

[2018] UKFTT 318 (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 2016/0752
BETWEEN**

**IMRAN KHAN
KAMRAN KHAN**

Applicants

and

NEELAM NAZ KHAN

Respondent

Property Address: 47 Yateholm Drive, Bradford, BD6 3WU

Title number: WYK916532

ORDER

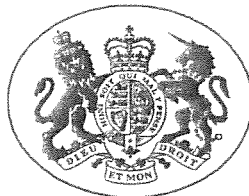
The Chief Land Registrar is ordered to give cancel the application dated 7 June 2016

BY ORDER OF THE TRIBUNAL

John McAllister

Dated this 26th day of April 2018





[2018] UKFTT 0318 (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 2016/0752

BETWEEN

**(1) IMRAN KHAN
(2) KAMRAN KHAN**

Applicants

and

NEELAM NAZ KHAN

Respondent

**Property Address: 47 Yateholm Drive, Bradford, BD6 3WU
Title number: WYK916532**

**Before: Judge McAllister
Leeds Employment Tribunal
3 October 2017**

Representation: The Applicants were represented by Helen Gardiner of Counsel instructed by Blacks Solicitors; the Respondent was represented by George Patros of Counsel

DECISION

Introduction

1. Imran Khan and Kamran Khan (the Applicants) and Tehseen Khan were brothers. For ease of reference only, and not intending any disrespect, I will refer to them by their first names. Tehseen died intestate, aged 32, on 3 February 2013, leaving his wife, Neelam (the Respondent) and three young children.
2. Tehseen and his family lived at 47 Yateholm Drive, Bradford ('the Property'). Neelam and the children continue to live there. Tehseen purchased a long leasehold interest in

the Property on 18 February 2010 for the sum of £67,500, and the Property remains registered in his name. The lease is a shared ownership lease, and the freeholder is the Home Group Limited. The sum paid represented a 50% share of the then value.

3. By an application dated 7 June 2016 Imran and Kamran applied enter a restriction in standard Form RX1 against the leasehold title to the Property on the grounds that they have a beneficial interest in the Property arising from the fact that the three brothers agreed that they would each have a 1/3rd beneficial share in the property.
4. In essence their claim, as clarified in part during the course of the hearing, is that each brother had a one third beneficial share in the Property based on a written agreement dated 4 December 2009 ('the Agreement'). In the alternative, Imran and Kamran claim to be each entitled to shares based on their actual contribution under the doctrine of resulting trust. Both parties have asked that, if possible, I should quantify the beneficial interest held in the event that I do not accept the primary argument advanced by Imran and Kamran that they each hold a 1/3rd interest.
5. Neelam challenged the authenticity of Tehseen's signature on the Agreement in her Statement of Case and at trial, but did not seek permission prior to the hearing to rely on, nor adduced any expert evidence in support of, this contention. The main reason for not doing so, I was told, was because Naleem had acted in person for at least part of the proceedings and was not in a position to afford such evidence. In effect, therefore, she put Imran and Kamran to proof of the validity of the Agreement, and of their assertion that they contributed any money to the purchase price. If they did, it is her case that this money was repaid. It is her case that they are not entitled to any share.
6. I heard evidence from Kamran and Neelam. Imran did not attend as he was abroad. Witness statements from Shadim Hussain, Aftab Ali and Azim Kidwai were also relied upon. There was no clear explanation as to why Mr Hussain and Mr Ali could not attend the hearing: Mr Kidwai was away in Turkey.

Events after the hearing

7. By an application dated 8 October 2017, followed by a more detailed letter dated 16 October 2017, the Respondent (now, it seems, acting in person) applied for permission to rely on expert evidence relating to the authenticity of Tehseen's signature on the Agreement.
8. The report relied on was prepared by James McNally of Forensic Excellence UK. It is dated 16 October 2017. The expert had been provided with a copy of the Agreement (the original has never been found) together with a number of other documents bearing the admitted/known signatures of Tehseen, namely his passport from May 2001 to May 2011, a further passport from January 2012 to January 2022, a driving licence dated 15 May 1998 and an undated marriage certificate.
9. Mr McNally concluded that there was strong support for the proposition that the questioned signature was not a genuine signature but was instead an attempted simulation of his genuine signature.
10. Imran and Kamran objected in the strongest terms to the introduction of this new evidence. Nonetheless, for the reasons given in an order dated 19 October 2017, I allowed the evidence, and gave directions for the two brothers to adduce their own expert evidence. A timetable was set with a view to relisting the case in early 2018.
11. I made a further order on 11 December 2017 requesting Imran and Kamran to produce the original of the Agreement or to make a witness statement detailing their efforts to find it. I also ordered Neelam to produce the originals of the sample signatures her expert had relied on in preparing his report.
12. Imran and Kamran obtained a report from the Radley Forensic Document Laboratory. This report is dated 18 January 2018. Mr Radley concluded that the comparison documentation was inappropriate because it was not contemporaneous with the disputed signature and because the volume of signatures was too small. He therefore stated that the evidence was inconclusive as to whether or not Tehseen had signed the Agreement. Mr Radley also rejected Mr McNally's method, approach, considerations, assessment and opinion on the extremely limited evidence before him.

13. Mr McNally withdrew his report, partly, it seems, as a result of critical remarks made against him by Eady J in *Gurmuck Singh Gahir v Gurdial Singh Bansal* [2016] EWHC 2041. The Tribunal was then informed by Neelam that she was content for the decision to be written without a further hearing. Imran and Kamran agreed.
14. For the reasons set out below I will order the Chief Land Registrar to give effect to the application to enter a restriction. I find that the 2009 Agreement is a valid agreement which, if not an express trust (it is not a deed) nonetheless gives rise to a common intention constructive trust. Each brother, accordingly, has a 1/3rd interest in the Property. If am wrong on this, and the issue becomes one of identifying what each brother contributed, I am satisfied that Imran and Kamran advanced the sums of £38,667, giving each a 28.64% interest in the Property by virtue of a resulting trust.

Background and evidence

15. On 7 August 2006 Home Group Limited ('HGL') purchased the freehold of the Property. HGL is a provider of a government backed shared ownership scheme. The rent is set low by reference to the outstanding percentage of the market value of the property. By a system known as 'staircasing' the leaseholder can buy additional shares in the leasehold.
16. The three brothers entered, or appear to have entered, into the Agreement in relation to the Property. The document, signed by Imran and Karman and purportedly signed by Tehseen (though this is not accepted by Naseem) was witnessed by Azim Kidwai. I have seen a witness statement made by him confirming that he signed the Agreement and witnessed the signature of each of the brothers. The statement exhibits his e-ticket to Istanbul.
17. The Agreement is headed 'Trust Fund and Purchase of Property' and gives the address of the Property. It provides as follows. The brothers were to set up a trust fund as a vehicle for investment purposes, including the investment in the Property. Contributions were to made equally by all three brothers, paying into Imran's savings account. All three brothers were to have an equal share in any property acquired,

including the Property. In relation to the Property it was agreed that Tehseen would hold the legal title, but that each would have a 33.3% share. The property would not 'therefore lend itself to being a matrimonial home'. When three properties had been purchased, then each brother would take full ownership of one property each.

18. The Agreement further provided that Tehseen would reside in the Property, pay the rent and any maintenance costs. If Tehseen left, then rent would be paid by the tenant, and the maintenance of the Property would be the responsibility of all three brothers. The lease granted by HGL prevents any subletting of the Property, a point relied on by Neelam in support of her argument that the Agreement was not, in fact, entered into.
19. In the event of a sale the proceeds were to be split equally between the brothers and returned to the trust fund. Repayment of money borrowed from friends and family in acquiring the Property was to be the collective responsibility of all three brothers. Each brother signed the Agreement which, as I have said, was witnessed by Azim Kidwai. Mr Kidwai also stated in his statement that he made a loan of £5,000 to the three brothers between October 2009 and December 2009. The sole purpose of the loan was to help with the purchase of the Property. The loan was for a term of 3 years and has been repaid.
20. Tehseen and Neelam married in 2004. Neelam came to the United Kingdom from Pakistan when she was 17. There is no reference to her in the Agreement, and her evidence, which I will consider in more detail below, is that she knew nothing of it.
21. The conveyancing file for the purchase of the leasehold interest in the Property is not available. I am told that the firm dealing with the matter no longer exist, and that it has not been possible to locate the file. I have seen a copy of the lease. The premium of £67,500 represented 50% of the share of the leasehold. The initial rent was £1,856.25 (50% of the gross rent per annum, ie £154.69 per month). At the time of the application for a restriction the rent had been increased to £183.00.
22. Tehseen, Neelam and his children (then aged, I believe, 5, 3 and 1) had been living with his parents, but, as I understand it, there were tensions within the family. Tehseen was working as an IT training and development officer with NHS Airedale, Bradford

and Leeds. He had begun work there in June 2008. His income at the time of his death, I am told, was £27,000 per annum. Neelam has never worked.

23. Kamran's evidence was as follows. Tehseen did not want to borrow money by way of a mortgage for religious reasons. The Agreement allowed him to purchase the Property without transgressing Sharia law, and provided a framework for the three brothers going forward.
24. As the evidence emerged at trial, the position regarding the financing of the purchase is as follows. Tehseen paid £9,500 from his savings, a further £10,333 from the sum of £31,000 which all three brothers had contributed to, and a further £9,000 which each brother had borrowed from friends, that is to say a total of £28,833 (or 42.7% of the purchase price). £8,000 of the £9,500 was, it was said, a gift to Tehseen from his mother, but treated by the brothers as part of Tehseen's contribution.
25. It is to be noted that this evidence differs from the evidence set out in Kamran's witness statement (and confirmed in Imran's witness statement), and in the letter before action dated 29 January 2014. In that letter, Imran and Kamran claimed that they contributed £31,000, and Tehseen paid £9,500. £27,000 was borrowed from family and friends. Tehseen repaid £9,000 making his total contribution £18,500.
26. In their witness statements, the brothers stated that they had contributed £58,000, leaving Tehseen to contribute only £9,500. The sum of £58,000 was made up of 31,000 of their own money, and £28,000 borrowed from friends and family.
27. There is some documentary evidence in support of the figures set out above. I have not seen Tehseen's bank accounts. I have seen copies of Imran's HSBC's account for January to March 2011, and July to October 2011 showing various payments in, with manuscript annotations, which make it clear that Tehseen was making regular contributions of £600,00. I have also seen copies of another HSBC account which shows the payment in of £31,000 by internet transfer on 7 December 2009 and the payment out of the same amount (in three tranches of £10,000 and one of £1,000) on 7, 8, 9 and 10 December to 'Tehseen A Khan House Deposit'. There are also repayments to Aftab Ali totalling £10,000 between April and June 2010, to S Hussain for the same amount, the final payment being made in December 2010, and a payment

of £5,000 to Mr Kidwai. All are marked as 'repayment of loan'. I am told that it was decided to use Imran's account because he is a banker by profession.

28. On 13 March 2012 Tehseen and Kamran attended a meeting (on Kamran and Imran's case) at which Imran was not present. Minutes were kept. The document is headed: '*TK, IK, and KK fund meeting.*' The topics discussed were at 1.5 year plan, business ideas, flexibility on money, and charity. The relevant part, dealing with property, notes: '*To buy property at the £40-60K range. These properties are then put on each one's name. The property is then free for the person to use as we want. If we see a property come up and are short by £15-20K we borrow the money and pay back. Inshallah.*' Kamran was asked why there was no reference to the Property at this meeting. His answer was that the meeting was concerned with future plans, not events which had already taken place.
29. Kamran was also asked about an email written by Imran to Homegroup in June 2012 (when Tehseen was very ill) inquiring generally as to what would happen if Tehseen died. He had been diagnosed with a grade 4 tumour, and had been operated on in April 2012. By this time he had lost part of his vision. He could not read, but could dictate. A further letter signed by him (but, on the evidence, dictated by him) dated 22 September 2012 asked that, on his death, the Property be transferred to Kamran Khan who would be able to pay the monthly rent, allowing his family to continue living there. The letter also stated that his brothers and family helped him greatly when he bought the Property.
30. On 25 September 2012 Tehseen signed a letter, which it is said was dictated by him, to HGL. By this time, he was seriously ill. The letter explained his circumstances, and asked that 'the deeds and any tenancy arrangements' be transferred to his brother, Kamran, who would be in a position to pay the rent, thereby allowing Tehseen's family to keep a roof over their heads. The letter also stated that his brothers and his family helped him financially when he bought the property, especially Kamran who helped him invest the money in the Property and who continued to help him in his current state. The letter concluded by asking that all correspondence should be addressed to his brother Imran, or, if by mail, to his parents address.

31. Finally, by way of further documentation relied on by the Applicants, reference should be made to the Will Questionnaire dated 2 October 2012. Tehseen was terminally ill and bedridden. At the time of preparing the Will, his mother and father had moved in with him. Other relatives were there, including Neelam. Imran downloaded the form. It was prepared by both brothers. The will provided that Imran and Kamran should be responsible for managing the proceeds of his estate. Tehseen also stated that he wanted the Property to be transferred to Kamran, who, along with Imran, would maintain the rental payments on the Property and 'would determine the best course of action going forward'. If the Property was to be sold, the proceeds were to be distributed equally to his three children. There is a manuscript note below his signature which reads: '*Discussed with Tehseen Khan. Agreed to all above*' followed by the signature of two witnesses, dated 5 January 2013.
32. Questions were asked about a number of mistakes or apparent mistakes: the misspelling of Aaysha/Aaisha, and a mistake in relation to the provisions regarding the payment of rent and increasing percentage ownership. These points are countered by the fact that Tehseen's signature on the Will was not challenged (although in closing submissions Counsel asserted that there was a distinct possibility that it had been made up too) and to the fact that the Will is, once again, broadly consistent with the terms of the Agreement. The Will Questionnaire is not a valid will, and accordingly Tehseen died intestate.
33. Kamran was asked why it was that the Agreement was not referred to in the Will Questionnaire, or in further correspondence in July 2013 and January 2014. His answer was that the Agreement had been put away and a copy only found very much later (and indeed, to this day, the original has not been found) but that there was nothing inconsistent in the letters written either by Tehseen (or on his behalf) or the letters written by Blacks with the case now being put forward by Kamran and Imran.
34. On 26 October 2015 the two brothers issued a Part 8 claim against Neelam, claiming a declaration that they were beneficially entitled to a 1/3rd share in the Property. The particulars relied were that at the time of the purchase it was agreed that it would be owned in equal shares, and that each brother contributed directly to the acquisition of the Property. The proceedings were dismissed on the grounds they should not have been brought against Neelam as personal representative because she had not taken out

a Grant of Representation. I have seen a transcript of the hearing before the District Judge which makes this clear.

35. Neelam's evidence is that she had been told by Tehseen that the Property had been purchased with the help of family and friends and that he had repaid all the money borrowed. She was not aware of the Agreement or the Will Questionnaire or the meeting in 2012. Her evidence was that she had a good relationship with her husband, but a less good relationship with her mother in law, or her brothers in law. After her marriage to Tehseen they had lived with his parents for three years. When Tehseen became ill they took over all the finances. As far as she was concerned, the Property was to have been a home for herself and her children.
36. Neelam did not know how much Tehseen earned, nor anything of their finances. As she stated, in her culture all these matters were dealt with by the men. She confirmed that Tehseen would not have borrowed if he had to pay interest. She also agreed that without assistance or loans he would not have been able to purchase the Property on his salary. In cross examination, Neelam accepted that at least some of the money may have come from her brothers in law, and also accepted that Imran's bank account statements appeared to show that he was responsible for repaying the loan to others, such as Mr Kidwai, and could not explain why the money was not repaid directly by her husband.
37. Her evidence was also that Tehseen stopped working 10 months before he died; he was on his full salary for 6 months, and thereafter half his salary and disability benefits. She stated that he managed to repay all that he owed in the three years before his death.
38. Neelam was only shown the Agreement two and a half years after his death, but accepted that the Property was being renovated and that a lot of the contents were in storage.
39. Finally, I should note that Karman and Imran made an open offer before and at the hearing to the effect that whatever the outcome they would not sell the Property but would allow Neelam to live in the Property on the basis that she pay all the outgoings,

and that the sale would only take place in the event she remarried or lived with someone, or died, but not until the youngest child had reached 18.

The parties' submissions

40. There is no dispute as to the relevant legal principles to be applied. Imran and Kamran's primary case is that the Agreement gave rise to a common intention constructive trust. It is not a deed, and cannot therefore be classed as an express trust. It is also their case that they relied on this Agreement to their detriment by contributing to the purchase price of the Property and that it would be unconscionable for Tehseen (or his estate) to resile from this. Alternatively, they are entitled to a share in the Property by reason of a resulting trust.
41. Ms Gardiner submitted that for the Applicants' case to fail I would have to be satisfied that the Agreement was not entered into by Tehseen, that is to say that his apparent signature is a forgery. There was no hand writing evidence before the hearing, and, notwithstanding the grant of permission to adduce such evidence after the hearing, the position remains that there is no evidence which goes further than to say that it is not possible to determine whether or not he signed the Agreement. This is because the sample signatures were not contemporaneous and because of the limited number of sample signatures.
42. The question therefore turns on the evidence taken as a whole. Ms Gardiner submitted that the very fact that the Agreement was prepared without legal assistance, and the other inaccuracies in, for instance, the Will Questionnaire (if such they were) are entirely consistent with Imran and Kamran's case, and that, if anything, they give credence to the oral evidence given. The brothers were clearly clever, thoughtful individuals, concerned to help each other, and mindful of religious considerations.
43. Neelam's evidence, properly analysed, was no more than a putting to proof of the brothers' case. She clearly had no, or no detailed, knowledge of the family finances and accepted that the Property could not have been purchased without the assistance of family and friends. In view of his earnings it would be very unlikely, if not impossible, that he could have repaid the amount needed to purchase the Property. His net income was some £21,000 a year, and he died three years after purchasing the Property.

45. As for the Will Questionnaire itself, Mr Patros pointed to a number of factors which raise serious doubts as to its authenticity. It came into existence when Tehseen was very ill; his daughter's name was misspelt, and there were a number of other errors.
46. In relation to the finances, it is clear, on the evidence, that Tehseen paid £28,833 at the time of purchase. As for the balance, this was repaid by him. The documentary evidence in the form of bank statements does not establish who paid what or even that the £31,000 paid to Tehseen was used for the purchase of the Property.

Conclusion

47. I am satisfied that the three brothers entered into the Agreement, and that the Agreement, taken with the events which followed, gave rise to a constructive trust whereby the Property would be owned by each of the brothers equally.
48. I say this for the following reasons. It is clear, from all the evidence, including the evidence of Neelam, that the family lived by and observed strict religious beliefs, which included the belief that no loan should be taken with interest. Tehseen did not, and would not have, borrowed money on a commercial mortgage to help with the purchase of the Property. Although he was earning a reasonable salary, he clearly needed assistance in order to fund the purchase. This too was accepted by Neelam.
49. The overall nature of the agreement between the brothers is borne out, in my judgment, by the bank statements, and by subsequent events, including the emails and letters sent to HGL when he was ill, and the Will Questionnaire. I accept that this document was signed by Tehseen. As Counsel pointed out, the very fact that the Agreement does not take effect as a deed, and that there are errors in the Will Questionnaire lends support to the claims made by Imran and Kamran. These were individuals doing their best, as lay people, to organise their affairs and help their brother.
50. I accept the evidence given by Kamran, whom I found to be an honest and straightforward witness. Although Mr Kidwai did not attend at trial because he was abroad, I have no reason to doubt his evidence as to witnessing the Agreement. There is no expert evidence to cast doubt on the authenticity of his signature: Mr Radley's

evidence was that he could not, in effect, say more than his opinion was inconclusive for the reasons given above.

51. The inconsistencies in the way in which the financial claim was put were clarified at trial, and I bear in mind the overall context which was a family arrangement, agreed to by the brothers, and only put in issue after his unfortunate and untimely death when a rift developed between Kamran and Imran, and Neelam.
52. Neelam can derive some comfort from the assurance given by Kamran at trial that, as stated above, there would be no attempt to sell the Property except in certain circumstances. Even without this assurance, of course, it is unlikely that a court would order a sale so long as the Property remained a family home or at least until the youngest child reaches 18.
53. In the alternative, if the matter had to be decided on a resulting trust basis, I have set out above the contributions as given in evidence and put forward by Applicants' Counsel.
54. This leaves the question of costs. The usual principle applied by the Tribunal is that the successful party is entitled to its costs. The Applicants are to file and serve a schedule in form N260 or the like by 18 May 2018. The Respondent may reply, raising such objections as she wishes, by 1 June 2018.

BY ORDER OF THE TRIBUNAL

Ann McAllister

Dated this 26th day of April 2018

