

[2019] UKFTT 0109 (PC)

REF/2017/1090

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

**LAND REGISTRATION ACT 2002**

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

**BETWEEN**

**Mark Shelley**

**APPLICANT**

**and**

**Nancy Helen Goepel**

**RESPONDENT**

**Property Address: Land at Chapel Cottage, Chapel Lane Westfield Hastings TN35 4QX  
Title Number: ESX381202 & ESX159961**

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**ORDER**

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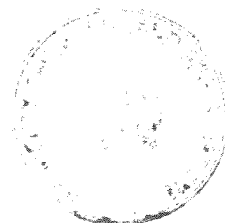
IT IS ORDERED as follows:

The Chief Land Registrar is to give effect to the original application dated 7 March 2017 for registration of a transfer of part as if the Respondent's objection had not been made.

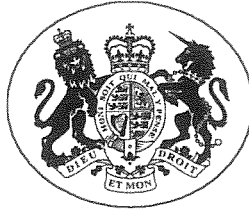
Dated this 2 January 2019

BY ORDER OF THE TRIBUNAL

Elizabeth Cooke







[2019] UKFTT 0109 (PC)

**REC/2018/0004**

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

**LAND REGISTRATION ACT 2002**

**Nancy Helen Goepel and David Wynn Goepel (Applicants)**

**and**

**Mark Shelley (Respondent)**

**REF 2017 1090**

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

**Mark Shelley (Applicant)**

**and**

**Nancy Helen Goepel (Respondent)**

**Property Address: Land at Chapel Cottage, Chapel Lane Westfield Hastings TN35 4QX  
Title Number: ESX381202 & ESX159961**

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**DECISION**

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1. Mr and Mrs Goepel are the registered proprietors of Chapel Cottage, Chapel Lane, Hastings, where they have their home and 1.5 acres of land. On 9 February 2017 they executed a transfer of a rectangle of land, 11m x 5.5m, to Mr Shelley. He has applied to register the transfer. Mrs Goepel has objected to the registration and the dispute has been referred to this tribunal by HM Land Registry pursuant to s 73(7) of the Land Registration Act 2002 (I refer to this matter as “the registration reference”). Furthermore, Mr and Mrs Goepel have applied to have the transfer set aside on one or more of a number of grounds (I refer to this matter as the “rectification action”). My decision on the rectification action will determine the outcome of the registration reference.

2. To avoid confusion between the two actions I refer to the parties by name throughout.
3. I heard the parties on 14 December 2018 at Alfred Place. Mr and Mrs Goepel were represented by Mr Denman of Holden & Co LLP, solicitors, and Mr Shelley presented his case himself.
4. I find that Mr and Mrs Goepel have not shown that the transfer was vitiated by misrepresentation or mistake, nor that it was an unconscionable bargain. They chose to transfer the land without consideration, they did so deliberately, and they were not in any way taken advantage of. Accordingly the rectification action fails. As to the registration reference, I have directed the registrar to give effect to Mr Shelley's application for registration as if Mrs Goepel's objection had not been made.
5. In the paragraphs that follow I give my reasons for that decision and for my direction to the registrar.

#### **The properties and the backgrounds**

6. The parties are neighbours in two senses. Mr Shelley owns Chapel Lodge, which is next door to Mr and Mrs Goepel's house Chapel Cottage; but it is let to tenants and he does not live there. He lives two doors from Mr and Mrs Goepel in the other direction, at 2 Anscombe Cottages.
7. Chapel Lodge sits on a square plot of land not much bigger than the house itself. Chapel Cottage is next door, to the south, and its land extends westwards and northwards in an L shape, so that Chapel Lodge is bounded to the south and west by Chapel Cottage's land. The strip of land transferred in February 2017 was directly to the west of Chapel Lodge's land, behind the house and its existing back garden.
8. Mr and Mrs Goepel bought Chapel Cottage in October 2016. They wanted to do quite a lot of work on it. Mr Shelley is in the building trade; he got to know Mr and Mrs Goepel when they moved in. He did some work for them without charge, although the basis on which he did so is now in dispute, and he recommended some tradespeople to Mr and Mrs Goepel. He also became a friend to Mr Goepel, who was in poor health and enjoyed his company. Mr and Mrs Goepel say he was always dropping in for coffee, whereas the Applicant says they also came to him for coffee; at any rate it is clear that a good relationship built up.
9. After they moved in Mr and Mrs Goepel had some trees cut down in their garden. For the most part this was for their own benefit but they also arranged for the tree surgeons to cut down trees which they say blocked light from the kitchen of Chapel Lodge. Mr Shelley says that the blocking of light was not a great problem because the trees were not as tall as Mr and Mrs Goepel say. But Mr and Mrs Goepel say that Mr Shelley's tenants were much happier once the trees had gone.
10. Around the end of 2016 and early 2017 there were discussions between the parties about the transfer of a piece of land to Mr Shelley. Mr Shelley recommended a firm of architects, Elevations, to Mr and Mrs Goepel, and the firm did some work for them in connection with their larger project for Chapel Cottage and its outbuildings but also drew up, and delivered on 17 January 2017, a plan of the land to be transferred to Mr Shelley. Mr and Mrs Goepel were not happy with the plan because it transferred too large an area and would have meant that their summerhouse would have to be moved

into the part of their land is in an Area of Outstanding Natural Beauty, where they are not allowed to have it.

11. So Mr Goepel telephoned the architects and explained what was wanted. A revised plan depicting a smaller area of land was delivered on 31 January 2017.
12. However, around that time Mr Goepel became very ill indeed. He had an operation on 19<sup>th</sup> January 2017; he came home after that but by mid-February he was still very poorly and was due to go back into hospital for temporary repair surgery, which took place on 17<sup>th</sup> February 2017. Mrs Goepel was exhausted, getting up early to do the housework and then looking after her husband, and getting very little sleep.
13. On 9 February Mr Shelley came to see them with Mr Gibson, who works for him, as a witness and the transfer was executed. The circumstances of the execution are in dispute but I should record at the outset that Mr Goepel's evidence was that he knew what he was signing, and that the plan attached to the transfer was the one he supplied, drawn up by the architects in accordance with his instructions.

#### **The evidence about the matters in dispute**

14. As I turn to the evidence on the matters that are in dispute I have to comment on the way the evidence was given.
15. Mr and Mrs Goepel adopted as their evidence the Statement of Case filed by Mrs Goepel in the registration reference, and their application notice in the rectification action; both gave additional evidence at the hearing. Mr Shelley wrote a Statement of Case, and a response to the application notice in the rectification action, and at the hearing gave a more detailed account of what happened on 9<sup>th</sup> February.
16. I draw no conclusions from the demeanour or tone of any of the witnesses because the manner in which they gave evidence was very much coloured by the acrimony between the parties.
17. However, Mrs Goepel's Statement of Case in the registration reference presents her own version of events, without any acknowledgement of the fact that Mr Goepel was aware of what he was signing and was content with the plan. Likewise the application notice in the rectification action, submitted by Mr and Mrs Goepel together, fails to give any indication of Mr Goepel's position. Both documents were therefore misleading to the tribunal and to Mr Shelley in his preparation for the hearing. Inevitably I therefore have little confidence in the truthfulness of Mr and Mrs Goepel's evidence. Their case is discredited by the way it has been presented, and is flawed by the inconsistency between their two accounts of what happened on 9 February; accordingly where the accounts given by the parties differ I regard Mr Shelley as the more reliable witness.

#### **Mr Shelley's evidence**

18. Mr Shelley says that after Mr and Mrs Goepel moved in he asked if he could buy some land behind Chapel Lodge. Their response was to offer to give it to him. He says that the work he did for them – taking a hedge down, putting in some plasterboard, doing some plumbing, clearing a parking area – was done in gratitude for that.
19. The parties are in agreement about the two versions of the plan and the reason why it changed. Mr Shelley says he thinks that Mr Goepel gave him the revised plan after 31 January 2017.

20. Mr Shelley produced witness statements from Mr Gibson and from Mr Tim Penny; neither attended for cross-examination and so I attach no weight to their statements. However, Mr Shelley adopted as his own evidence Mr Penny's account of a conversation in January when Mr Goepel handed the architects' plan (the earlier version, I believe) to Mr Shelley and said "are you sure you don't want any payment for the land?" and Mr Goepel said no. Mr Gibson reported a similar exchange on the day when the transfer was signed, and again Mr Shelley adopts that evidence.
21. As to the meeting on 9 February, Mr Shelley says it was agreed beforehand and set up at a time to suit Mr and Mrs Goepel. They had agreed that he would bring Mr Gibson along; he points out that no objection was made to Mr Gibson's presence nor any surprise expressed.
22. Mr Goepel showed them into the kitchen, where Mrs Goepel was at the table. He showed them the transfer and the form AP1 (the application form for registration), and they signed it and their signatures were witnessed.
23. The transfer – a form TP1 – is of course a printed form, but the details of the transfer are filled in by hand. Mr Shelley says he asked his solicitors about it and they said he could produce it himself, so he did, but he got a friend to write in the details since his own writing is illegible. The TP1 is exactly as one would expect for the transaction that Mr Shelley describes. The box is ticked to indicate that there is no monetary or other valuable consideration. Box 12 on the form sets out a restrictive covenant by the transferee not to use the land transferred to extend Chapel Lodge, which Mr Shelley says that Mr and Mrs Goepel had asked for.
24. Mr Shelley says he left a copy of the TP1 for Mr and Mrs Goepel, and then applied for registration of the transfer. He agrees that the summerhouse needs to be removed from the land transferred (it straddles the land transferred and the retained land at the moment), but he says that it was agreed that that would be done after the transfer was registered. He says that he and Mr and Mrs Goepel continued to encounter each other and that no problem was apparent until around July when Mrs Goepel unexpectedly challenged him in the street, saying that he was not married – as indeed he is not, although he has a partner. Thereafter he heard from HM Land Registry about the objection to the registration, and relations have broken down entirely since then.

#### **Mrs Goepel's evidence**

25. Mrs Goepel is the sole respondent in the reference to the tribunal of the application for registration. Her letter of objection to HM Land Registry, dated 4 August 2017, raises the following points:
  - i. She says Mr Shelley should not have sent the transfer in for registration, because he had not provided a copy of the application and "for all we know he maybe have altered the details of the application to suit his own needs".
  - ii. Mr Shelley has not moved the summerhouse.
  - iii. The transfer was supposed to have been done through solicitors, with Mr Shelley paying the costs because it added value to his land, which the letter says "we have since learned" was worth in the region of £5,000.

- iv. Mr Shelley “was going to help us, put us in touch with tradesman etc. or he would do some work for us. Unfortunately his workmanship was of a very poor standard, so there was no way we could allow him to do any work.”
26. The letter goes on to say that Mrs Goepel had understood that Mr Shelley had wanted the land to enable him to move back into Chapel Lodge with his wife who is in a wheelchair, so that she could get around more easily in the garden, but that she now understood that Mr Shelley’s wife had left him and that he had had several partners, none in a wheelchair. The paragraph concludes “The word sociopath comes to mind.”
27. The letter goes on to refer to disputes Mr Shelley has had with the neighbours, and to problems about parking.
28. Mrs Goepel’s Statement of Case sets out in some detail Mr Shelley’s early contact with Mr and Mrs Goepel. It seeks, I think, to portray him as trying to insinuate himself into their confidence. There is an explanation of the difficulty of moving the summerhouse, and a reference to a dispute between Mr Shelley and a previous owner of Chapel Cottage. Mrs Goepel explains about the felling of trees behind Chapel Lodge and asserts that “Mr Shelley’s share of the cost” was at least £750. It is not in dispute that all the trees removed were on Chapel Cottage’s land, but they were on the land that was transferred in February 2017 and so I believe the idea is that this is what it would have cost Mr Shelley to remove them trees after the transfer of the land, had he chosen to pay someone to do so.
29. Mrs Goepel says that the work Mr Shelley did was a recompense for having the trees cut down, and an inadequate one at that. She says that the removal of the trees will have added a huge value to Chapel Lodge, although no valuation evidence is offered. She says there was an agreement that in return for the transfer of the land he was to have done further work. It was not supposed to be a gift.
30. Mrs Goepel appends to her Statement of Case a draft of the sort of agreement that she says would have been necessary for the land to be transferred in return for work done; the draft is indexed as “What the agreement would have looked like” and its terms are that the land was worth £5,000, that £5,000 worth of work was to be done, there must be proof of purchases and a time-sheet of work done, and the summerhouse is to be moved.
31. It is not suggested that this draft was produced prior to the current litigation. No evidence is offered in support of the valuation of £5,000. It is clear from Mrs Goepel’s letter to HM Land Registry of September 2017 that the value of the land transferred had not been discussed by the parties.
32. As to the events of 9 February, Mrs Goepel details Mr Goepel’s medical history and stresses the level of discomfort and the seriousness of what he was suffering at the time. She too was having an extremely difficult time, and was exhausted and extremely worried.
33. Mrs Goepel says that when Mr Shelley arrived she was asleep on the sofa. She went into the kitchen. She was asked to sign a document, and looked at Mr Goepel who nodded and said it was ok. She did not have her hearing aid in so could not hear what Mr Shelley was saying, and she is dyslexic so needs to read documents slowly. She did not read it. Mr Shelley had his hands over it so that she could not do so; she signed

it thinking that she was witnessing Mr Shelley's signature on something else, perhaps a will because of the way he covered it, and had no idea that the document was the transfer of the land. She was not given a copy of the document.

34. At the hearing Mrs Goepel added that the plan attached to the transfer was not right; she did not want to transfer a rectangle but wanted the southern edge to be angled away from Chapel Cottage. She insisted that nothing had been done with the revised plan after it was sent to them by the architects on 31 January, and she could not imagine how Mr Shelley got hold of it or how it came to be attached to the TP1.

#### **Mr Goepel's evidence**

35. I turn now to Mr Goepel's evidence, which was heard for the first time at the hearing.
36. It was Mr Goepel who made clear how the second plan came into being, namely on his instructions. Mr Goepel said he thought he gave the revised plan to Mr Shelley.
37. As to the arrangements with Mr Shelley, Mr Goepel said that the expectation was that Mr Shelley would do some more work for them in return for the land. Asked if this was discussed with Mr Shelley he said it had been discussed weeks beforehand when Mr Shelley initially asked about the land. Mr Goepel was asked if Mr Shelley knew about the recompense that Mr and Mrs Goepel expected, he replied "I expect he knew ... He must have known."
38. Mr Goepel was asked if he knew that Mr Shelley was bringing a witness with him on 9 February, and his response was "It's some time ago, I can't rule it out." He confirmed that he knew that what he was signing on 9 February was the transfer, and that the plan attached to it was, so far as he was concerned, correct. He confirmed that he read it through before signing. He then said that he skimmed it. He said that he did not notice whether the box about consideration was ticked.
39. Mr Goepel did not say that he would not have signed the transfer had he noticed what it said about consideration. He agreed that the wording of the restrictive covenant in box 12 was in accordance with his instructions.
40. As to what Mrs Goepel had said about her execution of the transfer, and her allegation that Mr Shelley prevented her from reading it, Mr Shelley put it to Mr Goepel that he (Mr Shelley) was nowhere near Mrs Goepel when she signed. Mr Goepel said he did not remember, but that he was aware that Mrs Goepel said otherwise and that he "guessed" she was correct; then he said she knew she was correct because she remembers very clearly.
41. Mr Goepel also said that he did not expect the transfer to be registered until the work to be done in exchange for the land was sorted out.

#### **Discussion and conclusion**

42. Did Mr and Mrs Goepel intend to give the land to Mr Shelley? And what happened on 9 February 2017?  
*Was a gift intended?*
43. Mr Shelley did do some work for Mr and Mrs Goepel, and he says he did so as a thank-you for the transfer of the land but not as the price of the land. Mr and Mrs Goepel regard his work as inadequate recompense for cutting the trees down. They say that the transfer was not a gift, and that further work was supposed to be done in return for the land. It has not been explained why, if that was the case, they did not follow



this up with Mr Shelley after the execution of the transfer and ask him to get on with whatever it was that they expected him to do. It would have been very easy to do so since he lived two doors away.

44. They have given no evidence of what it was that they expected. The draft contract that Mrs Goepel has produced after the event was not part of the discussions between the parties.
45. Mr Goepel himself would not go so far as to say there was an agreement that Mr Shelley would do some work, saying only that he “must have known”.
46. Mr Denman has pointed out that Mr Shelley started using the word “gift” only after Mr and Mrs Goepel used it in their application notice in the rectification action. I do not attach any significance to that. Mr Shelley’s evidence, which I accept, is that the transfer was referred to as a gift at the time.
47. In view of my lack of confidence in the truth of Mr and Mrs Goepel’s evidence generally, of Mr Goepel’s very equivocal evidence on this point, and of the lack of any evidence as to what was the work they expected in return for the land, I accept Mr Shelley’s evidence that the land was intended to be transferred free of charge and without any expectation of recompense in work and materials. I accept that he checked this explicitly with Mr and Mrs Goepel both before and on 9 February 2017.

*The execution of the transfer on 9 February*

48. Mr and Mrs Goepel give very different accounts of the meeting on 9 February. Mrs Goepel says she does not know what she was signing. Mr Goepel says he knew what the document was. Mr Goepel read or skimmed it before he signed; Mrs Goepel says she was prevented from doing so.
49. I accept Mr Goepel’s evidence that he knew what he was signing and was content to do so. I find, in view of his hesitation in answering the relevant question, that he was indeed expecting Mr Shelley to arrive with a witness on 9 February. I find that he had no recollection of Mr Shelley covering the paper to prevent Mrs Goepel reading it and I find that he would have noticed if that had happened. On Mrs Goepel’s own account the couple are experienced in property transactions, and I find that neither of them would have gone ahead with an unexpected meeting, an unexpected witness, or a paper that one of them had not read.
50. Mrs Goepel says she thought she was witnessing a signature of Mr Shelley’s, but there is no signature of his on the document that she could have witnessed so it is difficult to see how she could have thought that. If Mrs Goepel’s account were true then it is most surprising that her misunderstanding was not resolved in conversation with her husband afterwards; and if that had happened I would have expected that they would have made contact with Mr Shelley and protested about what had been done. Mrs Goepel’s letter to HM Land Registry in September 2017 does not suggest that she had not intended to sign a transfer of the land.
51. I find that Mrs Goepel, like her husband, knew what she was signing.
52. I do not accept Mr and Mrs Goepel were unhappy that solicitors were not involved. They made no objection to the handwritten document. Mr Shelley’s evidence was that they would have been welcome to take it away and take advice and I accept that; they did not do so because they did not feel any need to do so.

53. I also reject Mr and Mrs Goepel's evidence that they were not given a copy of the transfer. Moreover I do not believe that Mrs Goepel was dissatisfied with the plan in its revised form. Even in her letter of objection to HM Land Registry she did not suggest that there was anything specific that was wrong with the plan; she suggested that the document "might" have been altered but that suggestion is not pursued.
54. Mr and Mrs Goepel executed the transfer knowingly and willingly, on the date when they expected to do so, and its terms were exactly as they expected.
55. In the light of my findings of fact I turn to look at the application to have the transfer set aside on the basis of misrepresentation or mistake, or as an unconscionable bargain.

*Misrepresentation*

56. The misrepresentation claimed is one by silence. It is said that since the agreement was that land would be transferred in return for work and materials, Mr Shelley should have pointed out that the transfer was stated to be for no consideration.
57. Mr Goepel initially said that he read the transfer, and then corrected himself to say that he skimmed it. I do not believe that he would have signed the document without reading it, and I do not believe his evidence that he only skimmed it. So even if the transfer had not been intended to be for no consideration, there would have been no misrepresentation.
58. More importantly, I have rejected the evidence that there was a bargain, with consideration to be given in the form of work and materials. The land was transferred without charge; there was no misstatement in the transfer. Accordingly the application for the transfer to be set aside on the basis of misrepresentation is without foundation and fails.

*Mistake*

59. Mistake was mentioned in Mr and Mrs Goepel's notice of application in the rectification action but was not pursued at the hearing; Mr Denman confirmed that his clients' case was based on misrepresentation and unconscionable bargain. Nevertheless, he developed an argument based on mistake in written submissions that I permitted after the hearing in connection with the allegation of an unconscionable bargain (see paragraph 67 below).
60. I accept that a gift may be set aside on the basis of mistake. But in the light of my findings of fact there was no mistake at all, and this aspect of Mr and Mrs Goepel's case also fails.

*Unconscionable bargain*

61. For a transaction to be set aside as an unconscionable bargain, there must be something wrong with the transaction, and there must be unconscionable behaviour.
62. As to the nature of the transaction, the test may be made out if its terms are hard, unreasonable or foolish (*Boustany v Piggott* [1993] UKPC 17), or if there is an absence or inadequacy of consideration (*Credit Lyonnais v Burch* [1996] EWCA Civ 1292). Whether such matters can ever be relevant to a gift is uncertain; Mr Denman refers to *Hamburg v Goldstein* [2002] EWCA Civ 122, but that was a permission application and it is not clear how far that takes things. It seems to me that in this case the real complaint is that Mr and Mrs Goepel did not intend to make a gift, and the relevant legal doctrines are mistake or misrepresentation. In any event my findings of

fact make all of this irrelevant; there is no possible basis for the transfer to be set aside on this basis. Mr and Mrs Goepel knew what they were signing and were content with it at the time.

63. I think it is important to add that even if I were wrong about that, the evidence cannot support a case based on an unconscionable bargain because of the other requirement namely for unconscionable behaviour. It is essential that the party who is said to have been at fault should have deliberately taken advantage of the other party's vulnerability.
64. What Mr and Mrs Goepel say is that they were vulnerable because of illness and extreme stress. I accept fully, and Mr Shelley did not challenge, what Mr and Mrs Goepel say about how very ill Mr Goepel was at the time, but for a case based on unconscionable bargain to succeed Mr and Mrs Goepel would have to show both that they were in fact vulnerable at the time, and that Mr Shelley deliberately took advantage of that.
65. No medical evidence has been produced to show that Mr and Mrs Goepel's competence or judgment might have been impaired either by Mr Goepel's medical condition or by the stress they were both under.
66. Moreover, Mr Shelley knew Mr Goepel was unwell; but there is no suggestion in the evidence that Mr Shelley had any idea how bad things were. He accepted that Mrs Goepel has asked him to cease from his regular visits for coffee. But there is no evidence that Mr Shelley knew that Mr Goepel had been in hospital, nor that he was aware that Mr Goepel had had surgery or was going to have more.
67. At the hearing Mr Denman said he was sure there *was* such evidence, but could not find it in the bundle; I gave him time after the hearing to produce written submissions to show me the evidence in support of the proposition that Mr Shelley knew how Mr Goepel was and was deliberately exploiting his situation. Mr Denman duly produced submissions, extensively developing the cases in misrepresentation and mistake – which I have disposed of above – and mounting lengthy argument about an unconscionable bargain. But he has not pointed me to any evidence to the effect that the Mr Shelley knew more than that Mr Goepel was unwell.
68. In any event, since I have found that the transfer was exactly as Mr and Mrs Goepel expected, there was no advantage taken. Mr Denman says in his written submissions that Mr Shelley pressed the transaction upon them, but even on Mr and Mrs Goepel's own evidence there is not the slightest hint of pressure.

### **Conclusion**

69. Mr Shelley says, and I accept, that Mr and Mrs Goepel agreed to give him some land; he had a transfer drafted, and he arranged for execution at a time that suited them. In preparing the transfer Mr Shelley used the plan provided by Mr and Mrs Goepel, and included the restrictive covenant that they had asked for. Everything was as they wanted.
70. Since that date the parties have fallen out, for reasons which do not concern me; Mr and Mrs Goepel have repented of their generosity; Mrs Goepel has referred to Mr Shelley as a sociopath for reasons that wholly escape me. But that change of mind does not vitiate the transfer. Their application to set it aside fails. Accordingly, in the

registration reference I have directed the registrar to give effect to the application to register as if Mrs Goepel's objection had not been made.

Dated this 2 January 2019

Elizabeth Cooke



BY ORDER OF THE TRIBUNAL