REF/2016/0165
REF/2016/0167

PROPERTY CHAMBER, LAND REGISTRATION
FIRST-TIER TRIBUNAL

LAND REGISTRATION ACT 2002

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

BETWEEN

Emma Laurie Crossley

APPLICANT

and

Joe Christopher Atkinson

RESPONDENT

Property Address: 2 Lingfield Drive Eaglescliffe Stockton on Tees TS16 0NX
Title Number: CE15680 & CE113237

ORDER

On hearing the Applicant, and counsel for the Respondent, at a hearing in North Shields on 2 June 2017

IT IS ORDERED as follows:

The Chief Land Registrar is to cancel the Applicant's application for the entry of e restriction, dated 22 September 2015, and her application for alteration of the register, dated the original application dated 19 November 2015.

Dated this 27 June 2017

BY ORDER OF THE TRIBUNAL

PROPERTY CHAMBER LAND REGISTRATION

Elizabeth Cooke

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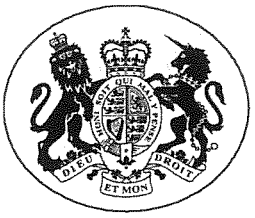

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DECISION

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1. Christopher Atkinson and Emma Crossley were married in 1988. In 1989 they bought 2 Lingfield Drive, Eaglescliffe ("the Property") as their home for £45,000; a deposit of £8,000 was paid and the remaining £37,000 was a mortgage advance from the Northern Rock Building Society. Title was leasehold but in 1990 the couple bought the freehold for a further £195. In 1995 they separated. In June 1996 a transfer of the Property from the two spouses to Mr Christopher Atkinson was registered at HM Land

Registry; the mortgagee was a party to the transfer. In August 1997 the couple were divorced, and from 1997 to 2012 Emma Crossley lived first in The Netherlands and then in Thailand, with her second husband, Mr Erik Dijkshoorn.

2. In September 2014 Mr Christopher Atkinson died suddenly at the age of 55. His son, Mr Joe Atkinson, is his personal representative and the sole beneficiary of his estate.
3. In September 2015 the Applicant applied to HM Land Registry to have a restriction entered on the register of title to the Property, and in November 2015 she made a further application to have the register altered by entering her name as the registered proprietor. She says that her signature was forged on the 1996 transfer, that she knew nothing of the transfer until 2015, that she remained a beneficial joint tenant of the Property, and that she therefore takes it by survivorship.
4. Mr Joe Atkinson objected to both applications. Two references were therefore made to the Land Registration Division of the First-tier Tribunal pursuant to section 73(7) of the Land Registration Act 2002 and consolidated. Emma Crossley and Joe Atkinson are therefore the Applicant and Respondent; I refer to Mr Atkinson senior, the Respondent's father, as Christopher, for the avoidance of confusion and without intending any disrespect.
5. The reference was heard before me in the North Shields Tribunal Centre on 2 June 2017. The Applicant represented herself, and Mr Maddison of counsel represented the Respondent; I am grateful to both for their presentation of the evidence and arguments.
6. I direct the registrar to cancel the Applicant's applications, because she has not proved, on the balance of probabilities, that the 1996 transfer was forged. In the paragraphs that follow I set out the evidence that the Applicant gave and of the witnesses she called, and I explain the extent to which I accept or reject that evidence. Having explained why I find that she does not succeed, I then explain briefly the findings I would have made on the matter of severance of the joint tenancy and the alteration of the register if the forgery had been proved.

The Applicant's evidence

7. The Applicant has the burden of proof. The Respondent does not have to prove that the transfer was genuine; the Applicant's application must be cancelled unless she can show that it is more likely than not that the transfer was forged.
8. The transfer itself is a straightforward document; it purports to be a transfer by the Applicant of her interest in the house for the sum of £1, and a release by the

mortgagee of the Applicant's liability for the mortgage debt. The Applicant, who is not a lawyer, suggested that the form of the transfer was unusual, but it is not. The witness to the Applicant's signature on the 1996 transfer died three years ago, the solicitors who acted on the transfer have been the subject of intervention and have closed, and the mortgagee has no records from 1996.

9. The Applicant has given and called evidence about the purchase of the house, the separation and the meeting in May 1997, the use of the house after 1997, and the renovation of the house in 2016. She has also called expert evidence. I look at these aspects of her evidence in turn. In doing so I consider where relevant the evidence called for, or given by, the Respondent – all of it necessarily limited by the fact that the crucial events happened before he was born.

The purchase of the house

10. The Applicant says that the purchase of the house was her idea. She says she chose it with her mother, and that she paid the deposit of £8,000 using her inheritance from her father. This evidence was not challenged and I accept it.

The separation and the meeting in May 1997

11. The Applicant and Christopher separated in 1995. There has been disagreement in the witness statements about the terms of their separation and about whether the Applicant received a horse, a horse box, a car and cash. In the end there is no dispute that she took with her her horse and horse box. She says that she kept a Fiesta sports car which was a company car and that Christopher kept the Vauxhall Cavalier that they owned at the time of their separation, and that she received no cash. I accept that evidence. Ms Julie Caffrey, the Respondent's mother and Christopher's partner until he died, said that she took a Jaguar car and some cash, perhaps £400, but that evidence is hearsay about a detail in a divorce that took place a long time ago and I do not regard it as sufficiently reliable to displace the Applicant's own evidence. The significance of the dispute about what she took from the divorce is her own argument that she would not have given up her interest in the house for £1, as the transfer states, when she took pretty much nothing else. I understand the argument she is making but I do not regard it as significant because the transfer released her from the mortgage debt and from responsibility for the monthly interest payments and the upkeep of the house, at a time when her share of the equity in the house was, on her own account, worth £4,000.
12. The Applicant says that in May 1997 she and Christopher had a meeting at the home of their friend Mr Ian Haszeldine to discuss the house and the divorce. She says that

they agreed that the house would be rented out to cover the mortgage and running expenses, because neither of them felt like selling at this point and Christopher had moved in with his girlfriend Julie Caffrey who was pregnant (with the Respondent, who was born in May 1997). They agreed that Christopher would contact her if he ever wanted to sell. The Applicant too at this point was pregnant, being by now in a relationship with Mr Erik Dijkshoorn whom she later married, and that was why she now wanted a divorce and wanted to sort everything out.

13. Councillor Haszeldine gave evidence to confirm that the meeting took place at that date – and not, as was suggested for the Respondent, in 1996. So did Mr Dijkshoorn, who remembers the date because of the death of his mother at about the same time. I accept their evidence that a meeting took place in May 1997 at Cllr Haszeldine's house, because I think that Mr Dijkshoorn's memory of the date of his mother's death is likely to be reliable.

14. But what was said at the meeting? No-one else was present and so no-one else can say. The Applicant said to HM Land Registry in her Statement of Truth, made in November 2015 to support her application for alteration of the register, that at that meeting her husband told her that the Property "was rented out", already; and she said the same in her initial letter in August 2015 to the Respondent's solicitors. By contrast her evidence in her witness statements and at the hearing was that the Property was *going to be* rented out, so the Applicant's evidence is not entirely consistent. I will come back later to my findings about the content of that meeting.

15. Cllr Haszeldine also said that Christopher told him that the house remained jointly owned and was going to be rented out. Cllr Haszeldine says that he helped Christopher with a few repairs and cleaning so that it could be rented. But his statement does not give the date of that conversation, although he said at the hearing that it took place after the meeting in May 1997. Despite his insistence on the accuracy of his memory for dates it would be all too easy, at this distance in time, for anyone to mix up the date of a conversation that may have taken place much earlier than May 1997.

16. The Respondent said that he had never heard from his father that the house was not his outright and was sure his father would have mentioned it if that had been the case. He also said that his father had occasionally made the jokey comment "one day all this will be yours". I accept the Respondent's evidence that he never heard any indication that the house was jointly owned, but of course that is consistent both with the transfer having been genuine and with his father having forged the transfer.

17. Overall, therefore, the evidence about what was agreed at the meeting in 1997 is thin. Only the Applicant knows what was said, and her account has to be examined in the light of the rest of the evidence, to which I now turn.

The use of the Property from 1997 onwards

18. The Applicant says that in September 1997 she telephoned the Property and the phone was answered by someone renting it. In her written evidence she insisted that the house was rented out, consistent with the agreement she says was made in 1997.

19. However, Julie Caffrey and the Respondent himself both gave evidence that Christopher Atkinson continued to live at the Property. Ms Caffrey explained that she wanted her independence and did not want to set up a shared home with Christopher. He kept his house; she kept her flat, and moved into a house in about 1998, and that suited them both. The Property remained Christopher's home. There were occasions when someone else was allowed to stay there, although neither Ms Caffrey nor the Respondent was aware of any payment being made. Christopher spent nights at Ms Caffrey's house, and in fact died there. The Applicant challenged Ms Caffrey's evidence and the Respondent's on the basis that the death certificate and the grant of probate state that Christopher Atkinson's home address was Julie Caffreys house. Both explained that in registering the death they gave the address at which he died, that the registrar entered that as his address, and that the solicitors then used that address for the grant of probate.

20. The Applicant also made reference to the utility bills supplied by the Respondent, which were addressed to Christopher at the Property – which is consistent with his either having lived there or rented it out. However, one of the bills was for car insurance, and it would be odd for that to go to the Property if Christopher did not live there. One of the electricity bills showed that for seven months in 2014 no electricity was used. The Respondent confirmed that that was perfectly possible; when he stayed with his father they would play cards, if it was light in the evening, or just go to bed in the dark; he might well not have switched a light on for seven months.

21. Family friends Susan Walker and Roland Bullock also gave evidence that Christopher did not live with Ms Caffrey, and they attended the hearing. A neighbour, Robert Stonier, also made a witness statement to the effect that Christopher lived at the Property, but did not attend the hearing. At the end of the hearing the Applicant confirmed that she accepted that the Property had not been rented out. Had she not

done so I would have had no hesitation in accepting the evidence of the Respondent, Ms Caffrey and others that Christopher continued to live at the Property as his home.

The renovation of the Property in 2016

22. The Applicant came back to England in 2012. When she heard that Christopher had died, she says that she wondered about the Property and went to look at it in February 2015. She found it in very poor condition. This is not in dispute; the Respondent confirmed that his father never spent any money on the Property and had no regard for his own comfort. The Applicant says that she noticed that a lot of work was done on the Property from June 2015 onwards after she had placed a caveat on Christopher's estate, and that work continued until August 2015. She said at the hearing that she had photographs and evidence of this; but she has produced neither photographs nor any other evidence. The Respondent says that work was begun in March 2015, before he knew of the Applicant's interest, and was finished in June 2015 just before his nephew was born. He says that he wanted to make the Property habitable because his half-brother (a son of Ms Caffrey and not of Christopher) wanted to move in with his children. He says that he moved into the Property as well because it was convenient for access to college, although he also spent some nights at his mother's. I accept the Respondent's evidence on this because it is consistent with family events and his own needs, and because I think it unlikely that he would have suddenly taken on the renovations in response to the Applicant's intervention.

23. The dispute about the timing of the renovations is not relevant to whether or not the transfer is forged. There was a suggestion that it might be relevant to whether the Respondent is a registered proprietor in possession of the Property, but the timing of the renovations does not affect the fact that after his father's death the Respondent was in possession of the Property in the sense that he had the key and had access to it. It was suggested for the Respondent that the fact and timing of the renovations might have relevance to whether or not – if I found that there was a forgery – it would be unjust for the alteration to the register not to be made (see paragraph 6(2)(b) of Schedule 4 to the Land Registration Act 2002). In the event I do not need to make any finding on that point.

The expert evidence

24. The Applicant obtained expert evidence from Ms Margaret Webb. Ms Webb is a Certified Document Examiner, having been certified by an American practitioner Katherine Koppenhaver some 20 years ago. She undertook her training as an expert

witness in 2006-7. She is not a member of a professional organisation. She does not undertake proficiency trials and her work is not peer reviewed; she has given evidence in legal proceedings about eight times.

25. Her report dated 8 October 2015 was prepared before the Tribunal proceedings had begun. As a result the parties have not had the opportunity to instruct an expert jointly, which would have been helpful; instead, the Respondent instructed and called an expert witness, and I will comment on Dr Barr's report shortly.

26. Ms Webb's report compared a copy of the signature on the 1996 transfer with three other copy signatures, labelled K1 (from a Land Registry scan of the Applicant's purchase of the leasehold with Christopher in 1989), K2 (from a Land Registry scan of the purchase of the freehold in 1990) and K3 from her mortgage application in 1989 (the one item the Building Society was able to produce). No original signatures were available. All signatures are written "E L Atkinson". The comparison signatures are all 6 or 7 years older than the transfer. There are fewer comparison signatures than one would wish to see; and they are not very good copies – the third, in particular, is pixellated.

27. Ms Webb's view in her report is that there are "fundamental differences" between the questioned signature and the comparisons. She points to

    a. the shape of the final "n" in "Atkinson", which is rounded in the comparisons and more angular in the transfer signature;
    b. the length of the questioned signature, which is longer than the comparisons;
    c. the position of the L, the Applicant's middle initial, which is lower in the questioned signature than the E and the A whereas the capital letters are of similar height in the comparison signatures.

28. Ms Webb's report makes it clear that all signatures exhibit natural variation – no two are identical. There are differences between the three comparison signatures, as obvious to the untrained eye as is the final "n" in the questioned signature: the bar on the "t" is in different positions, the "s" and the "o" at the end of "Atkinson" overlap in two but not in all three versions, one has dots after the initials and one has not. Ms Webb takes the view that the variations in the three comparison signatures are natural and that the questioned signature varies in a way that is not natural. Her view is that there is "strong" evidence that the questioned signature is not the Applicant's. She has explained the calibration of the expression she uses: "strong" means 70% - 80% certainty; stronger evidence might be "very strong" or "conclusive". She says in her

report "A stronger opinion would be given if all original documents were examined". In cross-examination she said she "could have notched it up" if she had seen the originals. She did not point out that had she seen the originals her conclusions might have been less certain.

29. In cross-examination at the hearing Ms Webb accepted that the copy of the questioned signature has been expanded, so that the signatures are not to scale, which weakens her comment about length. As to the differences taken together she agreed in cross-examination that she should not have used the word "fundamental". She summarised her view in cross-examination by saying "On balance the questioned signature does not totally resemble the questioned signatures." She also accepted that it would have been better to have eight or more comparison signatures rather than three, and to have comparisons closer in time to the questioned signature rather than 6 or 7 years older.

30. I asked Ms Webb to explain to me why she thought that the variations in the genuine signatures were natural whereas the variations between them and the questioned signature were not. She said that it came down to the pressure patterns in the signature.

31. Expert evidence was given by Dr Kathryn Barr for the Respondent. She is a Forensic Document Examiner and a member of the Expert Witness Institute. She says that she has given evidence in court around 50 times. She undertakes proficiency trials and her work is peer-reviewed. Her report, dated 22 July 2016, was necessarily prepared after Ms Webb's and so comments upon it. She disagrees with Ms Webb's statement that there is strong evidence that the Applicant did not sign the 1996 transfer. Her view of the differences between the questioned signature and the comparison signatures is that they are natural variations. The final "n" in particular she regards as "slightly different" (her words in cross-examination) from the comparison signatures, but thinks that in view of the difference in date this could be a natural variation. She says that she is unable to offer a view as to whether the Applicant signed the transfer; the result of her examination, she says, is inconclusive. She explained at the hearing that nothing can be deduced about the pressure patterns in the absence – which cannot be helped – of the originals.

32. I have no hesitation in preferring Dr Barr's opinion to Ms Webb's. Leaving aside the fact that Dr Barr is more qualified and more experienced than Ms Webb, what concerns me about the latter's evidence is her failure to mention the variations between the comparison signatures in her report or to analyse why she thinks they are

natural variations. If, as she said at the hearing, the reason was the pressure patterns, that is unconvincing in this case with only copies available, and not very good ones at that. Her report reads, as Mr Maddison suggested it did, as if she had set out to demonstrate that the 1996 signature was forged rather than to approach the matter objectively and consider whether there was evidence either way. Her oral evidence was hesitant and she agreed that her use of the word "fundamental" had been incorrect.

33. Accordingly I reject Ms Webb's conclusion that there is strong evidence that the signature on the 1996 transfer is not the Applicant's.

Conclusion

34. The evidence in favour of the Applicant's case is therefore really only her own testimony, and there are some strange aspects to her story.

35. It was put to the Applicant that she cannot have made the arrangement she says she did with Christopher, because she then went abroad of 15 years and he had no way of contacting her. The Applicant said in her second witness statement, in answer to the Respondent, that Christopher knew her grandmother well, who lived locally, and could have contacted her through her grandmother. She then went on, in the course of cross-examination, to say that she "will have told" Christopher how to contact her. This is an addition to her earlier evidence and appears to be an embroidery of it. If she told Christopher how to contact her, it would have been obviously wise to say so in her statement in answer to the Respondent's challenge.

36. Another addition to her evidence at the hearing happened as follows. During cross-examination she was asked if she had been in contact with Christopher during her absence from this country. She hesitated, and said no. In closing she said that in fact she had been in touch; she had telephoned two or three times during the first eighteen months of her absence, but did not do so thereafter as they had not much to say to each other. I find it very strange that she said something she knew to be untrue during cross-examination.

37. The Applicant accepts that she showed no interest in the Property for eighteen years. She says she trusted Christopher to manage it and did not need to. But I find it very odd, indeed implausible, that she never made contact to check that the house was in good shape or even to ask if any help was needed with its upkeep. She insisted that the house was bought for them both to enjoy, but she does appear to have comprehensively washed her hands of it.

38. On the Applicant's account, the Property became an investment – a nest-egg for the future – in 1997. I asked her why, therefore, she did not get in touch with Christopher in 2014 when she knew that the endowment policy would have matured. She says it did not occur to her. Again, I find this implausible. Release from responsibility for nearly 20 years of monthly interest payments in 1996, in return for the loss of £4,000 equity, would have been a good deal for her, and it seems to me that the reason why she never contacted Christopher was because she had no interest in the Property, having walked free from the Property and the debt.

39. Mr Maddison for the Respondent makes some observations about the risks involved in the alleged forgery which I think are unanswerable. He points out that on the Applicant's account the forgery was committed in 1996 when she was living locally and had not decided to go abroad. Her signature was witnessed by a Mr Allen, whom she knew to speak to in the street. Why, if he was going to commit a serious fraud, would Christopher have used that witness? It is not suggested that the witness was party to a fraud, but it must be suggested that he witnessed a signature he had not seen being made – I accept that people do that, although of course they should not, and the transfer says "signed in the presence of" so I am being asked to believe that Mr Allen signed something he knew to be untrue. I am also asked to believe that Christopher took the risk of Mr Allen mentioning that fact to the Applicant when he next saw her. This is implausible. It is also very strange that if he had just got away with a forgery Christopher did not sell the house while the Applicant was abroad – an unexpected and golden opportunity. Instead he continued to live there, and took no profit from his fraud – save that of passing the property on to his son, but of course that was not something that anyone anticipated would have happened when it did.

40. So I do not accept that the Applicant's signature was forged on the transfer of 1996. The expert evidence is of no assistance in either direction. The risk of making that forgery at that time using that witness makes me think it highly unlikely that that fraud was committed. The Applicant's own behaviour is consistent with her having transferred her interest in the Property to Christopher and is wholly inconsistent with her continuing to be a joint owner of the Property.

41. What then do I make of the Applicant's evidence, and in particular of the meeting in 1997? I accept that a meeting did take place in May 1997. I think it quite possible that Christopher did tell the Applicant at that meeting that the Property was going to be rented, because Julie Caffrey was pregnant and he may well have hoped to move in

with her and perhaps set up home in a new house with her after the baby was born. There may well have been someone allowed to staying in the Property when the Applicant phoned in September 19997. In the end the plan to move in with Julie did not happen because she stood by her determination to keep her independence and, as she put it, that suited the two of them very nicely, but Christopher may still have been hoping to set up home with her in 1997, particularly as she was pregnant. So much of what the Applicant says about the meeting may well be true, save for the crucial point that I do not accept her evidence that they agreed at that point that the Property would remain unsold, because in 1997 it no longer belonged to the Applicant.

Severance and rectification

42. Because I have found that the transfer was not forged, that is the end of the matter and I direct the registrar to cancel the Applicant's applications. However, it may be helpful if I set out what I would have found about matters that would have arisen if my primary finding had been different.

43. Had I found that the transfer in 1996 had been forged, I would have found that the couple's beneficial joint tenancy was severed by that act of forgery, following the decision of Blackburne J in *Mervin Pinto v Chanmom Lim* [2005] EWHC 630 (Ch). If Christopher had indeed forged the transfer he would have held the Property on trust for himself and the Applicant, but the two would have been entitled as beneficial tenants in common. The law could not have countenanced the forger becoming entitled, later, by survivorship. That in fact did not happen, but this is not a case where one can "wait and see"; if there had been a forgery I would have to decide how the beneficial interest stood by the end of 1996, and that would certainly have been a beneficial tenancy in common.

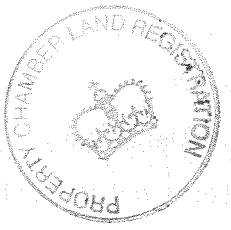
44. If that is not right, then in any event when the couple agreed – as on this hypothesis they did – to keep the property and rent it out to finance the mortgage and upkeep then that changed the nature of their interest, as Mr Maddison argued. It became an investment; and I would have found that that change in the way the Property was to be regarded by Christopher and the Applicant would have been a course of dealing that severed the beneficial joint tenancy.

45. Therefore, if I had found that there was a forgery, I would have found that the beneficial interest became at that point and remains now a tenancy in common. The Applicant would be entitled to half the proceeds of sale and the Respondent to half, as tenants in common and with the Respondent inheriting his father's entitlement.

46. That being the case I would not have ordered rectification of the register. Certainly there would have been a mistake on the register as it stands; the transfer of 1996 – in this hypothesis – should not have been registered. But if I found that the transfer was forged, I would then have found that the Applicant was a beneficial tenant in common and entitled to half the proceeds of sale after redemption of the mortgage. She would be no more and no less entitled to be registered as proprietor then would the Respondent, whose entitlement would be the same. Had I found that there had been a forgery I would have given directions with a view to enabling either party to offer to buy the other out and, failing agreement on that, for one or other to apply to the court for an order for sale if sale could not proceed by agreement.
47. So even if the transfer had been forged, there would be no reason to rectify the register.
48. That, however, is an hypothesis. I have found that the Applicant has not shown that the 1996 transfer was, on the balance of probabilities, forged and accordingly I direct the registrar to cancel her application for rectification.
49. The Respondent is in principle entitled to his costs, If he seeks an order for costs he is to send a schedule of costs to the Tribunal within 28 days of the date of this decision; if he does so, the Applicant may make representations about liability, or the amount claimed, within 21 days of receipt of that Schedule and the Respondent will have a further 21 days to respond to any representations she makes.

Dated this 27 June 2017

Elizabeth Cooke



BY ORDER OF THE TRIBUNAL