclusions.

The factual context

5. The Appellant and the Respondent met in 2001, and lived together from 2002 (according to the Appellant) or 2003 (according to the Respondent). They lived at the Respondent's home, 11 Beatty Road Stanmore. The Appellant was in the business of operating restaurants, one of which was Curry Craze where he commenced business in December 2003, and which later became Mangos Restaurant Ltd.

6. The Property (as defined above, 176 Uppingham Avenue) was bought in December 2004 for £351,000. It is not in dispute that the Appellant paid to the Respondent's solicitors the sum of £70,200 for use in the purchase of the Property, and she raised the balance with a mortgage. The Respondent says the £70,200 was a loan; the Appellant says it was a contribution to the purchase price of the property. Moreover, he says that he paid a further £31,800 for the same purpose; the Respondent agrees that he paid her that further £31,800 but says that that too was a loan and that it was not connected with the purchase of the Property.

7. The Appellant says that it was agreed that the Property would be purchased in the Respondent's name and held on trust for the Appellant absolutely; he also says that the

mortgage repayments were to be met from rental income and that he would meet any shortfall. The Respondent denies both those assertions.

8. In 2005 the Respondent borrowed £70,000 on the security of 11 Beatty Road. She says she used it to repay part of the debt to the Appellant; he says she invested it in Mango's Restaurant Ltd. Rooms were let at the Property and a rental income generated, although the parties disagree as to the ownership of that income. Mango's Restaurant Ltd ceased trading in 2009. The parties' relationship ended in 2014.

9. That is the barest summary of the facts. There is substantial disagreement even about the few events I have mentioned, as well as over considerable further factual detail. There is no need for me to make findings of fact about those disagreements because the outcome of the Appellant's application turns, not on the resolution of those factual issues, but upon the status of a deed that he executed (as I find) in 2009, and to that I now turn.

The agreement of 8 January 2009 and its legal significance

10. Crucial to this dispute is the deed dated 8 January 2009 ("the 2009 deed"), whose terms it is worth setting out in full. The parties are the Respondent, referred to as "Lina", and the Appellant ("Ganga").

> "1. In December 2004 the [sic] Ganga lent to Lina the sum of £100,000 to pay as a deposit towards the purchase of the property for Lina known as 176 Uppingham Avenue Stanmore Middlesex.
>
> 2. The loan was an interest free loan which was repayable by Lina to Ganga upon demand.
>
> 3. In 2005 Lina repaid the said loan to Ganga by way of a Bank transfer of £70,000 to the [sic] Ganga's solicitors [sic] Bank which Ganga utilised towards the purchase of his business known as the Mango Restaurant.
>
> 4. The balance of the £30,000 had been paid to Ganga by various stage payments of which Ganga acknowledges receipt.
>
> IT IS NOW AGREED AS FOLLOWS:
>
> 5. Ganga having acknowledged receipt of the loan in full from Lina hereby discharges Lina of all further liabilities in respect of this borrowing and confirms that there are no further borrowings between the parties.
>
> 6. Ganga confirms that in acknowledging receipt of the loan that he has no more rights over the property known as 176 Uppingham Avenue, Stanmore Middlesex or over Lina's other property known as 11 Beatty Road Stanmore Middlesex HA7 4EU.
>
> 7. Ganga further acknowledges that there are no persons within his knowledge who can exercise any rights either under Ganga's direction or otherwise over the said properties.

8. Ganga confirms that he continues to reside at the premises of Lina as a lodger only and acquires no legal or beneficial interest in the property.

9. Lina confirms that having discharged the debt due to Ganga in full that she is not liable to Ganga under this or any loan."

11. The first page of the deed ends there. On the second page are the attestation clauses, "Signed as a Deed by…"; it is executed by the Respondent and the Appellant, and each signature is witnessed by Ms Urnisha Lakhani, a solicitor, and the stamp of the firm (Tibb & Co) appears by each of her signatures. As well as signing as witness to each of the parties' signatures, Ms Lakhani has written by hand:

> "Signed after having read and translated the agreement to GANGA BAHADUR BASNET who confirmed that he understood its terms and effect"
>
> Ms Lakhani signed again after that statement, and again the firm's stamp was added.

12. The 2009 deed does not describe itself as a declaration of trust. It cannot do so because it does not create a trust; instead it declares that the Respondent does not hold the Property upon trust for the Appellant. If it is the Appellant's deed, I take the view that it must be conclusive as to the beneficial interests in the Property as between the Appellant and the Respondent on the principle set out in by the Court of Appeal in *Goodman v Gallant* [1985] EWCA Civ 15, exactly as would be a deed that declared that they were both beneficially entitled to the Property. Mr Sawtell for the Appellant disagreed with me on that point, but he did not dispute that in any event if this is the Appellant's deed then he is estopped by it, according to the familiar principle of estoppel by deed.

13. I was referred by Mr Sawtell to the exposition of that principle in *Halsbury's Laws* (volume 47, 2014). Mr Sawtell accepts that a statement of fact in a deed cannot be denied by the Appellant, if it is his deed and was not obtained by "force, fraud or other foul practice" (*Halsbury's Laws*, volume 47, paragraph 324). He accepts furthermore that the terms of the 2009 deed are unambiguous and that if it is the Appellant's deed than his case is at an end.

14. In the light of all that, I proposed to counsel for both parties at the hearing that I should first consider the evidence relating to the 2009 deed, and endeavour to make an immediate finding of fact about it, on the basis that if I were to find that it is the Appellant's deed there would be no reason for me to hear any other evidence or to make any other findings. Mr Sawtell and Mr Christensen agreed to proceed in that way.

The evidence about the 2009 deed

15. The Appellant's witness statement says that he does not recall signing the 2009 deed; that he wishes to have an expert witness inspect it to assess its authenticity; and that Tibb & Co should not have drafted it because they were acting for the Respondent and had a conflict of interest.

16. The Respondent did obtain evidence from a handwriting expert who concluded that the signature was probably the Appellant's. I do not have to consider that evidence because at the outset of the hearing Mr Sawtell said that the Appellant confirms that the signature is his, although he does not recall signing.

17. The Respondent's representatives have been in touch with Ms Lakhani. She has made a witness statement confirming that the signatures on the second page of the 2009 deed are hers, as well as the handwritten words. She has no recollection of the occasion when she witnessed the deed. Mr Sawtell stressed the minimal nature of her evidence. She was not required to attend for cross-examination, and therefore the Appellant cannot contest what she wrote on the deed itself – namely, that she read and translated the agreement to him and that he confirmed he understood its terms and effect. I find as a fact that that was true. I understand that the Appellant disagrees; in cross examination he went so far as to say that Ms Lakhani was lying when she said she witnessed his signature. It may be that he did not understand (because at various points in this litigation he has acted in person) that he should have asked for Ms Lakhani to attend; I have no doubt that even had he done so I would have accepted her evidence. There is no suggestion of any possible reason why she would have misrepresented the content of the 2009 deed to him or why she would have been party to a fraud.

18. At the hearing the Appellant said first that when he signed the deed Ms Lakhani's handwritten passage was not there (as one would expect, since it would be added afterwards). He said he had never met Ms Lakhani. I accept Ms Lakhani's evidence, and I reject the Appellant's evidence on this point.

19. Later he said that the first time he had seen "these two documents", by which I take it he meant the first and second pages of the deed (the originals of which are stapled together) was in February 2017 when they were sent to him by the Respondent's solicitors. Again, I reject the Appellant's evidence on this point.

20. The Respondent in her witness statement gave some background to the 2009 deed. She said that in 2006 the Appellant was struggling financially, and that he kept on saying when they argued that he had an interest in the Property. By 2009 she wanted the issues between them to be resolved. She discussed matters with the Appellant and they reached an agreement. She says that the Appellant then told her she should instruct solicitors to prepare a document confirming the agreement and that he was prepared to sign. She instructed Mayuri Shah of Tibb & Co, and went to see her. Ms Shah said that Ms Lakhani would prepare the document, which she did. The Respondent went to see Ms Lakhani and went over the draft with her, and a few minor amendments were made. Then on 8 January the Respondent went to see Ms Lakhani with the Appellant; Ms Lakhani explained the document to her in Gujarati, and to the Appellant in Hindi (which the Respondent confirmed at the hearing she also speaks). They both signed. She paid the solicitor's invoice, which was addressed to her.

21. In cross-examination the Respondent said that the Appellant had been with her to the initial meeting with Ms Shah. I think she is mistaken about that, but I do not regard that as denting her credibility. She was a very nervous witness, and had difficulty with some questions; for example, when asked whether the Appellant had (as she said in her statement) kept on saying he had an interest in the property, she replied that he had no interest, and

appeared unable to understand that she was not being asked whether he had one, but whether he said he had one. That may have been a difficulty in translation, or the result of nerves. The Respondent had difficulty in explaining paragraph 4 of the 2009 deed and could not point to a document that proved the repayment of the balance of the loan; but that is not relevant if the 2009 deed is genuine. Mr Sawtell agreed that if the 2009 deed is genuine then it is not open to him to go behind it. It may be that the document to which the Respondent did draw attention, namely the record of a loan by her to Mangos Restaurant Ltd of £26,400, may have been treated by the parties, eventually, as the repayment by her of part of the larger sum. But I do not need to make any findings about that.

22. I accept the truth of what the Respondent says in her witness statement. Her evidence together with Ms Lakhani's lead me to find that the Appellant did execute the 2009 deed on 8 January 2009, that he freely agreed to do so and that he understood what he was signing.

Conclusions

23. It is difficult to see on what basis the Appellant can challenge the 2009 deed. He does not allege forgery because he admits that this is his signature. He has not suggested that there was any undue influence exerted upon him; Mr Sawtell made much of the fact that only the Respondent instructed the solicitor, that she was the client and that she paid the bill, but there is nothing there that could form the basis of a challenge to the genuineness of the 2009 deed.

24. Mr Sawtell suggested to the Respondent in cross-examination that the Appellant saw only the second sheet of the 2009 deed before this action began. It was not clear to me that the Appellant had said that in his evidence. But at any rate, it may be true. When he signed on 8 January 2009 the pages may not yet have been stapled together, and since he needed to have the first page translated to him it may not have been put in front of him. That is of no significance and does not amount to any basis for a challenge to the 2009 deed.

25. I see no substance in the Appellant's suggestion that Tibb & Co had a conflict of interest because they were the Respondent's solicitors. On his own evidence he introduced the Respondent to them when she purchased the Property, and it was he who suggested that the Respondent see a solicitor to get the agreement drawn up in 2009. He was well able to seek legal advice of his own if he wished to do so.

26. Accordingly, the Appellant executed the 2009 deed, it is his deed, and there is nothing to render it either void or voidable or in any way unreliable. Therefore he cannot challenge what he said in it, that he has no interest in the Property.

27. The appeal is therefore dismissed, and the FTT's decision upheld, but on the basis of evidence and of findings about that evidence.

28. I was asked to make a summary assessment of the Respondent's costs at the hearing, which I did, and I order that the Appellant pay to the Respondent, within 28 days of the date of this decision, the sum of £23,220 including VAT.

Judge Elizabeth Cooke

9 May 2019