



[2018] UKFTT 215 (PC)

REF/2017/0329

**PROPERTY CHAMBER LAND REGISTRATION
FIRST-TIER TRIBUNAL
IN THE MATTER OF A REFERENCE
UNDER THE LAND REGISTRATION ACT 2002**

BETWEEN

SAD MIAH

APPLICANT

and

ANTHONY MARLON AGOSTINI

RESPONDENT

Property Address: Flat 17, Ashpark House, Norbiton Road, London E14 7TJ

Title Number: EGL255265

Before: Judge Owen Rhys

Sitting at: 10 Alfred Place, London WC1E 7LR

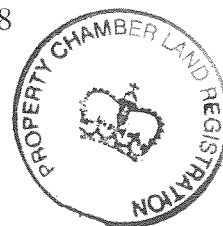
On: 27th February and 1st March 2018

ORDER

IT IS ORDERED that the Chief Land Registrar shall cancel the Respondent's application in Form UN4 dated 3rd January 2017.

Dated this 23rd day of March 2018

Owen Rhys



BY ORDER OF THE TRIBUNAL



ALR@hmcts.gsi.gov.uk

REF/2017/0329

**PROPERTY CHAMBER LAND REGISTRATION
FIRST-TIER TRIBUNAL
IN THE MATTER OF A REFERENCE
UNDER THE LAND REGISTRATION ACT 2002**

BETWEEN

SAD MIAH

APPLICANT

and

ANTHONY MARLON AGOSTINI

RESPONDENT

Property Address: Flat 17, Ashpark House, Norbiton Road, London E14 7TJ

Title Number: EGL255265

Before: Judge Owen Rhys

Sitting at: 10 Alfred Place, London WC1E 7LR

On: 27th February and 1st March 2018

Applicant representation: Mr Phillips of Counsel instructed by Sterling Ackroyd
Legal

Respondent representation: Mr Waritay of Counsel instructed by Pindoria Solicitors

DECISION

1. The Respondent Mr Agostini is the sole registered proprietor of the above-named property (“the Property”) under title number EGL255265. On 18th April 2013 the Applicant Mr Sad Miah (“Mr Miah”) entered a unilateral notice in the Charges Register of the Property, to protect an alleged equitable interest arising under a second charge over the Property dated 4th April 2013 (“the Charge”), a copy of which was

lodged with the Land Registry. On 3rd January 2017 the Respondent applied to the Land Registry to cancel the unilateral notice. This followed on from a series of unanswered letters written by the Respondent's solicitors to Mr Miah, between August and December 2016, in which they sought a copy of the Charge and an explanation for the transaction, since "*our client does not know you and has not borrowed any money from you to warrant there being a charge let alone a unilateral notice against the property.*" Mr Miah objected to the application and the dispute was referred to the Tribunal on 28th March 2017.

2. The Tribunal designated Mr Miah as the Applicant and Mr Agostini as the Respondent. This is a slight curiosity in that one might have thought that the burden was on Mr Agostini, the chargor, to demonstrate why the unilateral notice should be cancelled. This situation was compounded by the fact that Mr Miah's Statement of Case is extremely laconic. Essentially, it pleads that the Charge was executed, that it records the payment of £25,000 to Mr Agostini, and that Mr Miah has been paying the instalments on the mortgage on the Property since 22nd April 2013.
3. The Respondent's Statement of Case is, fortunately, somewhat more informative. His case is summarised at paragraph 2 as follows: "*In brief the said unilateral notice has come about because of a fraud perpetrated on the Respondent, Anthony Marlon Agostini by his former estate agent one Bilal Miah (of X-presslink properties) and the Objector/Applicant Sad Miah in respect of [the Property]. The Respondent does not know and never had any dealings with Sad Miah. The said Messrs Miah have in concert concocted documents including two Contracts of Sale alleging that they are beneficial owners of two properties which in fact and in law belong to the Respondent. Further given the similarity in surnames it is reasonable to suppose that Bilal Miah and Sad Miah are related.*"
4. Further details of his case are set out at paragraphs 4 to 10. Mr Agostini pleads that the Property was purchased by him using a cash deposit, and the balance raised on mortgage with the Bank of Scotland. He says that he intended to work abroad, and at or around the date of purchase he agreed that Mr Bilal Miah ("Bilal") of X-Press Link Properties would manage the Property, and another property at 17 Mohawk House, London E3 5DZ ("Mohawk House"), on his behalf. Both properties were bought as

“buy-to-let” investments. In or about January 2012 he asked Bilal to place both the Property and Mohawk House on the market for sale. No purchasers were found. By this time, Bilal had lent Mr Agostini a sum of £22,000, and it was agreed that this sum would be secured by a charge over Mohawk House. He agreed to allow Bilal to continue to manage both properties, and on the sale of either of them the loan from Bilal would be discharged. No other agreement was made with Bilal and no sale was agreed with any other person. He had not met or even heard of Mr Miah prior to 2016 and had no dealings with him. It was in 2016 that Bilal made a request, through his solicitors, for a Power of Attorney from Mr Agostini to enable him to dispose of both properties. It was this request that caused him to consult his lawyers and investigate the transaction.

5. Further allegations were made elsewhere in the Statement of Case. In particular, in paragraph 11 he alleges that his signature on the Charge is not genuine, that he was overseas when the document was allegedly executed, and he denies that he ever received the sum of £25,000 from Mr Miah. He also alleges that the sale agreement, purportedly made between him and the Applicant and relating to the Property, is a forgery. In essence, therefore, Mr Agostini’s case is that he has been the victim of fraud carried out by Bilal and Mr Miah.
6. In support of his case Mr Agostini obtained a report dated 3rd August 2017 from Mr Michael Handy, a forensic document and handwriting examiner. The Tribunal gave permission for this expert evidence, but Mr Handy did not attend the hearing because his evidence was not challenged by Mr Miah, represented at the hearing by Mr Sam Phillips of Counsel. Mr Handy was instructed to assess the genuineness of Mr Agostini’s purported signatures on 5 separate documents, including the Charge itself. It was his conclusion that although there was strong evidence that Mr Agostini’s signature on some documents was forged, the evidence that his signature on the Charge was forged was “*inconclusive*”. Although he expressed doubt as to the genuineness of the signature on the separate charge in favour of Bilal over Mohawk House, Mr Agostini accepted before me that this was a genuine document. Although that document was not included in Mr Agostini’s disclosure – and it seems to me that it was clearly a relevant and therefore discoverable document – nevertheless parts of it have been attached to Mr Handy’s report. In particular, the signature page is

exhibited. As I have said, Mr Handy's conclusion is that the evidence as to forgery of the Charge is inconclusive. Mr Handy has set out at page 7 of his report the accepted evidential scale that he was working to. "*Inconclusive*" is one level below "*weak evidence to support one of the stated propositions*". In my view, this means that there is no expert evidence which can be relied on to support the forgery allegation. "Inconclusive" in this context is the same as "non-existent". Mr Agostini must therefore establish on the balance of probabilities that the Charge is a forgery by reference to his own evidence, and other matters, such as surrounding circumstances and inherent probability, that the Tribunal is entitled to take into account.

7. I should mention the events that immediately preceded the hearing before me. In January 2018 the Applicant's solicitors applied to the Tribunal to adjourn the hearing, on the grounds that new documents had come to light and in all the circumstances, and in view of the gravity of the allegations made against Mr Miah, further time should be granted to fully research his case. That application was refused and no permission was given to rely on any additional documents. Despite this, the Applicant's solicitors took it upon themselves to include these very same documents in the Trial Bundle, notwithstanding the protests of the Respondent. They also obtained further witness statements: from Mr Miah himself, from Bilal, and from Mr Reza, the solicitor who had witnessed Mr Miah's signature on the Charge. Mr Phillips, on behalf of the Applicant, applied at the outset of the hearing for permission to rely on these documents and statements. Most of the new documents consisted of transcripts of recent telephone conversations that took place between Bilal and Mr Agostini, in which it seems Bilal was attempting to broker some sort of settlement between the parties. I invited Mr Phillips to identify any key passages that he relied upon, but he was unable to do so. A cursory perusal of the transcripts suggested that they were largely irrelevant to the issues in this case, and were potentially privileged. I refused permission. I did allow in some other documents, including an email from a solicitor, a Mr Jinnat Ali Chowdhury, confirming that he had witnessed Mr Agostini's signature on the Charge. As I pointed out to Mr Phillips, this did not have the status of evidence, not being a witness statement bearing a statement of truth, and as such had little value. I refused permission for the Applicant to rely on the statement of Mr Reza, since he had no dealings with Mr Agostini and could not speak as to his execution of the Charge. I did however allow the statement of Bilal. Both parties

accepted that they had dealings with him, and it seemed to me that it would be wrong to decide the case without hearing from him. I gave Mr Waritay time to consider the statement with his client and to prepare his cross-examination.

8. Before considering the evidence given by the witnesses, I shall set out the issues as I see them. The specific application referred by the Land Registry is Mr Agostini's application to cancel the unilateral notice, which, in turn, is designed to protect Mr Miah's alleged interest in the Property arising out of the Charge. Although the application for a unilateral notice referred to Mr Miah's beneficial interest in the Property derived from the Charge, the entry on the register simply refers to the charge and not to any beneficial interest. Since the Charge is a second charge there is no question but that it may be protected by a notice in the Charges register. I shall turn to the specific terms of the Charge shortly, but it may be noted that the notice does not protect Mr Miah's alleged interest under the Contract for sale of the Property dated 4th April 2013, the authenticity of which may be in doubt in the light of Mr Handy's expert report. Accordingly, the sole issue before me is whether the Charge is a genuine document properly executed by Mr Agostini – there being no challenge to the execution of it by Mr Miah. Although Mr Agostini makes various associated allegations – such as his contention that he had never met Mr Miah, and never borrowed any money from him – his central allegation is that the document is a forgery which does not bind him.

9. I shall now consider the terms of the Charge. Mr Agostini is defined as “the Chargor” and Mr Miah as “the Chargee”. It is very poorly drafted and incomprehensible in places. There are two recitals, as follows:
 - (a) *“Whereas the chargor indebted to the Chargee for a sum under a contract to sale the property to the Chargee, which he is not willing to do so or cannot so so at the moment; and*
 - (b) *Whereas the Chargee agrees to get the debt being the consideration paid to the Chargor to be secured on the property as a second charge until completion of the said agreement or variation of the same in writing; hence this Charge is witnesseth as below.”*

10. In clause 2 the Chargor acknowledged receipt from the Chargee of the sum of £25,000 “on or before the date hereof”. Clause 3, 4 and 5.1 read as follows:

“3. The Chargee agrees to take possession of the property along with liability to pay monthly mortgage instalments along with service charge payable under a lease so long as he has been in possession under this charge deed along with relevant contract. E.g contract to sale/purchase the property

4. As the chargee takes responsibility to pay mortgage instalments as rent for use of the property and the property is worth less than the sum paid under this deed along with a contract, the Chargor cannot deny to transfer the Property on payment of £143,756 or such sums as may be outstanding on the date of demand.

5.1 The Chargor with full title guarantee HEREBY CHARGES to the Chargee the Property with payment of the indebtedness.”

11. The Charge includes various other standard mortgage terms, and is executed on the last page. There is a signature which purports to be that of Mr Agostini, and this is witnessed by “Chowdhury Mohammed Jinnat Ali”, a solicitor. The signature of Mr Miah appears below, witnessed by Mr Reza, also a solicitor. The document therefore appears on its face to be properly executed.

12. As I have said, there is in existence a document bearing the date 4th April 2013 which purports to be a contract for the sale of the Property from Mr Agostini to Mr Miah. The purchase price is stated to be £165,000, with a deposit of £5,000. Mr Handy, the expert witness retained by Mr Agostini, expresses the opinion (see paragraph 8 of his report) that “*there was strong evidence that Anthony Agostini did not make the signature copied on the Agreements dated 08/03/2012 and 04/04/2013...*” The other agreement referred to purports to be a contract for the sale of Mohawk House to Bilal.

13. Certain other facts are not in contention. Mr Miah can prove that he made all the mortgage payments in relation to the Property between April 2013 and April 2017. There was an exchange of correspondence in 2016, which commences with an email dated 28th June 2016 from Mr Reza, the solicitor who acted for Mr Miah in relation to the Charge and for Bilal in relation to the Mohawk House charge. It reads as follows: “*Dear Tony We have been trying to get in with your [sic] very urgently. It’s regards*

17 Ashpark House major works outstanding amount above £12,785. We believe you have sold the property. You need to come and see us urgently and Sign a assigned document to transfer the new owners name or u will be liable for paying the full £12785. Please call us to arrange a time and date.” Mr Agostini’s response dated 15th July 2016 (at 16.24) was as follows: *“Dear Mr Reza I am sorry for the delay but I have been very busy. To speed up this process will you please email me assigned documents that I need to sign. I can take a quick look at them and it will save time when I just need to sign. Kind regards Tony.”* Later in the same day he sent another email, copied to “Bill” (Bilal) as follows: *“Dear Mr Reza Monday is fine as I am very busy over the weekend. I look forward to hear from you on the 18th. Bill Miah needs this to be sorted ASAP so the faster that you can send me it the faster I can help and it will all be done Kind regards Tony”.* In the event, a draft Power of Attorney was sent to him but it was never signed. Mr Agostini instructed solicitors, who wrote to Mr Reza on 30th August 2016, stating that their client was *“somewhat confused about the situation”* and asking for clarification.

14. Against that background, I shall now consider the evidence that I heard. First, Mr Miah. He made two witness statements, which he verified on oath and upon which he was thoroughly cross-examined by Mr Waritay, appearing for Mr Agostini. His evidence was straightforward, and to this effect. He was known to Bilal, with whom he had business dealings. Bilal mentioned Mr Agostini to him, and the fact that he could not find a purchaser for the Property. It was Bilal who suggested the scheme to him, and he accepts that he never met Mr Agostini or had any direct dealings with him. Mr Miah instructed solicitors to act for him – in the person of Mr Reza – and left all the details to him. He says that he executed the Charge, and paid the sum of £25,000 to Bilal which was to be paid to Mr Agostini. He also paid £500 in legal fees. Shortly after the date of the Charge he was given the details relating to the mortgage on the Property, including the bank details of the mortgagee, and immediately began to pay the monthly instalments. He also paid certain service charges (the Property is leasehold) and for the repair and maintenance of the Property. He received the rental income, collected through Bilal’s estate agency. He vigorously denied that he was guilty of any wrongdoing in relation to the Property, but accepted that he had not personally witnessed Mr Agostini signing the Charge or the sale agreement.

15. Bilal made a statement upon which he was cross-examined. He confirmed Mr Miah's evidence in every respect.
16. Mr Agostini's evidence was to the effect that he had never authorised Bilal to deal with the Property other than in his capacity as managing agent. He had not given instructions to him to carry out the transaction with Mr Miah, he had never signed either the Charge or the sale agreement, and he had never borrowed any money from Mr Miah. He denied that he received the sum of £25,000 from Bilal in April 2013, and denied that he ever gave instructions that the mortgage repayments should be taken over by Mr Miah. He said that Bilal had sufficient information about his finances to allow him to cancel his payments to the mortgagee and replace them with payments by Mr Miah. He accepted that he had entered into a Legal Charge with Bilal in relation to Mohawk House, and accepted that it was more or less in the same form as the Charge.
17. There is a direct conflict of evidence between Mr Miah and Bilal on the one part, and Mr Agostini on the other. The issue which I must resolve is whether the Charge is or is not a forgery. I find as a fact that:
 - (a) Mr Agostini did execute the Charge, which is a genuine document.
 - (b) He agreed with Bilal that Mr Miah would participate in the transaction.
 - (c) He received a sum of £25,000 from Mr Miah through the agency of Bilal.
 - (d) He authorised Mr Miah to take over the mortgage payments after execution of the Charge.
 - (e) He agreed to the transaction whereby Mr Miah was a contractual purchaser of the Property and entitled to call for a transfer of the title upon discharge of the sums due to the mortgagee.
18. In making these findings, it will be apparent that I have rejected Mr Agostini's evidence and accepted the evidence of Mr Miah and Bilal. I have reached these conclusions in the light of my assessment of the witnesses, against the background of the inherent probabilities and the known facts and circumstances. I also bear in mind that a serious allegation such as forgery must be proved by appropriately strong evidence, albeit that the standard of proof is the civil standard. In this case, of course,

the fraud would almost certainly have involved the attesting witness to Mr Agostini's signature on the Charge, a practising solicitor. The well-known passages (see paragraphs 73 to 75) in the speech of Lord Nicholls in Re H & Ors (minors) [1995] UKHL 16 discuss these issues, and he says this at paragraph 74: "*Although the result is much the same, this does not mean that where a serious allegation is in issue the standard of proof required is higher. It means only that the inherent probability or improbability of an event is itself a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred. The more improbable the event, the stronger must be the evidence before, on the balance of probability, its occurrence will be established.*" Particular matters to which I have had regard are as follows:

- (a) The Charge itself is validly executed on its face, with Mr Agostini's signature apparently witnessed by a named solicitor. Although Mr Agostini initially alleged that he was overseas when it was purportedly signed, he has produced no evidence in the form of passport stamps or travel documents to support this.
- (b) Mr Handy's conclusion that the evidence of forgery is "*inconclusive*" supports Mr Miah's case. In paragraph 20 of his report Mr Handy accepts that the signature "*exhibited similarities with a few differences*" to the reference signatures. The differences he refers to are trivial. This is to be contrasted with his firm conclusions with regard to the other questioned documents.
- (c) The terms of the Charge are, as I have mentioned, unusual and are clearly not derived from a common form but are bespoke. They are virtually incomprehensible in parts. However, Mr Agostini now accepts that he entered into an identical charge in relation to Mohawk House, in favour of Bilal, having initially denied it (resulting in another reference to this Tribunal). The Mohawk House charge also refers to a contract for sale with Bilal which, however that Agreement came into being, is wholly inconsistent with the allegation that he was unaware of it and did not authorise it.
- (d) Mr Agostini was therefore familiar with this type of transaction.
- (e) Mr Agostini's relationship with Bilal went far beyond the simple relationship of client and managing agent as he contends. Bilal had lent him money, had contracted to purchase Mohawk House, and had a charge over it. It is accepted by Mr Miah that he never met Mr Agostini, and left everything to Bilal and his solicitors to organise. It is entirely probable that Bilal – as he

says – acted as the middle man, assisting both parties and using the same structure as the arrangement he had made with Mr Agostini over Mohawk House.

- (f) Mr Agostini was clearly short of money in 2012, hence his borrowing from Bilal and intention to sell both properties.
- (g) It is improbable that Mr Agostini would – as he contended – allowed Bilal as his agent to keep the entire surplus income from the Property after discharging the mortgage payments. There is also evidence that he paid service charges on the Property and other expenses. The fact that Mr Miah paid the mortgage and other outgoings from April 2013 onwards and retained the surplus income is entirely consistent with his case. Mr Agostini’s explanation is implausible.
- (h) Mr Agostini’s reaction to the correspondence from Mr Reza in June and July 2016 is also inconsistent with his case. It will be noted that Mr Reza (Bilal’s and Mr Miah’s solicitor) addresses him as “Tony” from the outset. Mr Agostini does not query Mr Reza’s belief that he had sold the Property, and accepts the obligation to sign a document transferring the title. Although subsequently he instructed solicitors, his initial reaction was not to query the request in any way. His explanation that he was trying to find out more details before deciding what action to take does not fit with these emails.
- (i) From the outset he has relied heavily on the fact that he had never met Mr Miah and had not borrowed money from him. At one point he alleged that Bilal and Mr Miah were one and the same person, which is not the case. Mr Miah accepts that he did not meet Mr Agostini and did not make a direct payment to him of £25,000, which was channelled through Bilal. However, there is no doubt in my judgment that Mr Agostini knew that a third party was involved in the transaction, albeit that he may not have known his identity. It makes no difference, in my view, to the authenticity of the Charge.

19. In my judgment, therefore, all these factors indicate that the Charge was indeed signed by Mr Agostini, and that he had agreed to enter into the same form of transaction as he had previously done with Bilal in relation to Mohawk House. The Charge contains an acknowledgment that he had received the sum of £25,000 from Mr Miah, and he cannot go behind that. Furthermore, the Charge refers to an agreement for sale of the Property to Mr Miah. Indeed, the existence of such an

agreement is central to the terms of the Charge, and unless such an agreement has been entered into the Charge makes no sense. The authenticity and enforceability of the sale agreement is of course outside the scope of this reference, and Mr Handy's evidence suggests that Mr Agostini's signature may have been cut and pasted. However, I do not accept that Mr Agostini was unaware of the sale agreement or that he did not intend to enter into it.

20. Accordingly, I conclude that Mr Miah has the benefit of the Charge over the Property, and there are no grounds to cancel the Unilateral Notice. I shall therefore direct the Chief Land Registrar to cancel the Respondent's application in Form UN4 dated 3rd January 2017. As to costs, I do not see why these should not follow the event. If the Respondent wishes to persuade me otherwise, he may make written submissions (to be served on the Applicant and lodged with the Tribunal) no later than Friday 6th April 2018.

Dated this 23rd day of March 2018

Owen Rhys

BY ORDER OF THE TRIBUNAL

