



[2017] UKFTT 0473 (PC)

REF/ 2016 / 0521

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

LAND REGISTRATION ACT 2002

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

BETWEEN

ARROW GLOBAL GUERNSEY LIMITED

APPLICANT

and

EDITH DELALI AVORNYO

RESPONDENT

Property Address: 30 Manordene Road, London SE28 8ET

Title Number: SGL395846

ORDER

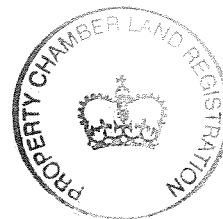
The Tribunal orders as follows:

- (1). The Chief Land Registrar do cancel the application of the Applicant, Arrow Global Guernsey Limited to register a charging order dated 17 February 2016
- (2). The Applicant do pay the Respondent's costs to be summarily assessed.
- (3). The Respondent do serve a schedule of costs on the Applicant and on the Tribunal by 5pm on 5th June 2017
- (4). The Applicant do serve written points of objection to the schedule of costs on the Respondent and on the Tribunal by 5pm on 19th June 2017.

Dated this 22nd May 2017

Michael Michell

BY ORDER OF THE TRIBUNAL





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Before: Judge Michell

Sitting at: 10 Alfred Place, London

On: 22nd May 2017

Applicant Representation: Mr James Mathieson, counsel, instructed by Restons solicitors

Respondent Representation: Mr S Ahmed, counsel

DECISION

1. District Judge Russell, sitting in the County Court at King's Lynn made on 18th February 2016 an interim charging order charging "the interest of the judgment debtor" Mr

Francis Akator (“Mr Akator”) in 30 Manordene Road, London SE28 8ET (“the Property”) with payment of a judgment debt owed by him to Arrow Global Guernsey Ltd. (“Arrow”). Judgment for the debt (amounting to approximately £11,000) had been given on 18th January 2016. Arrow applied to HM Land Registry on 24th February 2016 to register a restriction in Form K to protect its interest under the charge. The registered proprietors of the Property are Mr Akator and the Respondent, Edith Delali Avornyo (“Ms Avornyo”). Ms Avornyo objected by letter dated 7 March 2016 to the application. The matter was referred to the Tribunal for determination on 7th July 2016. By that date, a final charging order had been made on 11 April 2016.

2. Mr Akator and Ms Avornyo were married on 14th August 2013. They were together registered as proprietors of the Property on 3rd September 2004. The purchase was financed in part with money provided by Mr Akator and with money provided by Ms Avornyo and also by money advanced to them both and secured by a mortgage. Mr Akator and Ms Avornyo had three children together. In 2010 Mr Akator and Ms Avornyo separated. Ms Avornyo moved out of the Property with the children. In 2011, Mr Akator moved out of the Property and Ms Avornyo and the children moved back in.

3. In June 2013 Mr Akator and Ms Avornyo signed a typed agreement (“the Agreement”). The document is headed “An Agreement between Francis Akator and Edith Akator”. It gives the venue of the agreement as the Property and the time as 17.30. It states that the contents were agreed on Sunday 9th June 2013. The date “16/6/13” appears beside the signatures on the document of Mr Akator and two witnesses, Mr A. M. Ahmed and Henry Imakpo. Ms Avornyo’s evidence is that the parties and the witnesses met on 16th June 2013 at the home of Mr Imakpo, that Mr Akator then produced the typed agreement and that Ms Avornyo then read the document, agreed its contents and signed it.

4. Arrow does not challenge the authenticity of the document or the date on which it was signed being 16th June 2013. The Agreement was clearly signed before 8th January 2014 because on that date Ms Avornyo sent a copy to the mortgagee, Halifax in support of her application to have the mortgage over the Property transferred into her sole name.

5. Paragraph 1 of the Agreement contains provisions as to contact between Mr Akator and his children. Paragraph 2 provides as follows

“2. Joint property owned by Francis Akator & Edith Akator

Francis has this date told Edith Akator; that he ceases to be a part owner of the above property and also he has therefore given me (Edith Akator) full ownership of the property; on the basis of his current religion as Moslem NOT on the grounds of divorce settlement.

Edith will give the property to Gabrielle, Joel and Joleen after the 25 years has ended on the property”.

It is clear that “the joint property” referred to is the Property. Gabrielle, Joel and Joleen are the children of Mr Akator and Ms Avornyo.

6. Ms Avornyo’s case is that following the signing of the Agreement, Mr Akator no longer had a beneficial interest in the Property and that the charging order should not be registered.

7. Section 2 of the Charging Orders Act 1979 (so far as may be relevant) provides as follows

“(1) ...a charge may be imposed by a charging order only on –

(a) any interest held by the debtor beneficially –

- (i) in any asset of a kind mentioned in subsection (2) below, or
- (ii) under any trust; or

(b) any interest held by a person as trustee of a trust (“the trust”), if the interest is in such an asset or is an interest under another trust and –

- (i) the judgment or order in respect of which a charge is imposed was made against that person as trustee of the trust, or
- (ii) the whole beneficial interest under the trust is held by the debtor unencumbered and for his own benefit, or
- (iii) in a case where there are two or more debtors all of whom are liable to the creditor for the same debt, they together hold the whole beneficial interest under the trust unencumbered and for their own benefit.

(2) The assets referred to in subsection (1) above are –

(a) land.

...”.

8. Ms Avornyo was not a party to the application for a charging order but she was identified in the completed N379 application document as a person who had or might have an interest in the Property. Arrow says that the application was served on Ms Avornyo. Ms Avornyo did not attend the hearings when the interim charging order and the final charging order were made. No point was taken before me on behalf of Arrow that Ms Avornyo should have attended before the District Judge to argue that no charging order could be made because Mr Akator had no beneficial interest in the Property and having failed to do so, could not now argue before the Tribunal that Mr Akator did not have a beneficial interest in the Property.

9. I accept that where two people are registered as joint proprietors of land then in the absence of other evidence, they will be presumed to hold the land on trust for themselves. For that reason, District Judge Russell made the interim charging order. However, in this case there is the Agreement. A person entitled to an equitable interest in land may dispose of that interest but such a disposition must be in writing signed by the person disposing of the same – Law of Property Act 1925 s. 53(1)(c). A disposition of an equitable interest need not be for consideration to be effective – *Donaldson v. Donaldson* (1854) Kay 711.

10. The Agreement contains a written disposition of Mr Akator's beneficial interest in the Property. The words "Francis has this day told Edith Akator that he ceases to be a part owner of the above property and also he has therefore given me (Edith Akator) full ownership of the property" are a disposition by Mr Akator of his beneficial interest in the Property. It is true that Mr Akator does not say in the Agreement, "I hereby assign my beneficial interest to Edith Akator" or words to the like effect. However, that is plainly what the words of the Agreement set out above mean. It would have been impossible for Mr Akator to have contended after signing that document that he remained a joint beneficial owner of the Property. It is irrelevant that he remained a joint legal owner. He held and holds the legal estate on trust otherwise than for himself.

11. It was submitted by counsel for Arrow that by the Agreement Mr Akator intended to transfer both his legal and beneficial interest in the Property to Ms Avornyo and that since the Agreement was not effective alone to transfer the legal estate, it should not be read as a disposition of the beneficial interest. I do not accept that argument. One of the most common circumstances in which a trust arises is where an attempt to transfer a legal interest fails for want of compliance with formalities but equity treats the attempt as a valid transfer of the

beneficial interest. I can see no reason why, if by the Agreement Mr Akaton intended to transfer the legal interest as well as the beneficial interest, the Agreement should not take effect as a valid disposition of the beneficial interest prior to the necessary formalities being completed to transfer the legal estate.

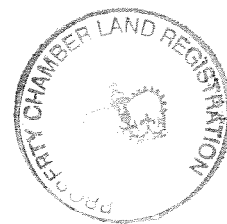
12. I am satisfied that Mr Akator did not at the date of the charging order and did not at the date of the application for registration of the charging order have any beneficial interest in the Property. The charging order is expressed to charge the interest of Mr Akator in the Property. That must be a reference to an interest falling within section 2 of the Charging Orders Act 1979. It cannot and does not charge the interest of anyone else in the Property. Mr Akator has no beneficial interest in the Property and no interest within section 2(1)(b) of the 1979 Act. It would not be right to register a restriction on the Property where Mr Akator has no interest in it to which the charging order can attach. Accordingly, I shall direct the Chief Land Registrar to cancel the application to register the charge.

13. Costs

Arrow must pay Ms Avornyo's costs of the proceedings before the Tribunal. The usual order in proceedings before the Tribunal is that the losing party pay the costs of the winning party. There is no reason why such an order would not be just in this case. Ms Avornyo said in paragraph 7 of her Statement of Case that Mr Akator ceased to be a part owner of the property in June 2013 and that he signed the Agreement in front of witnesses. Arrow knew that Mr Akator remains one of the joint registered proprietors. It should therefore have been obvious to Arrow that Ms Avornyo meant that Mr Akator ceased to be beneficially entitled to an interest in the Property by signing the Agreement in June 2013.

BY ORDER OF THE TRIBUNAL

Michael Mitchell



DATED THIS 22nd MAY 2017