



[2017] UKFTT 0811 (PC)

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

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

REF No 2017/ 0068

**BETWEEN**

**MOSES KRAUSZ**

**Applicant**

**and**

**ROBERT WILLIAM LESLIE HORTON  
(as Trustee in Bankruptcy of Moses Krausz)**

**Respondent**

**Property Address: 34 Fountayne Road London N16 7DT**

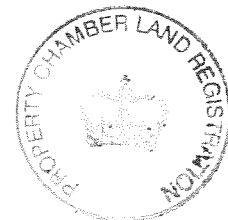
**Title number: 43038**

**ORDER**

The Chief Land Registrar is ordered to give effect to the applications by the Trustee in Bankruptcy of Moses Krausz dated 23 March 2016

**BY ORDER OF THE TRIBUNAL**

*Ann McAllister*  
**Dated this 19th day of October 2017**







[2017] UKFTT 0811 (PC)

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

**IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY**

**LAND REGISTRATION ACT 2002**

**REF No 2017/ 0060**

**BETWEEN**

**MOSES KRAUSZ**

**Applicant**

**and**

**ROBERT WILLIAM LESLIE HORTON  
(As Trustee in Bankruptcy of Moses Krausz)**

**Respondent**

**Property Address: 34 Fountayne Road London N16 7DT**

**Title number: 430348**

**Before: Judge McAllister  
Alfred Place, London  
18 October 2017**

**Representation: The Applicant appeared in person; the Respondent was represented by Samuel Loughton of Counsel instructed by Gordon Dadds**

**DECISION**

**Introduction**

1. The issue in this case is whether the Respondent ('the Trustee') is entitled to register two restrictions, in Form A and J respectively, against the title of 34 Fountayne Road, London N16 ('the Property'). The Property is registered in the joint names of Mr and Mrs Krausz, originally held by them as beneficial joint tenants.

2. The application to Land Registry was made by the Trustee on 23 March 2016. The Form A application provides that no disposition by a sole proprietor of the registered estate under which capital monies arise is to be registered without an order of the court. The Form J restriction, in effect, requires that no disposition of the estate (other than a disposition by a proprietor of any registered charge entered into before the date of the restriction) is to be registered without the consent of the Trustee.
3. In support of the applications the Trustee relied on the fact that the Applicant before me (Mr Krausz) is the registered joint proprietor of the Property (together with his wife, Malca) and was adjudged bankrupt on 12 January 2016. The Trustee was appointed on 9 February 2016.
4. Mr and Mrs Krausz objected by letter dated 20 April 2016 on the grounds that Mr Krausz did not have any beneficial interest in the Property immediately before the bankruptcy order was made and on the basis that his interest, in any event, was not transferred to the Trustee. The matter was referred to the Tribunal on 16 January 2017. By that date Mrs Krausz had withdrawn from the dispute. At the conclusion of the hearing on 18 October 2017 I stated that I would order the Chief Land Registrar to give effect to the Trustee's applications. My reasons are set out below.

### **Relevant facts**

5. On 21 July 2015 Mr and Mrs Krausz entered into a mortgage deed in favour of Eurobeam PLC under which they covenanted to pay all monies due under the terms of Facility Agreement dated 21 July 2015 and charge the Property by way of second legal charge. The charge ( 'the Charge') was duly registered in the charges register of the Property.
6. On 30 April 2015, and in anticipation of the Charge, Mr and Mrs Krausz entered into a written agreement ( 'the Agreement') witnessed by a barrister who had advised them in relation to the charge and who, it seems, had given independent advice to Mrs Krausz in relation to the loan and the Charge.

7. The Agreement reads as follows: ‘ *This agreement is made between Malca Krauz and Moses Krauz both of 34 Fontayne Road, London N16 7DT. In consideration of Malca Krauz borrowing up to £350,000 from Eurobeam Services Limited and using 34 Fontayne Road, London N16 7DT as security for this loan (‘the second charge’) on the property signed by them on 30 April 2015, Moses Kraus agrees that the whole beneficial interest remaining in the property shall belong to Malca Krauz only, until the second charge has been repaid.*’ [the various spellings of Mr and Mrs Krausz name are as set out verbatim in the Agreement].
8. Although the Charge is dated 21 July 2017, I am told that it was signed on 30 April 2015. In any event, it is clear that there is only one charge in favour of Eurobeam.
9. The value of the Property is (it seems) in the region of £1,200,000 to £1,250,000. The first legal charge covers an interest only mortgage of £400,000 and a secured overdraft facility of £100,000 which has been fully used. The amount due under the Charge is said to be approximately £460,000 (and £363,661 at the time of the Trustee’s appointment).
10. Mr Krausz alleges that the sum of £300,000 was borrowed from Eurobeam PLC to fund an action brought against Mr Krausz by Swiss Life Company on the basis, as set out above, that this charge would be secured only against his beneficial share and that, until such time as the loan was repaid in full and the charge released, all the beneficial interest would vest in Mrs Krausz. Eurobeam was not a party to the Agreement, and it follows therefore that the Agreement has no effect on the Charge. The Charge is over the legal estate.

### **Submissions**

11. The Trustee’s case is straightforward. Whatever the Agreement may mean, it is clear that, at the very least, Mr Krausz retained a future or contingent beneficial interest in the Property. On the repayment of the loan (secured by the Charge) in full, his beneficial interest would revert to him. Mr Krausz does not dispute this: on the

contrary, he asserts this to be the case in his letter of objection to the Land Registry and in his Skeleton Argument.

12. Section 283(1) (a) of the Insolvency Act provides that a bankrupt's estate comprises all property belonging to or vested in the bankrupt at the commencement of the bankruptcy. Section 436 of the Act provides that 'property' *'includes money, goods, things in action, land and every description of property wherever situated and also obligations and every description of interest, whether present or future or vested or contingent, arising out of, or incidental to, property.'*
13. It follows that, whether or not the Agreement on its true construction means that Mr Krausz retains a present interest in the beneficial interest in the Property, it is clear that he has a possible future interest, and accordingly such interest is within the definition of 'property'.
14. Mr Krausz submits, however, that as there is no equity in the Property (on the assumption that the Eurobond loan is secured on his share only) the restriction would serve no purpose. Moreover, he relies on section 313A of the Insolvency Act which requires the court to dismiss an application for an order for possession or for an order under section 313 (the imposition of a charge) if the value of the interest of the bankrupt's estate in a dwellinghouse which is his (amongst other's) principal residence is below a certain amount, currently £1,000.
15. As to the first point, the issue is not the value of the bankrupt's beneficial interest (which, by definition, will fluctuate with the value of the property and the level of indebtedness) but whether there is such an interest. As to the second point, section 313A is procedural and applies only when the trustee applies for an order for sale or seeks to register a charge. In the present case the Trustee has not taken either of these steps. The point therefore falls away.
16. Mr Krausz also referred to Rule 6.237A of the Insolvency Rules which (if it is still in force) provides that a trustee must apply to withdraw the Form J restriction when the beneficial interest in the property passes from the bankrupt's estate back to the

bankrupt. Again, this provision clearly does not apply here. Mr Krausz' interest remains vested in the Trustee.

### Conclusion

17. There is no basis to any of the arguments advanced by Mr Krausz against the registration of the restrictions. The Trustee is entitled to the relief sought.

### Costs

18. The Trustee has filed and served a schedule of costs in the sum of £32065.20. I assume these costs have been incurred since the reference to the Tribunal: if not, a further schedule will need to be prepared.

19. On this assumption I have allowed Mr Krausz 21 days (to 8 November 2017) to raise any objections to paying the costs as a matter of principle or as to the amount, and the Trustee 7 days to respond if so advised. I will then determine the issue of costs on paper.

**BY ORDER OF THE TRIBUNAL**

*Ann McAllister*

**Dated this 19<sup>th</sup> day of October 2017**

