

[2019] UKFTT 0114 (PC)

REF/2018/0277

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

BETWEEN

FREDERICK EVERTON HAZELL

APPLICANT

and

**PAULETTE TYNA KING
DENNIS ALBARICK KING**

RESPONDENTS

Property Address: 240 Galton Road, Smethwick B67 5JL

Title Number: WR23897

Before: Judge Owen Rhys

Sitting at: Birmingham Employment Tribunal

On: 14th January 2019

ORDER

IT IS ORDERED THAT the Chief Land Registrar shall give effect to the Applicant's application in Form RX1 dated 28th November 2017. .

Dated this 23rd day of January 2019

Owen Rhys

BY ORDER OF THE TRIBUNAL



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Applicant representation: Mr Skudra of Counsel instructed by Ian Henery
Solicitors Ltd

Respondent representation: In person

D E C I S I O N

1. On 28th November 2017 the Applicant applied to enter a restriction against the title to the property known as 240 Galton Road, Smethwick B67 5JL, as the same is registered at HM Land Registry under title number WR23897 (“the Property”). The Property is registered in the joint names of the Respondents. They objected to the application, and on 26th March 2018 the Land Registry referred the dispute

to the Tribunal. I heard this case in Birmingham on 14th January 2019. Evidence was given by the Applicant and by the first Respondent, Mrs King. Mr Skudra of Counsel represented the Applicant, and the Respondents were unrepresented.

2. The Applicant is the first Respondent's brother. The second Respondent is his brother-in-law. Prior to February 2012 the Respondents lived in rented accommodation in Birmingham with their family, and also the first Respondent's mother. According to Mrs King, the accommodation was somewhat crowded, and her mother was occupying a bedroom together with three of her children. It seems that Mrs King wished to buy a larger property, for which she would need to raise a loan on mortgage. However, her financial status was such that she needed to provide a substantial cash deposit before she could contemplate a mortgage. She therefore asked her brother David, and the Applicant, to help her out. They therefore loaned her a sum of money to be used as a deposit. However, despite the deposit, her income was insufficient to obtain a mortgage, and as a result David asked for his money back. These facts are all agreed.
3. The plan then changed. It was decided that the Applicant would pay for the house from his own resources. It is common ground that the Applicant made several money transfers to Mrs King in 2011: £144,000 on 27th June 2011, £32,000 on 23rd August 2011, and £2000 on 24th September 2011. On 17th February 2012 the Property was vested in the joint names of the Respondents. The funds for the purchase were provided entirely by the Applicant. This is agreed. Subsequently, on 7th May 2014, the Applicant provided a further sum to Mrs King - £24,000 – which was used to add an additional bathroom to the Property. This also is agreed. In total, therefore, the Applicant transferred the sum of £202,000 to Mrs King. These sums were either used to purchase the Property (at £125,000) or to pay for the extensive refurbishment and improvements that took place after the purchase.
4. Mr Skudra relies on the doctrine of resulting trust. A presumption of a resulting trust occurs where A has paid for property which is then vested in B's name. It is a very well known doctrine, and Mr Skudra has cited Snell's Equity (33rd ed.) at para 25-004 and Westdeutsche Landesbank Girozentrale v Islington LB [1996] A.C 669 at 708 in support. Although the presumption may not apply in the case of

cohabitees who buy a property for their shared occupation, and the doctrine might be considered to have been somewhat diluted in recent years, in my judgment it applies with full vigour in a case such as the present one. However, it is only a presumption – namely, it is presumed that the nominal purchaser holds the property on trust for the person who provided the purchase price. Like any presumption, it may be rebutted by evidence of the parties' true intentions.

5. The Applicant's case is simple. He says that he agreed to purchase a house where his mother could live with the Respondents and their family. He says that he assumed that the house would be put into his name, but did not at the time take any steps to ensure that this happened. He says that the family had always operated on the basis of trust and he trusted Mrs King to protect his interest. He believed that once his mother had ceased to reside at the Property, or on her death, he would get the Property back. He did not intend to make a gift of the monies to the Respondents, as they well knew. He maintained this position throughout his cross-examination.
6. The Respondents' case is that the monies used to fund the purchase, and to pay for the improvements, were intended as an outright gift. In her evidence, Mrs King said that she would not otherwise have agreed to give up her existing accommodation and move into the new house. She says that she was giving up the security of the rented accommodation for an uncertain future in the new house. She insisted that it was understood that the house belonged to her. She said on many occasions that it was her mother's "*last dying wish*" that she should have the Property. She was asked what that expression meant, bearing in mind that Mrs Hazell is alive and well. Essentially, it meant that her mother wanted her to own the Property.
7. There is a direct conflict of evidence between the Applicant and his sister, Mrs King. It might assist in resolving the conflict to look at any contemporaneous documentary evidence that may exist. As it happens, there are a number of emails passing between the parties which may shed some light on their true intentions. The relevant extracts from these emails are as follows:

- (1) Mrs King to the Applicant 6th April 2011: *“Spoke to Mum last night and she seems very happy that you are going to help us get a bigger place so that she can stay with us and wants me to start looking to see what is available.”*
- (2) Mrs King to the Applicant 29th April 2011 (11.50): *“Hi Frederick. This is the house that I am going to look at next week. Will let you know what it looks like inside. This is the cheapest one I have seen so far.”* A link to a property website was included.
- (3) The Applicant to Mrs King 29th April 2011 (17.38): *“Thanks, Paulette. I know that you will look not only at the price but also whether there is enough space (and bathrooms) to accommodate everyone.”*
- (4) Mrs King to the Applicant 29th April 2011 (1.03): *“OK. Will do. You and I can only try our best for Mum. Don’t worry I will pay you back for this. The money that I have been paying for rent will go towards paying you back and a bit extra.”*
- (5) Mrs King to the Applicant 30th May 2011: *“Hi Frederick. Wondered if you could do us a favour. We went to see this house about a month ago and they said that a offer had been made on the house and the people had a month to complete. But we can still see the house for sale on the internet. ... So I thought if you contacted them and explained that you wanted to buy the property for your mum and see what they say. Let me know. I am going to ring them again this week to see what they say.”*
- (6) Mrs King to the Applicant 30th May 2011: *“Hi Frederick. How are things? Mom was wondering what was happening with the money transfers. Have they been done yet?”*
- (7) The Applicant to Mrs King 20th August 2011(13.54): *“If the house is in good shape and you don’t have to spend too much to make it livable, then £225,000 (instead of 230,000) might be OK. But the first thing you have to sit down and do is to figure out how much money you need. Let me know how much more money you wil need to be able to buy it at 225,000.*

You keep referring to a “loan”. I sent you the mortgage calculation table some time ago so that you can understand that it il be impossible for you to pay back the money that David and I sent to you. You can try to pay as much as you can over time but unless there is a huge increase in your income it just cannot be done. It is good to dream but it is not the real world.”

(8) Mrs King to the Applicant 20th August 2011 (3.21 pm): *“I understand what you say about the money. Just that if I could I would like to pay back. But I understand about what you are saying..... If I every was to win the lottery I would pay you back, double the price, but I can only keep dreaming I guess.”*

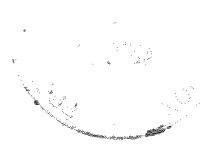
(9) Mrs King to the Applicant 16th November 2011: *“Mom has seen one [a house] that would suit us all just up the road which is really nice, but the only problem is that we are about 10,000 short. Mom said that I should ask you if you would be able to help us since David let us down and took back his money. Please let me know if you can help us with the situation as it was just the same as before and I know that you said that you would help. I know that you have helped us so far..... I would not contact you if I was not really desperate and have no one else to ask for help. Have been to the bank but no luck there.”*

8. Having heard the evidence of the witnesses, having regard to the emails, and the inherent probabilities of the case, I have reached the conclusion that the monies transferred to Mrs King were not advanced by way of gift or loan. In my judgment, the position was as stated by the Applicant, namely that he was buying a house to enable his mother to live there with his sister’s family with no intention of making an outright gift of the purchase monies. Nor was the money loaned for the reasons given in the emails – namely that Mrs King could not possibly afford to repay. The Applicant stated that he believed the house would be conveyed into his name. Whether or not that is the case, I hold that the presumption of resulting trust applies, and the Respondents have not been able to supply any credible evidence to rebut the presumption.

9. It follows that the Applicant is entitled to enter a restriction against the title to the Property in order to protect his interest. I shall therefore direct the Chief Land Registrar to give effect to the Applicant's application in Form RX1 dated 28th November 2017. I should make it clear that this Decision does not in any way require the Respondents to vacate the Property. The Applicant made it clear, through Counsel, that he did not wish to evict the Respondents and their family from the Property. However, as the sole beneficial owner the decision as to the future of the Property is a matter for him.

Dated this 23rd day of January 2019

Owen Rhys



BY ORDER OF THE TRIBUNAL