



REF/ 2015 /0451

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

LAND REGISTRATION ACT 2002

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

BETWEEN

SHARON SHARMA

APPLICANT

and

**(1) SANTANDER UK PLC
(2) SIMON DAVID FISHER**

RESPONDENTS

Property Address: 27 Inchwood, Bracknell, Berkshire RG12 7ZX

Title Number: BK252583

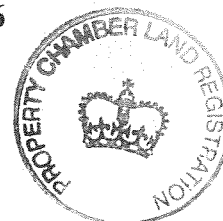
ORDER

The Tribunal orders that the Chief Land Registrar do give effect to the application of the Applicant, Sharon Sharma dated 21st August 2014 to alter the register by reinstating her name onto the proprietorship register as joint proprietor with the Respondent, Simon David Fisher and cancelling the registration of a charge dated 5th May 2009 made between the Respondent, Simon David Fisher and Abbey National Plc, as if the objection of the Respondents thereto had not been made.

Dated this 25th October 2016

Michael Michell

BY ORDER OF THE TRIBUNAL





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RESPONDENTS

Property Address: 27 Inchwood, Bracknell, Berkshire RG12 7ZX

Title Number: BK252583

Before: Judge Michell

Sitting at: Alfred Place, London

On: 26th and 27th September 2016

Applicant Representation: In person

First Respondent Representation: Ms Lisa Lacob, counsel, instructed by Gordons LLP

Second Respondent Representation: In person

DECISION

ALTERATION OF THE REGISTER- APPLICANT AND 2ND RESPONDENT JOINT PROPRIETORS- REMOVAL OF APPLICANT FROM PROPRIETORSHIP REGISTER – REGISTRATION OF CHARGE BY 2ND RESPONDENT IN FAVOUR OF 2ND RESPONDENT WHETHER REMOVAL OF APPLICANT FROM PROPRIETORSHIP REGISTER WAS A MISTAKE - WHETHER APPLICANT’S SIGNATURE ON TRANSFER INTO SOLE NAME OF 2ND RESPONDENT WAS A FORGERY- WHETHER CHARGE IN FAVOUR OF 1ST RESPONDENT SHOULD BE REMOVED FROM REGISTER TO CORRECT THE CONSEQUENCES OF A MISTAKE

Cases referred to

Gold Harp Properties Ltd. v. MacLeod & Ors. [2014] EWCA Civ 1084

1. Mrs Sharma has applied to HM Land Registry to alter the register by re-instating her name as a joint proprietor of 27 Inchwood, Bracknell and to cancel the registration of a charge in favour of Santander UK plc (formerly “Abbey National”). Mrs Sharma (under her maiden name, Sharon Elizabeth Hicks) was joint registered proprietor with the Respondent, Mr Fisher from 25th January 1991 until her name was removed on 15th June 2009 on the registration of a transfer in form TR1 dated 5th May 2009. Mrs Sharma says that she did not sign the TR1. Mr Fisher disputes this and has objected to the application. On the same date a charge dated 5th May 2009 made between Mr Fisher and Abbey National Plc was registered and an associated restriction was entered on the proprietorship register. Santander UK plc (“Santander”) is the successor in title to the charge. Santander has objected to the application. The matter was referred to the Tribunal for determination.

2. Mrs Sharma and Mr Fisher were previously married to one another. They purchased the Property in their joint names in 1991. They purchased with the assistance of money loaned on mortgage by Alliance and Leicester Building Society. Mrs Sharma purchased in her maiden name, Sharon Hicks. Mr Fisher and Mrs Sharma were married on 20th June 1992.

3. Mrs Sharma and Mr Fisher separated in December 1992 and Mrs Sharma moved out. Mr Fisher continued to live in the Property. Mrs Sharma says that while she and Mr Fisher were together, the mortgage payments came out of pooled income. Mr Fisher says that Mrs Sharma did not work for the period they were together from the time they took out the mortgage. However, both parties accept that Mrs Sharma has not made any mortgage payments since the parties separated in 1992 or made any other payments towards the Property. Mrs Sharma and Mr Fisher were divorced by a decree absolute on 9th May 1997.

In his oral evidence Mr Fisher said that the Reading County Court made what he called a “clean break order” in an application for financial relief under which the property was to be transferred into his sole name. He says that there was then more outstanding under the mortgage of the Property than it was worth. Mr Fisher did not produce any copy of the order he said was made by the county court. Mrs Sharma denied that any order was made. In his objection to the application sent to Land Registry Mr Fisher said “In 1997 we were granted a full divorce and a month later the financial hearing took place to which the judge granted me a clean break order hence no financial order was awarded due to the negative equity in the house and no payments received to maintain her joint responsibility”. He did not there mention that any order was made for the transfer of 27 Inchwood from joint names into his sole name.

4. Mrs Sharma remarried in 1999, her new married name being Quinton. In 2000 Mr Fisher was serving a sentence of imprisonment. Mrs Sharma instructed solicitors, Herrington & Carmichael to write to Mr Fisher. They wrote to him on 11th February 2000 and again on 15th June 2000. In the first letter, they stated that the mortgage was in arrears in the sum of about £3,500 and that Alliance and Leicester had issued possession proceedings. Mrs Sharma had found out about the proceedings and applied on 9th February 2000 for time for the arrears to be paid. Mrs Sharma would pay the arrears and continue to pay the monthly mortgage instalments provided that Mr Fisher agreed to the property being sold and to the proceeds, after deduction of the sums paid by Mrs Sharma in respect of the arrears and current mortgage instalments, being split equally between Mr Fisher and Mrs Sharma. In the letter of 15th June 2000 Herrington & Carmichael said that Mrs Sharma wished to realise her interest in 27 Inchwood and invited Mr Fisher to say whether he was prepared to purchase her interest. They stated that if Mr Fisher did not respond within 14 days, Mrs Sharma intended to bring proceedings for an order for sale and for costs. No reply to that letter was in evidence and there was no evidence from Mr Fisher as to whether or not he replied. Mrs Sharma did not bring proceedings for an order for sale. The arrears were then paid off by Mr Fisher’s family.

5. In his statement of case, Mr Fisher said that in December 2003 Mrs Sharma contacted him requesting financial help due to an illness. He said that he agreed to re-mortgage 27 Inchwood to release funds for Mrs Sharma and that Mrs Sharma agreed to pay him back monthly. Mrs Sharma denied that she had contacted Mr Fisher in 2003 or that she had

received any money from Mr Fisher in 2003. She said that she was a trainee nurse in 2003 at a hospital in Slough and that she was not ill.

6. In his Statement of Case, Mr Fisher said that he contacted Mrs Sharma in May 2009 at 15 Greenhow, Bracknell, requesting a meeting to deal with the “financial side” to 27 Inchwood. He said that Mrs Sharma agreed to meet him and that she agreed to “release her ownership” of 27 Inchwood “due to the fact that she had never paid a mortgage payment” to Alliance and Leicester. Mr Fisher gave no details at all in his Statement of Case as to the detailed circumstances of the signing of the TR1, i.e. as to when and where it was signed or who was present when it was signed. Paragraph 5 of his Statement of Case appears to say that the TR1 was sent to Mrs Sharma at 15 Greenhow. In paragraph 13 of his Statement of Case Mr Fisher stated “Mrs Sharma agreed to be removed from the property because in 2009 the property had negative equity and her lack of interest in the property and none payment towards her joint responsibility to either loan secured on the property”.

7. In an undated letter put in the bundle and relied on by Mr Fisher as his witness statement, Mr Fisher said that in 2009 he received a promotion and a substantial salary increase. He then approached Santander to see if he could obtain a loan to consolidate both mortgages. Once Santander had confirmed he could obtain the funds, he wrote a letter to Mrs Sharma offering her £4,000 “if she once and for all signed out of the mortgage and walk away debt free” and that this was accepted by Mrs Sharma.

8. Mr Fisher put it to Mrs Sharma in cross-examination that in 2009 Mrs Sharma contacted his mother and told her she needed to speak to Mr Fisher. Mr Fisher put it to Mrs Sharma that he then went around to 15 Greenhill to see her and they had a conversation in the kitchen. Mrs Sharma told him she had cancer of the womb and wanted money for a private operation. Mr Fisher put it to Mrs Sharma that he told her the only way he could help her was if she signed the house into his name and he would then give her £4,000. Mrs Sharma denied it all. She did not have cancer of the womb or any other serious medical condition in 2009. She did not contact Mr Fisher’s mother in 2009. She was not living at 15 Greenhill in 2009 and did not have a meeting with Mr Fisher there in 2009. She did not ask Mr Fisher for money for an operation.

9. Mr Fisher then put it to Mrs Sharma that he arranged a meeting for Mrs Sharma to come to the Property to sign the TR1. He put it to her that he did so by putting a letter through the letter box of 15 Greenhill. He put it to her that she came to the Property early evening about 7pm and that she signed the TR1. He put it to her that about 8 days later, he withdrew £4,000 in cash and handed it over to Mrs Sharma. Mrs Sharma denied it all.

10. In cross-examination, Mr Fisher said that Mrs Sharma put a letter through his door asking for help. He said that the money Mrs Sharma wanted for the operation was £3,700 and he “rounded it off” to £4,000. He said that he told the mortgage broker he was paying Mrs Sharma £4,000 for the transfer of the Property into his sole name and that he did tell the solicitors acting on the re-mortgage.

11. Mr Fisher served as witness statements documents apparently signed by Vernon Peckham and Wendy Jennings. The wording of the statements was identical save for the names. The document served as a statement of Vernon Peckham was in the following terms

“To whom it may concern

I, Vernon Peckham, on or around May 2004 & May 2009 was asked by Mr Simon Fisher to witness a document between Miss Sharon Hicks & Mr Simon Fisher. The meeting took place in the evening at 27 Inchwood, Birch Hill, Bracknell, Berkshire RG12 7ZX.

Myself and my ex-Wife Mrs Wendy Jennings witnessed Miss Sharon Hicks signing the form

I believe that the facts and matter contained in this Statement of Case are true”.

There then appeared a signature beneath the word “Signed” and under the signature, the name “Mr Vernon Peckham”. Mr Fisher told me that he had not drafted the witness statements or obtained Mr Peckham’s signature to the statement but that he had been sent both statements by Mrs Jennings and that they had already been signed when he received them.

12. Neither Mr Peckham nor Mrs Jennings attended to give evidence on the first day of the hearing. On the application of Mr Fisher, I caused summonses to be issued under Rule 20 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 requiring Mr Peckham and Mrs Jennings to attend as witnesses at 10.30 am on the second day of the hearing. Mrs Jennings did not attend. I was informed by Mr Fisher that she had told him she would not attend as she had a bad back. Mr Fisher told me that he telephoned Mr Peckham

on the morning of the hearing and told him he must attend. Mr Peckham did attend the hearing, albeit at about 11.30 am and not 10.30am. Mr Peckham made an affirmation to tell the truth and gave his evidence. When he was taken to the witness statement, he said that the signature on the witness statement was not his and he had not seen the statement before. He was then taken to the TR1 in the bundle and box 12 on the last page of that document. Mr Peckham said that the signature appearing there under the name "Vernon Peckham" was not his signature. He attempted to demonstrate it was not his signature by producing a bank card with his signature on the reverse. He said that the address appearing written under the signature, "17 Tudor House, Easthampstead, Bracknell, Berkshire" was not the address he was living in at the date of the TR1. He had moved from there on 5th August 2005. He was living in Fulham in London at the time of the TR1. He also said that his occupation at the time of the TR1 was not that of "warehouse man" being the occupation given on the TR1 below the signature and address. He had left that job in February 2006. Mr Peckham stated in very clear terms that he had not signed the TR1 and had not witnessed the signature of Mrs Sharma on the TR1. Indeed, he said that he had not seen Mrs Sharma since a date when she was still living with Mr Fisher. He said that 17 Tudor House was the address at the time of the TR1 of Wendy Jennings but that the signature on the TR1 was not her signature. He said that Wendy Jennings would then have signed "WA Peckham" and not "W Peckham".

13. During cross-examination by counsel for the bank, Mr Peckham said that it was not his signature on the mortgage deed dated 31st December 2003 which apparently mortgaged 27 Inchwood to Southern Pacific Personal Loans Ltd.. He accepted that he was at the time of the deed living at 17 Tudor House, the address given on the mortgage deed but he said that he was not then a "warehouse manager", being the occupation given below the address and signature on the mortgage deed. He was at that time a warehouse operative. Mr Peckham finished his evidence at about 12.10 pm. He was then informed that he could leave and he left the hearing room.

14. Over the short adjournment, Mr Peckham approached the court clerk in the waiting area outside the hearing room and stated that he wished to give further evidence. At the resumption of the hearing after the short adjournment, Mr Fisher asked for permission to recall Mr Peckham. The Tribunal gave permission and Mr Peckham took the affirmation again. Mr Peckham then said that he could now recall signing something at the time (i.e. in May 2009) and that he put his name to a document. The signature on the TR1 was his. He

had signed the TR1. Asked by the Tribunal if Mrs Sharma had been present when he signed the TR1, he said that she had not been present. He did not see Mrs Sharma in 2009. He said that he was sure that Mrs Sharma was not in the room when he signed the TR1 and he had no doubt that his recollection was correct. When Mr Peckham was then told that Mr Fisher's evidence had been that all four people, namely himself, Mrs Sharma, Mr Peckham and Mrs Jennings had been in the room at the same time when the TR1 was signed, Mr Peckham then said that he was not sure. He could not recollect clearly. Asked by Mrs Sharma in cross-examination if he had seen her on the 5th May 2009, the date of the TR1, he replied "No".

15. The manner in which the letters "P" and "e" are written in the signatures below the names "Vernon Peckham" and "Wendy Peckham" in the TR1 are remarkably similar. Both signatures are very different from the signatures on the witness statements. Though the signature on Mrs Jennings' witness statement is "W. Jennings", the "W" in that signature is very different from the "W" in the signature "W. Peckham" on the TR1.

16. Mr JA Fullerton, Assistant Land Registrar at Land Registry Gloucester Office wrote to the Bank's solicitors on 27th November 2014, replying to a request for copies of the evidence Land Registry relied on to satisfy itself that the TR1 was, on the balance of probabilities, fraudulent. Mr Fullerton wrote as follows

"...we did receive a telephone call from Mrs Jennings/Peckham on 30 September 2014. She said that the signature was not hers and had been forged. She also stated that her ex-husband's signature was forged. Although she was asked to confirm this in writing, we have not received any follow-up correspondence from her."

17. Mrs Sharma produced her diary for 2009. Mrs Sharma said that she was then working as a self-employed swimming instructor. She pointed to entries in her diary for 5th May 2009 running throughout the day up to 9.45 pm as showing that she could not have gone to 27 Inchwood on that day to sign the TR1.

18. On 3rd December 2008 Mr Fisher signed an agreement with mortgage brokers, FirstXtra to pay them a fee of £250. FirstXtra Ltd described itself as a representative of Personal Touch Financial Services Ltd.. On the same day, FirstXtra made an application on behalf of Mr Fisher to Abbey for a loan of £120,000. On 11th December 2008 a surveyor completed a mortgage valuation of the Property for Abbey, valuing the property at £180,000

rather than the £195,000 suggested as the value by Mr Fisher. On 23rd February 2009 Abbey made a mortgage offer to Mr Fisher for a loan of £120,000 repayable over a 20 year term and subject to a £1,499 “booking fee” and a further “mortgage account fee” of £250. On the same day, LMS Direct Conveyancing Ltd (“LMS DC”), a company describing itself as “licensed conveyancers”, wrote to Mr Fisher stating that it would be acting for Abbey and not for Mr Fisher in the mortgage transaction. On 24th February 2009 FirstXtra sent LMS DC certified copies of Mr Fisher’s driving licence as evidence of his identity. On 27th February 2009 Mr Fisher appears to have signed and dated a mortgage deed. The name of the witness to the signature is given as Vernon Peckham and his address is given as 17 Tudor House, South Lynn Cr, Easthampstead, Bracknell. Mr Peckham was not asked about the signature on this deed when he gave his evidence.

19. On the same date Mr Fisher signed a re-mortgage questionnaire. On page 7 of the form, he wrote “Land Registry Title Deeds currently under:

Mr Simon David Fisher and Miss Sharon Elizabeth Hicks.

New deeds to be under

“Mr Simon David Fisher only””.

Then on the 11th March 2009 LMS DC sent to Mr Fisher its transfer of equity questionnaire. Mr Fisher completed the questionnaire and signed it. It is dated 14th March 2009. He gave the name of the joint owner as “Miss Sharon Elizabeth Hicks” and her address as “8 Hurley Court, Thornhill, Bracknell, Berks”. Mrs Sharma said in her evidence that she had never lived at 8 Hurley Close and the address meant nothing to her. Mr Fisher said in cross-examination that this was an address Mrs Sharma had given him during a telephone conversation and it was an address at which she received post. In answer to the question asking him to confirm if he was providing any payment for the Transfer and to whom and to give details of the amount, he wrote, “No payment due to: Does not want this Property”. In cross-examination, Mr Fisher claimed that he wrote this because the conveyancer had told him to do so when he called her to ask for advice about how to complete the form. In answer to the question asking him to confirm whether the Transfer was part of any matrimonial proceedings, he wrote “Just because she doesn’t want to keep “this” property”. Mr Fisher could give no explanation in his oral evidence for why he had put inverted commas around the word “this”. He also wrote on the form “She currently moved out 6 years ago”. That is a curious thing for him to have written because the evidence of both Mrs Sharma and Mr Fisher was that Mrs Sharma moved out in 1992. However, a search of the electoral roll conducted by

LMS DC showed that Mrs Sharma was on the electoral roll as residing at 27 Inchwood between October 2004 and October 2006.

20. On 26th March 2009 LMS DC wrote to Mr Fisher enclosing documents for signature, being a TR1 and a Stamp Duty Land Tax form. The writer asked Mr Fisher to sign the documents in the presence of an independent witness but not to date them. The writer went on to say that the transfer was a transaction at an undervalue and that Abbey would require Mr Fisher to take out an indemnity policy at a cost of £156. The policy was to provide for an indemnity in the event that Mr Fisher or Mrs Sharma were adjudged bankrupt within 2 years and the transfer was set aside under insolvency legislation as being a transfer at an undervalue. In Box 8 of the TR1 the consideration for the transfer was said to be "half of the existing debt with Alliance and Leicester and Southern Pacific Personal Loans Limited calculated at the date of execution". The SDLT form was stamped with the words "for client approval". In box 10, the consideration was given as £42,500. Mrs Sharma's address was given as 8 Hurley Court.

21. On 29th April 2009 LMS DC sent a certificate of title to Abbey. The certificate gave the name of Mr Fisher as Abbey's client and stated that the property was registered. The letters "N/A" was printed after the words "Purchase Price as stated in the transfer/lease". The anticipated completion date was given as 1st May 2009. That date was a Friday.

22. It is not possible to tell from the disclosed file of LMS DC when the TR1 was returned to LMS DC or why the 5th May 2009 is the date put on the TR1. LMS DC wrote to Mr Fisher on 5th May 2009 stating that they had on that date completed the re-mortgage to Abbey and enclosing a cheque for £30,957.85 being the surplus funds after redemption of the prior charges to Alliance and Leicester and to Southern Pacific.

23. On 6th May 2009 LMS DC signed a form AP1 to apply for the discharge of the charges to Alliance and Leicester and Southern Pacific and the registration of the charge. On 5th June 2009 LMS DC signed a further AP1. In box 13 of this form, the names of Mr Fisher, Abbey and Mrs Sharma were given but no conveyancer was stated to represent Mrs Sharma. Part (2) of the box was not completed as regards Mrs Sharma. The form was sent together with the TR1, the mortgage deed and the SDLT Form 5 submission receipt. On 8th June 2009 Land Registry wrote to LMS DC rejecting the application because Mrs Sharma had not been

accounted for in part (2) of box 13. LMS DC then resubmitted the AP1 on 12th June 2009. In the AP1 as received by Land Registry on 15th June 2009 part (2) of box 13 was completed so the form included the following statement

“I confirm that I am satisfied that sufficient steps have been taken to verify the identity of Sharon Elizabeth Hicks”.

There is no indication in the conveyancing file as disclosed of what, if any, steps were taken to verify the identity of Mrs Sharma.

24. Mrs Sharma married her current husband in 2010.

Expert Evidence

25. A forensic document examiner, Mr Derek Aves was instructed jointly by the parties to examine the signatures said to be those of Mrs Sharma on the 2003 mortgage deed and the TR1. Mr Aves compared the disputed signatures to 6 known signatures, of which one was a copy and 5 were original. He concluded that there was strong evidence that the disputed signatures were not written by Mrs Sharma. Mr Aves described a notable feature of the known signatures as being a loop extending below the base line of the signature from the left upright of the letter “H” in the surname. That feature is not present in the disputed signatures. He also described how in the known signatures the ink line of the letter “S” at the beginning of the signature begins near the top of the letter with an anti-clockwise loop. This feature was not present in the letter “S” in the disputed signatures and on the Southern Pacific signature, the signature begins with a curve near to the bottom of the letter which then extends upwards to continue with the remainder of the letter. He also noted that the disputed signatures used only the initial letter “S” and not the full name, Sharon, whereas the full name appeared in the accepted signatures.

26. Mr Fisher did not accept the evidence of Mr Aves but he did not require him to attend for cross-examination.

27. Findings

I find that Mrs Sharma did not execute the TR1. I so find for the following reasons.

(1). Mrs Sharma was an apparently credible witness. I believe what she said. In so doing, I do not place any reliance at all on her diary entries for the 5th May 2009. The 5th May 2009 was the date the solicitors entered on the TR1. It would not have been the date on which the

TR1 was signed. It would have had to have been signed some days earlier so that it could have been returned in time for LMS DC to have dated the TR1 and completed the re-mortgage on 5th May 2009.

(2). Mr Fisher was a poor witness and lacked credibility. He has given three different accounts as to the transfer of the property into his sole name.

(i) In his letter to HM Land Registry objecting to Mrs Sharma's application, he said that Mrs Sharma agreed for the transfer to go ahead "as no payments were ever received or maintained from her for the last 18 years" and that he paid of the joint mortgage liability "including her half". He made no mention at all in this letter of having paid Mrs Sharma £4,000 or any other sum for her agreeing to transfer the property into his sole name. He repeated this explanation in his Statement of Case.

(ii). In his undated letter relied on as his witness statement, Mr Fisher stated having received a promotion and salary increase, he approached Abbey to ask for a loan and once this was confirmed, he wrote to Mrs Sharma offering her £4,000.

(iii). At the hearing, he said that Mrs Sharma approached him and asked for money to pay for an operation she needed to treat cancer and that he agreed to give her the money provided that she transferred her interest in the property to him.

If it was really the case that Mr Fisher agreed to pay Mrs Sharma £4,000 in return for her to transfer her share to him, he would have stated this in his letter of objection and in his Statement of Case.

(3). There is no evidence that the signature of the TR1 by Mrs Sharma was validly witnessed. Given the extraordinary fact that Mr Peckham gave two directly contradictory accounts of whether or not he signed the TR1 as a witness to Mrs Sharma's signature, I can place no weight at all on his latter statement that he did sign the TR1. If he did sign it, he did so, according to his own account, when Mrs Sharma was not present. He could not therefore even on this second account of events, have actually witnessed Mrs Sharma signing the TR1.

(4). I accept the evidence of the forensic document examiner, Mr Aves that he found strong evidence on his examination that the disputed signatures were not written by Mrs Sharma. Mr Fisher could have required Mr Aves to give oral evidence and to be cross-examined so that Mr Fisher could put to him any points casting doubt on Mr Aves's conclusions. Mr Fisher did not do so. I heard nothing which would lead me properly to reject Mr Aves's evidence.

(5) Mr Fisher produced no evidence of the payment of £4,000 at the hearing. Having stated initially at the outset of the hearing that neither he nor his bank had copies of his bank

statements which would show the payment to Mrs Sharma, he stated on the second day of the hearing that the bank did have statements for the relevant time. I told the parties that I would not issue this Decision until at least 14 days after the date of the hearing to allow a time for Mr Fisher to obtain the bank statements and to apply for them to be admitted into evidence. He did not produce them within that period.

(6) On 23rd October 2016 Mr Fisher sent an email to the Tribunal attaching a copy of a Bank statement for his Santander bank account number 090126 45604697. The account shows an “over the counter” withdraw of £4,000 in cash on 10th February 2016. Mr Fisher did not say so but I presume he wishes to state that this is the £4,000 he says he paid to Mrs Sharma for the transfer to him of her interest in the Property and that he wishes to apply for permission to rely on this evidence. This bank statement provides very little support for Mr Fisher’s case. Mr Fisher’s case as put to Mrs Sharma was that he withdrew the cash after receiving the funds from Abbey following the re-mortgage of the Property and then paid it to her. He received the funds by cheque under cover of a letter dated 5th May 2009. His case is not supported by a withdrawal by Mr Fisher of cash from his bank account on 10th February 2016. That was some 6 weeks before he was sent the TR1 for signature and almost three months before he received the mortgage funds. It is not Mr Fisher’s case that he paid the £4,000 to Mrs Sharma before she signed the TR1. On the contrary, it is that he paid her after she signed. Had it been Mr Fisher’s case that he paid Mrs Sharma in February 2009, he should have put that case to Mrs Sharma. He did not do so. The idea that he would have paid Mrs Sharma before he had obtained her signature to the transfer would have been incredible, even had that been his case, which it was not.

28. I find that Mrs Sharma did not sign the charge for the Southern Pacific loan. Her evidence is that she did not do so and Mr Aves’s expert opinion indicates that there is strong evidence on an examination of her signature on the charge that it was not signed by Mrs Sharma. The only evidence that Mrs Sharma did sign is the unsupported evidence of Mr Fisher. For the reasons set out above, I do not find him to be a reliable witness and I reject his evidence.

Alteration of the Proprietorship Register

29. The registrar’s power to alter the register is set out in Schedule 4 to the Land Registration Act 2002. By paragraph 5 the registrar may alter the register “for the purposes of

(a) correcting a mistake”. Where the correction of the mistake would prejudicially affect the title of a registered proprietor then the limitations on the registrar’s powers in paragraph 6 apply. Paragraph 6(2) provides

“No alteration affecting the title of the proprietor of a registered estate in land may be made under paragraph 5 without the proprietor’s consent in relation to land in his possession unless –

“(a) he has by fraud or lack of proper care caused or substantially contributed to the mistake, or

(b) it would for any other reason be unjust for the alteration not to be made”.

Paragraph 6(3) provides

“If on an application for alteration under paragraph 5 the registrar has power to make the alteration, the application must be approved, unless there are exceptional circumstances which justify not making the alteration”.

30. The removal of Mrs Sharma’s name from the proprietorship register was a mistake. There is now a mistake on the register because Mrs Sharma’s name does not appear on the proprietorship register as co-proprietor with Mr Fisher. That mistake has been caused by fraud on the part of Mr Fisher, the current sole registered proprietor. He sent to LMS DC the TR1 carrying a purported signature of Mrs Sharma. As Mr Fisher sought to maintain strenuously throughout the proceedings that Mrs Sharma did sign it and gave evidence that she did so in his presence and I have found that Mrs Sharma did not sign the TR1, I have to conclude that there was fraud on the part of Mr Fisher in sending the TR1 to LMS DC with a false signature on it. The registrar therefore has power to make the alteration to the register to re-instate Mrs Sharma on the property register. There are no exceptional circumstances. Accordingly, the registrar must give effect to Mrs Sharma’s application in so far as it is an application for the alteration of the register by the adding of Mrs Sharma as joint proprietor.

31. Counsel for Santander submitted that if I were to find that the TR1 was void then the register should not be altered to remove the Santander charge. She submitted that the registration of the charge in favour of Abbey was not a mistake. At the point that the legal charge was created, Mr Fisher was the sole registered proprietor. As such, the legal estate was deemed to be vested in him - Land Registration Act 2002 s. 58. As registered proprietor Mr Fisher had full power to grant a legal charge to Abbey – Land Registration Act 2002

s.23(1)(b). Counsel submitted that therefore there was no mistake made when the Abbey charge was registered and there is no mistake on the register to be corrected under Schedule 4.

32. I do not accept that submission. In *Gold Harp Properties Ltd. v. MacLeod & Ors.* [2014] EWCA Civ 1084, the Court of Appeal was concerned with the power on alteration of the register to give an interest added back onto the register priority over a derivative interest appearing on the register. Underhill L.J. in a judgment with which Sullivan LJ and Richards LJ agreed, considered cases and textbook authority on the different question whether the power to correct the original mistake extends to correcting the consequences of that mistake by the removal of the later-created interest. He held that those authorities were relevant to the issue before the court. At paragraph 95, His Lordship stated that Schedule 4 was concerned with “correcting mistakes” and that it was

“established by the decisions to which I have referred that the power to do so extends to correcting the consequences of such mistakes”.

That the power to correct mistakes extends to correcting the consequences of a mistake was a key part of the reasoning in Underhill LJ’s reasoning in reaching the conclusion that the power to alter the register to correct a mistake extended to giving a re-instated derivative interest priority over another derivative interest created during the period of mistaken de-registration. I consider that the statement that the power to correct mistakes extends to correcting the consequences of such mistakes is part of the *ratio decidendi* in *Gold Harp Properties Ltd. v. MacLeod & Ors* and as such it is binding on me. Even if it were not part of the *ratio* I would regard it as highly persuasive authority which I should follow.

33. The removal from the register of the charge to Abbey is required as part of correcting the mistaken removal of Mrs Sharma from the proprietorship register. The registrar has power to alter the register by removing the charge. There being no exceptional circumstances, he should give effect to Mrs Sharma’s application by removing the charge.

34. Counsel for Santander in her skeleton argument invited me to find that in so far as Abbey’s loan was applied in redemption of the Alliance and Leicester charge, Santander was entitled to be subrogated to the prior rights of Alliance and Leicester and that Santander had an equitable charge over the beneficial interest of Mr Fisher in the property. Those are not matters for me to determine and I make no findings upon them.

35. I shall direct the Chief Land Registrar to give effect to the application of Mrs Sharma to alter the register by adding her name to the proprietorship register and by removing the Abbey charge and the associated restriction as if the objection of Mr Fisher had not been made.

36. Costs

My preliminary view is that the Respondents, Mr Fisher and Santander should be ordered to pay the costs of Mrs Sharma. Mrs Sharma has succeeded in her application. The objectors have failed. The normal order made in the Land Registration division is that the unsuccessful party is to pay the costs of the successful party – see Practice Directions, Property Chamber, First-tier Tribunal, Land Registration Division, Practice Direction 9.1(b). Any party who wishes to submit that some different order should be made as to costs, must serve written submissions on the Tribunal and on others parties by 5pm on 1st November 2016.

BY ORDER OF THE TRIBUNAL

Michael Michell

DATED this 25th day of October 2016

