



[2019] UKFTT 0157 (PC)

REF/ 2016/0131

PROPERTY CHAMBER, LAND REGISTRATION DIVISION  
FIRST-TIER TRIBUNAL

LAND REGISTRATION ACT 2002

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

BETWEEN

MICCLE CHESTER

APPLICANT

and

BARRY ANTHONY WEST

RESPONDENT

Property Address: Land at Penweathers Vean, Truro TR3 6EA

Title Number: CL2237433

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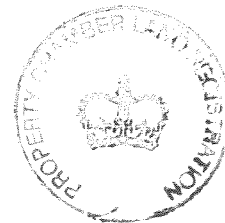
ORDER

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The Tribunal orders that the Chief Land Registrar do cancel the application of the Applicant, Miccle Chester dated 20<sup>th</sup> November 2015 to register a transfer dated 1<sup>st</sup> November 2015

Dated this 8<sup>th</sup> February 2019

*Michael Micheli*



BY ORDER OF THE TRIBUNAL



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FIRST-TIER TRIBUNAL

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

BETWEEN

MICCLE CHESTER

APPLICANT

and

BARRY ANTHONY WEST

RESPONDENT

Property Address: Land at Penweathers Vean, Truro TR3 6EA  
Title Number: CL223743

Before: Judge Michell

Sitting at: Truro Magistrates Court

On: 18<sup>th</sup> September 2018

Applicant Representation: Mr Colin Elliott, counsel

Respondent Representation: In person

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DECISION

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1. This is a contested application by Mr Miccle Chester to register a transfer of an area of woodland at Penweathers, near Truro to him. The land is registered under title number CL223743. I shall refer to the land in this title as “the woodland”. The registered proprietor of the woodland is the Respondent, Mr Barry West. The transfer

sought to be registered is a TR1 form dated 1st November 2015. Mr Chester applied to register the transfer by a form AP1 dated 3<sup>rd</sup> November 2015. The application was accepted by HM Land Registry on 20<sup>th</sup> November 2015 and notice was given to Mr West. Mr West objected the application by letters dated 2<sup>nd</sup> December 2015 and 10<sup>th</sup> December 2015. Mr West's case as to the TR1 is somewhat curiously phrased. He accepts that the signature on the TR1 is his signature but he says that he did not put the signature on the document and he does not know how it came to be there.

2. The woodland is an area of about 5 acres. It is bound on one side by a railway line. Trees on the woodland are subject to a tree preservation order made by Carrick District Council in December 1987. The woodland is separated from the nearest highway by a thin strip of land registered under a different title. The only means of access is over that strip. The woodland and the thin strip between it and the highway have been the subject of more than one set of proceedings in the County Court and in this Tribunal. Those proceedings have included Mr Chester's former use of the woodland (including the keeping of goats on it), enforcement action taken by the local authority, the validity of a local land charge over the woodland and access over the strip. Mr West owns a printing shop and business in Truro. It is common ground that he has printed and photocopied documents for Mr West, mainly relating to the various sets of proceedings.
3. Mr Chester acquired the woodland in 1987. In 1996 Carrick District Council served a notice on Mr Chester under s. 215 of the Town and Country Planning Act 1990. The District Council then brought criminal proceedings against Mr Chester for breach of the notice, which lead to Mr Chester being fined and he says, an order that if the fine was not paid, the land be sold and the proceeds used to pay the fine. Mr Chester paid the fine. In 2005 Carrick District Council served a further s. 215 notice on Mr Chester.
4. Mr Chester acquired another piece of land near the village of Summercourt. This is an area of damp grassland in the parish of St Enoder Cornwall. It is registered under title number CL142620. It was water logged when Mr Chester bought it and was referred to in the proceedings as "the marshland". I shall use that term to refer to it in this Decision.

5. In 2005 Mr Chester transferred title to the woodland and the marshland to Mr William Rowland. Mr Chester said in his statement of case that he had registered the woodland in Mr Rowland's name "for credit given. The credit was against back rent on storage facilities and for a study done". In his witness statement Mr Chester repeated the explanation he gave in the statement of case for transferring the woodland to Mr Rowland but went on to state that so far as he was concerned the main purpose of the transfer was to minimize the risk of a forced sale of the woodland by Carrick District Council. In his oral evidence Mr Chester said that at this time he was having difficulties with the District Council over concerns about the welfare of goats he kept. He thought it best to put the land in the name of Mr Rowland so that the Council could not get it. Mr Chester served a witness statement of Mr Rowland in the form of an email sent from Mr Chester's email address to a Mr Ian McChesney on 18<sup>th</sup> March 2016 and to which a statement of truth in manuscript was added dated 17<sup>th</sup> August 2016 with a signature of Mr Rowland. That statement says that during 2005 Mr Rowland was commissioned by Mr Chester to carry out a survey of land at Penweathers Vean, Truro, covering wildlife and plant species. Mr Chester had difficulty paying for the study. Mr Rowland accepted the woodland and the marshland "on credit" "against the debt owed" and that the agreement was that when the debt was paid, Mr Chester would have the land back. When the debt was paid, Mr Rowland signed both pieces of land to Mr West. The "value on the land register forms were against the credits that Mr West was allowing m Chester for printing services". In his oral evidence Mr Rowland said that the reason the woodland was transferred to him was because Mr Chester was concerned that he might lose the land. Mr Rowland said nothing about having conducted any survey for which he was to be paid by Mr Chester.
6. In November 2008 Carrick District Council took enforcement action against Mr Chester pursuant to s. 219 of the Town and Country Planning Act 1990, which involved the Council's contractors clearing items from the woodland. The Council notified Mr Chester that it intended to claim the costs of the clearance against him and to enter a local land charge in respect of those costs against the woodland.
7. Mr Chester complained to the Local Government Ombudsman about the Council having removed materials from the woodland in the course of the clearance that the

Council classified as waste but which Mr Chester said were not waste. Mr Chester's complaint was rejected by the Ombudsman who found that the Council was correct to classify the material taken as waste. In 2010 and 2011 Mr Chester sought to involve his Member of Parliament in his complaint about the disposal of the materials. On 24<sup>th</sup> February 2011 the Member of Parliament for Truro & Falmouth, Mrs Sarah Newton wrote to Mr Chester stating that she was not prepared to challenge the decision of the Ombudsman.

8. On 24<sup>th</sup> November 2008 Mr Rowland executed a transfer in form TR1 of the marshland to Mr West. The TR1 contains a statement that the transferor had received from the transferee for the property the sum of £4,500. The TR1 form was filled in by Mr Chester and made by Mr Rowland at Mr Chester's request. It is common ground that Mr West did not pay any sum for the marshland. Mr Chester's explanation for the entry of the figure of £4,500 as the consideration for the transfer was that he plucked the figure out of the air. He did not want to make the figure look too small. Mr West did not pay that or any amount for the marshland.
9. The reason Mr Rowland gave for having executed the transfer was that he did not want to become involved in trouble with the Council. Mr Chester's case as stated in his statement of case as to why the transfer was made of both the woodland and the marshland to Mr West was that he had "paid the debt owed to W Rowland" and that the land was transferred to Mr West because Mr West had given him credit for printing work. Mr Chester stated in his witness statement dated 14<sup>th</sup> September 2016 that he had become concerned that the Council would discover that Mr Rowland was the owner of the woodland and the marshland and might pursue a sale of both plots of land to meet the costs of the clearance. In his oral evidence, Mr Chester said that Mr Rowland told him he had been asked by his family not to become too involved and did not want the land to remain in his name. He said that he needed to find someone to hold the land on trust for him. He thought Mr West might be interested because he was doing some printing work for Mr Chester and having the land would provide him with some security that he would be paid for that work. Mr Chester said that this would also protect his interest in his stock of goats and "put Cornwall Council off the sent" and give him more time to find other land on which to keep the goats. Cornwall Council became the successor authority to Carrick District Council on 1<sup>st</sup> April 2009

and it is clear that Mr Chester intended to refer to the District Council. Mr Chester said that he told Mr West he was having trouble with the Council and asked if he would take the woodland on for him “in trust”.

10. Mr West’s evidence as to why the marshland was transferred to him was that Mr Chester asked him to help him out and he agreed to do so. Mr West knew that Mr Chester was concerned about losing the land to the District Council. Mr Rowland and Mr West both signed the transfer in the presence of a solicitor. Mr Chester said he paid the solicitors and the Land Registry fee. Mr West said Mr Chester paid the solicitors’ fees but he, Mr West, paid the Land Registry fee.
11. On 28<sup>th</sup> November 2008 Cornwall County Council as highway authority placed large boulders in front of the gate into the woodland to prevent vehicular access from the highway.
12. On 12<sup>th</sup> May 2011 Mr Rowland executed a transfer in form TR1 of the woodland to Mr Barry West. The TR1 contains a statement that the transferor had received from the transferee for the property the sum of £750. The box had been ticked in section 9 of the form to state that the transferor transfers with full title guarantee but against these words Mr Chester wrote “except the mineral rights”. The TR1 was filled in by Mr Chester and executed by Mr Rowland with Mr Chester signing as witness to his signature. It was not executed by Mr West. Mr Chester’s evidence as to why the consideration was stated to be £750 was that he chose this figure as being less than £1,000 which meant that Land Registry would not require the parties to provide identification certificates signed by a solicitor in form ID1 as had been required in the case of the earlier transfer of the marshland. Mr West accepted he did not make a cash payment for the woodland but he said that he gave Mr Chester a cooking range in return for the land and agreed to carry out Mr Chester’s printing requirements. Mr Chester denied that he was given a cooking range of any value by Mr West or that it was given in return for the woodland. Mr Chester paid the Land Registry fees for registration of the transfer.
13. Mr Rowland’s evidence as to the reason why he made the transfer of the woodland was the same as for the transfer of the marshland. He did not want to be involved in

any problems with the Council. Mr Chester's evidence as to the reason for the transfer to Mr West was that Mr Rowland was concerned because he did not want to be involved any more in Mr Chester's disputes with the Council and asked him to take the woodland back. Mr Chester said that he had not wanted to transfer the land into Mr West's name in November 2008 because of the dispute with Cornwall County Council over the placing of boulders between the woodland and the highway. According to Mr Chester's witness statement, in about May 2011 Mr West was suggesting to Mr Chester the idea of entering into a joint venture with Mr West to grow Christmas trees on the woodland. Mr Chester said that Mr West said he would pay the associated costs of the joint venture but wanted the woodland put into his name "for security". In cross-examination, Mr Chester said that there was no Christmas tree project. He said that he did not discuss a Christmas tree project with Mr West although in a letter to the Tribunal dated 1<sup>st</sup> January 2018 Mr Chester said that he explained to Mr West many times that the Forestry Commission would not allow Christmas trees to be planted on the woodland.

14. Mr West's evidence was rather different. He said that Mr Chester was concerned he might lose the woodland. He said that Mr Chester told him there was a local land charge on the land for £24,000 and if Mr West took the woodland, he would be liable for the £24,000. Mr West said that in that case then he wanted to have the land and he would grow Christmas trees on it. Mr West said in cross-examination that he was safeguarding Mr Chester from losing the land by taking it on and was making himself liable for £24,000. He said that he was not saying it was his land. He and Mr Chester were entering into a business venture involving the woodland. He was safeguarding Mr Chester's land.

15. In 2012 Mr Chester caused the small area of land between the highway and the woodland to be registered in the name of Mr Ian McChesney. Mr McChesney gave evidence. He said that he agreed to the land being registered in his name as a gesture of goodwill. He knew the woodland was registered in the name of Mr West but understood that it was controlled by Mr Chester. He said that he was subsequently given notice by Network Rail that he would be responsible for any damage that arose to the railway from access to the woodland. He then transferred the land back to Mr Chester.

16. In about 2009 Mr Chester brought proceedings in the County Court at Truro in the name of Mr West against Cornwall Council in respect of the removal and disposal of timber said to belong to Mr West from the woodland at the time of the clearance by Carrick District Council in 2008. Mr Chester said that he had Mr West's permission to bring the proceedings. He said that Mr West withdrew the proceedings when he was contacted by the Council about its costs of the proceedings. Mr West said in cross-examination that he did not know about the claim until after Mr Chester had started the proceedings using his name.
17. On 24<sup>th</sup> February 2011 Mrs Sarah Newton, Member of Parliament for Truro and Falmouth wrote to Mr Chester. In that letter, Mrs Newton stated that she was aware Mr Chester had entered Mr West's name onto a court action against Carrick District Council without Mr West's consent. She went on to say that that meant that Mr West could not approach the Local Government Ombudsman in connection with the loss of his materials but that her office was now helping him to make a complaint and the complaint had been accepted for investigation.
18. On 6<sup>th</sup> February 2012 Mr West wrote a letter headed "Re illegal removal of items". In the letter he said that Carrick District Council had removed from the woodland a large amount of wood that was seasoning for use as fuel for his wood burner at home although it had been informed before that the wood was not covered by any court order. Mr West said in cross-examination that this letter was sent to the Local Government Ombudsman.
19. On 6<sup>th</sup> June 2013 a letter was sent purportedly from Mr West to the solicitors for Network Rail stating that the writer had asked Mr Chester to find out if Network Rail was going to object to a right of way application and that Mr West required access to the woodland to collect seasoning fuel wood for the winter months. The letter is signed "B West" but the signature is different from the signature of Mr West on letters to the Tribunal. Mr Chester denied in cross-examination that he wrote this letter. He said that Mr West wrote and signed it. Mr Chester said that he had applied to Network Rail for a right of way over its land to and from the woodland 4 or 5 times but had made mistakes in the application. He was told that Mr West had to sign the



application. Mr West was in Portugal at the time and when he returned, according to Mr Chester, Mr West wrote the letter.

20. Mr West's evidence was that he did not write this letter. He claimed that it was written in the style of Mr Chester and included a number of phrases he would not have used. However, in cross-examination he accepted that he had used a number of the phrases in the letter that had been highlighted by his brother when writing to the Tribunal on his behalf as phrases he would not have used. Mr West said that he did not know an application for a right of way to the woodland had been made to Network Rail in his name. However, he accepted in cross-examination that a letter from Network Rail about the application and addressed to him must have come to him. Mr Chester produced a letter in manuscript bearing Mr West's home address, addressed to "To whom it may concern, signed by Mr West and having on it Mr West's business telephone number. The body of the letter reads

"This is to allow Mr M Chester to act on my behalf with respect to an application for right of way over Network Rails land at Penweathers".

Mr West said that he could not recall the letter but he did not deny that it was in his handwriting and signed by him.

21. Mr West gave Mr Chester an invoice dated 23<sup>rd</sup> October 2013 for printing work. Mr West said that he gave it to Mr Chester to use in a claim by him for costs in court proceedings. Mr West claimed that it was a genuine invoice but he accepted that he had not made any agreement for Mr Chester to pay for the work before it was done and was not expecting Mr Chester to pay.

22. On 13<sup>th</sup> April 2015 in proceedings in the County Court at Truro between Mr Chester and Cornwall Council Cornwall Council agreed in a consent order to remove the boulders from the strip between the woodland and the highway.

23. On 4<sup>th</sup> June 2015 Mr Chester and Cornwall Council agreed the terms of a consent order in Tomlin form of a claim brought by Mr Chester against the Council. The terms as set out in the Schedule to the Order provided that in full and final settlement of all claims the Council and Mr Chester might have against each other arising out of clearance of the woodland by the Council, (including any claims the Council might have against Mr Chester for the recovery of its expenses of such clearance under s.

219 of the Town and Country Planning Act 1990) the Council would remove the local land charge registered against the woodland in the register of local land charges, agree not to register the local land charge at HM Land Registry and not seek to register any further local land charge against the woodland or any other land in respect of the expenses incurred in the clearance of the woodland in November 2008.

24. On 20<sup>th</sup> June 2015 Mr West executed a form TR1 to transfer the marshland to Mr Chester. The consideration for the transfer was said to be £1,500 received by Mr West from Mr Chester. No such sum was in fact paid or received. Mr Chester said that he plucked this figure out of the air. Mr West signed the form at 68 Lemon Street, Truro being the address of his business premises. Mr Chester said that Mr West wrote in his address. Mr West's signature was witnessed by Mr D Penhaligon whose address is stated on the form to be 13 Albert Place, Truro TR1 2DL. Mr Penhaligon wrote in his address. The rest of the form was filled in by Mr Chester. Mr Chester also signed the form and wrote his address beside his signature. The TR1 signed by Mr West in the presence of Mr Penhaligon. Mr Chester paid the Land Registry fee to register the transfer.
25. Mr Chester's case in his statement of case was that "during 2015" he paid Mr West for the printing work done for him by delivering to him 5 loads (of 10 cubic metres) of wood. There was evidence as to whether Mr Chester had or had not delivered wood to Mr West though the evidence of the delivery of wood was in a period before 2015. Mr Patrick Collins gave evidence that together with Mr Chester he had delivered two loads of oak logs to Mr West's home over two consecutive days in about 2010 using a tractor and trailer. Mr Brighton, Mr West's neighbour gave evidence that he had only seen Mr Chester deliver timber to Mr West on one occasion. Mr McChesney stated in his witness statement that in 2015/2016 Mr Chester provided firewood to Mr West from firewood he and Mr West had purchased together for a biomass fuel project.
26. Mr West's evidence in cross-examination was that he had only one delivery of wood from Mr Chester. That was in 2011 and comprised some damp wood from the marshland and about 8 to 10 logs measuring 8' by 6".
27. Mr Chester said in his oral evidence that he requested the marshland back from Mr West because the local land charge on the woodland had been removed. In cross-

examination Mr Chester said that he did not ask Mr West to transfer the woodland back to him in June 2015 because he thought Mr West would be better able to deal with the Council about the bollards outside the gate to the woodland.

28. Mr West said that he transferred the marshland to Mr Chester because Mr West asked him to do so. He did not know why Mr Chester asked him. Mr Chester did not tell him.

29. What happened between 20<sup>th</sup> June 2015 and 2<sup>nd</sup> November 2015 so far as may be relevant seems to have been the following. According to Mr Chester at some time after the County Council had agreed to remove the boulders, Mr West asked Mr Chester to transfer the strip to him. Mr Chester said in his witness statement that Mr West asked him to do so because Mr West believed he would be able to use the strip to access the woodland. Mr Chester said that at this time Mr West “began to give indications that he wanted to keep [the woodland] for himself”. On or about 8<sup>th</sup> August 2015 the Council replaced the boulders with bollards on the highway which prevented vehicular access to the woodland.

30. Mr West said that he approached Mr Egerton, a County Councillor and friend of his, for help in getting the bollards removed. Mr West accepted that he probably did discuss with Mr Chester his conversations with Mr Egerton. Mr Chester said that Mr West told him Mr Egerton said the highway was an unclassified road and that Mr Chester told him it was a classified road. Mr West denied that this had been said.

31. On 25<sup>th</sup> September 2015 Mr Chester applied to the Forestry Commission for a licence to fell 2000 birch trees on the woodland (giving an estimated area of 2.5 hectares) and stating that he intended to restock the site with ash. A question mark appears written on the form beside the word “ash” and “spruce” is written below the question mark. In a box at the bottom of the application form marked “Please provide further information about the proposed restocking” is written “the plan is fell the birch & restock with ash. don’t forget spruce and pine”.

32. In his witness statement, Mr Chester said that by about the end of October 2015 Mr West realised that he would not be able to exploit financially the woodland in any way and agreed to transfer it back to him provided that Mr Chester made some payment.

33. Mr Chester's explanation in his oral evidence for wanting the woodland transferred back to him at the end of October 2015 was that Mr West had been reporting to him on conversations with a County Councillor Mr Egerton, to whom Mr West had been speaking about getting the barriers removed so as to allow access to the woodland. Mr Chester said he thought Mr Egerton had been telling Mr West "untruths" and decided that he needed the woodland back in his name. What Mr Chester did not explain in his evidence was why he did not ask for the return of the woodland to his name at the same time as the marshland.
34. Mr Chester said in his witness statement that he and Mr West had a "fairly heated discussion" about how much Mr Chester should pay for Mr West to transfer the woodland to Mr Chester. Mr Chester said that Mr West agreed to accept £200 and that he paid Mr West £200 in cash on 29<sup>th</sup> or 30<sup>th</sup> October 2015. In his oral evidence, Mr Chester said that Mr West told him he had put in a lot of work in respect of the woodland and Mr Chester would not get the land back for nothing.
35. Mr Chester said in his witness statement that on 1<sup>st</sup> November 2015 he went to Mr West's shop in Lemon Street with a partially completed TR1 and that Mr West signed the TR1 in front of him. Mr Don Penhaligon signed the TR1 in front of Mr Chester, attesting Mr West's signature. At the start of his oral evidence, Mr Chester said that he paid the £200 the week before the 1<sup>st</sup> November 2015. He then said that he paid the money on 29<sup>th</sup> or 30<sup>th</sup> October 2015. Mr West told him that he might be working on the following Saturday or Sunday and would telephone Mr Chester. Mr West did telephone Mr Chester on the Saturday and possibly on the Sunday 1<sup>st</sup> November 2015. He also telephoned Mr Chester on 2<sup>nd</sup> November 2015, as appears from the mobile telephone records he disclosed. Mr Chester said he went to Mr West's shop on Monday 2<sup>nd</sup> November 2015. Mr Chester had stated in his witness statement that Mr West had not telephoned him in November 2015 "or indeed at all". In cross-examination, he said that his witness statement was wrong and Mr West had called him.
36. Boxes 1 to 9 of the TR1 on which Mr Chester relies were completed by Mr Chester. In the date box is written "1.11.15 / November . 15". The two figure "1" s to make the number "11" are written very close together, i.e. not naturally spaced but as if a

single “1” was written before the “15” and the second “1” was added later. Mr Chester said that he filled in the form and in doing so anticipated that he would take the form for Mr West to sign on Sunday 1<sup>st</sup> November 2015 so he put in the 1<sup>st</sup> November 2015 as the date. I should note that Mr Chester provided this explanation at the start of the hearing and only after it had been pointed out by Mr West in his skeleton argument that the 1<sup>st</sup> November 2015 was a Sunday.

37. The consideration inserted in box 8 as received by the transferor from the transferee is £1500. Mr Chester’s evidence was that it was not intended that he should pay more than the £200 he had already paid. He just picked a figure to go in the box, which was less than £3,000 because he believed that if a figure of £3,000 or more was the consideration then Land Registry would require ID1 forms to be signed by a solicitor.
38. In box 12, the execution box, Mr Chester wrote “Signed as a deed by and in the presence of”. Below this on the left-hand side he wrote on consecutive lines he wrote, “BARRY WEST”, “Address”, “Witness” and “Address”. Below that, across the box he wrote his name and address. These elements written in the box by Mr Chester are not a tracing or mechanical or photographic copy of the same words appearing on the TR1 relating to the marshland and dated 20<sup>th</sup> June 2015.
39. Next to the name “BARRY WEST” there is a signature that Mr West accepts is [identical to] his signature but which he says he did not put on the document. To the right of the signature is the word “home” followed by Mr West’s home address. That address does not appear on the 20<sup>th</sup> June 2015 TR1. Mr Chester said that he wrote in this address on the form while in Mr West’s presence. He said that he did so because he thought Mr West had given his home address on a previous deed and he did not want any confusion at HM Land Registry that might be caused by different addresses appearing for Mr West. Below the signature is written Mr West’s business address. Mr Chester said that he wrote on the business address before he took the form to Mr West for signature. The address is written on two lines, whereas the same address is written over three lines on the 20<sup>th</sup> June 2015 TR1. Below the address and next to the word “Witness”, there appears a signature “D Penhaligon”. The signature appears very similar to the signature of Mr Penhaligon on the 20<sup>th</sup> June 2015 TR1 but some small differences (e.g. the width of the letter “e”) indicate that it is not a tracing or mechanical or photographic copy of the signature on the 20<sup>th</sup> June 2015 TR1. Below

the signature is written Mr Penhaligon's address. Mr Chester said that Mr Penhaligon wrote in this address. It is apparent from looking at the document, that the address is not a tracing or mechanical or photographic copy of the address on the 20<sup>th</sup> June 2015 TR1.

40. Mr Chester said that the only example he had of Mr Penhaligon's signature before the 1<sup>st</sup> November 2015 was the signature on the transfer of the marshland dated 20<sup>th</sup> June 2015.
41. Mr West made a witness statement (without a statement of truth) in the form of a letter dated 23<sup>rd</sup> October 2017. In that statement Mr West said that Mr Chester did not visit his premises after June/July 2015. Mr West said that he did not sign the TR1. Apart from this, the statement does not deal with the detailed facts of what Mr West said happened.
42. In a letter to the Tribunal dated 9<sup>th</sup> December 2016 Mr West said that he did not contest the fact that the purported signatures of himself and Mr Penhaligon on the 1<sup>st</sup> November 2015 TR1 were "true facsimiles" of their signatures. He said they were copied examples deceptively applied to the TR1 in an attempted fraud. In cross-examination, Mr West accepted that Mr Penhaligon's signature on the 1<sup>st</sup> November 2015 TR1 was not a copy of the signature on the 20<sup>th</sup> June 2015 TR1 and accepted that Mr Chester had not had other examples of Mr Penhaligon's signature. He accepted that the address for Mr Penhaligon appearing on the 1<sup>st</sup> November 2015 TR1 was not a copy of the address from the 20<sup>th</sup> July 2015 TR1. He stated that Mr Chester had not handwritten the addresses on the 1<sup>st</sup> November 2015 TR1. Mr West said that Mr Chester had had many examples of Mr West's signature but he accepted that the signature on the 1<sup>st</sup> November 2015 TR1 was not the same as any of the examples of his signature in the trial bundle.
43. Mr West produced his telephone bill for the period October to December 2015. The bill lists two calls to Mr Chester's number in October 2015, the latter being on 20<sup>th</sup> October 2015 and calls to Mr Chester's number on 1<sup>st</sup> and 3<sup>rd</sup> November 2015, the latter lasting for 21 minutes. There was no evidence about what was said during this telephone conversation.

44. Mr Penhaligon signed a letter dated 30<sup>th</sup> June 2016 addressed to “To whom it may concern” in which he wrote “concerning my involvement with the signing of a Land Transfer Deed as witness and signing of a further transfer document alleged by a Mr M. Chester which I supposedly signed in November 2015”. He went on to write

“I agree that I signed one form on the 20<sup>th</sup> June 2015 regarding land at Summercourt, of the second form for November 2015 I have no knowledge of. At this November date I no longer came to work for Mr West, his daughter had taken my position, I did however help Mr West in the latter part of December 2015”.

He went on to state in the letter that it was impossible for him to have signed a form in November as he had not seen Mr Chester since the middle of 2015. There was not statement of truth on the letter but Mr Penhaligon confirmed the truth of the contents of the letter at the beginning of his oral evidence. Mr Penhaligon also made a witness statement dated 20<sup>th</sup> February 2017. In the statement he said that he worked infrequently up until October 2015 and did not attend the shop from then until around Christmas time in December 2015. He said that he had not met Mr Chester face to face since June 2015. He accepted that the signature on the TR1 dated 1<sup>st</sup> November 2015 was not a direct copy of his signature on the 20<sup>th</sup> June 2015 TR1 and said that the signature on the 1<sup>st</sup> November 2015 must have come from somewhere else.

45. In cross-examination, Mr Penhaligon accepted that the first time Mr Chester had access to Mr Penhaligon’s signature was when he signed the 20<sup>th</sup> June 2015 TR1. He also accepted that more often than not, up to the summer of 2015, Mr West was with him in the shop when he was working. He said that he could not recall when he was working in the shop in October and November 2015. He could have been working in the shop on 2<sup>nd</sup> November 2015. Mr Penhaligon accepted that his address on the 20<sup>th</sup> June 2015 TR1 appeared to be in his handwriting and that that was the only example Mr Chester would have had of his address. He accepted that the handwriting used for his address on the 1<sup>st</sup> November TR1 looked like his handwriting and that the address on that TR1 was not a direct copy from the 20<sup>th</sup> June 2015 TR1.

46. Mr West’s daughter, Charlotte West gave evidence. In her witness statement, Miss West said that she took up working for her father at his printing shop in February 2015 and has worked there ever since. She said that she did not see Mr Chester come into the shop from July 2015. She said that Mr Penhaligon would come into the shop

when her father was not working so that she could collect her children from school. She said that from October 2015 Mr Penhaligon did not attend the shop. In cross-examination, she said that she did not work in the shop during the school holidays and that she worked only 16 hours a week. She said Mr Penhaligon would have been needed to work in the shop in the school holidays. She accepted that Mr Chester could have come to the shop at a time when she was not working there. She said that she was working on 2<sup>nd</sup> November 2015 and Mr Penhaligon was not.

47. Mr Chester applied to register the TR1 by an application in form AP1 dated 3<sup>rd</sup> November 2015, paying an application fee of £40. HM Land Registry gave notice to Mr West of the application but no copy of the letter giving notice was in evidence. Mr West's evidence was that initially he did not take any notice because Mr Chester had told him he was transferring the small piece of land between the highway and the woodland to him. Mr West said he did not recognise the title number on the notice as the title number of the woodland. Mr West said that he then applied to Land Registry for a copy of the transfer and was amazed when he received a copy of the 1 November 2015 TR1. Mr West first wrote a very brief letter to HM Land Registry stating "This is to notify you of my objection to this application dated 11/11/15. I have not authorised the transfer of this property named above". On 10<sup>th</sup> December 2015 Mr West wrote by email to HM Land Registry stating that the signature on the TR1 was his but that this had been applied by some other means than him signing the document. He went on to state

"I do not know the witness who seems to be called Penhaligon, I did not sign this document".

When asked in cross-examination why he had told HM Land Registry he did not know a witness called Penhaligon, Mr West said that he was fuming and did not realise that the D Penhaligon whose name was written on the 1<sup>st</sup> November 2015 TR1 was the Mr Penhaligon who worked in his shop. Mr West said that as soon as he realised his mistake, he telephoned Land Registry to tell them.

48. On 7<sup>th</sup> November 2015 Mr Bob Egerton wrote to Mr West by email enclosing a draft of a letter Mr Egerton suggested Mr West send to Mr Bidgood, Highways Manager with a view to getting the bollards removed which prevented access from the highway onto the woodland.



## Decision

49. Neither Mr Chester nor Mr West have shown themselves to be entirely honest men. Mr Chester tried to hide his assets from the Council to avoid their being taken in satisfaction of monies he might owe to the Council. Mr West knew the reason why Mr Chester wanted to transfer both the marshland and the woodland to him and he agreed. Mr West was prepared to provide an invoice for printing services to Mr Chester knowing that Mr Chester would use it to claim costs but had not agreed to pay for the printing and would not pay for it if he did not recover the costs.
50. It is not possible for me to say that either Mr Chester or Mr West is the generally more credible witness. Mr Chester was generally dishonest in his statements in trying to give the impression that the woodland and marshland were put into Mr Rowland's name in payment for or as a bond for payment for work done in preparing an environmental report on the woodland. Mr Rowland did not come across at all as the sort of person who would prepare an environmental report for reward. His evidence was that the land was conveyed into his name to try to mislead Carrick District Council as to the true identity of the owner and Mr Chester at the hearing accepted this was the case. Mr West's own credibility is further damaged by the fact that he wrote letter to Land Registry saying he did not know the Penhaligon who signed as a witness. Mr Penhaligon had worked for Mr West for many years in his printing shop in Truro. I simply do not believe that Mr West would not have known as soon as he saw the TRI that the person signing as witness was the Mr Don Penhaligon who worked in his shop. He may well have soon realised that it was silly for him to maintain that he did not know the witness, Mr Penhaligon and so he decided to tell Land Registry that he did know Mr Penhaligon.
51. It is the case that Mr Chester brought proceedings in Mr West's name. In so doing, he must have put on the claim form a signature purporting to be the signature of Mr West. However, no copy of the claim form was in evidence. Mr West sought to make much of the letter in his name to the solicitors for Network Rail. I do not accept that it is possible from an examination of the language used to tell that it was not written by Mr West. Mr West himself accepted that a number of the phrases referred to in a letter written on his behalf to the Tribunal were phrases which he in fact used in other

letters. However, the signature on the letter is different from the signature of Mr West on the 20<sup>th</sup> June 2015 TR1 and on letters written by Mr West to the Tribunal. I accept Mr West's evidence that he did not sign this letter, though I do accept that he did know at the time of the application being made to Network Rail for access to the woodland.

52. Mr Penhaligon did not have any obvious financial or other interest in the outcome of the proceedings. Mr West in closing submissions submitted that I should accept him as an honest witness. It appeared at the hearing was that Mr Penhaligon does not have any clear recollection now as to whether or not he was working for Mr West in the shop in November 2015. Mr West paid Mr Penhaligon in cash on a "self-employed" basis and produced no records on this point. However, what is more significant is that Mr Penhaligon has been consistent throughout in saying that he only witnesses Mr West sign one transfer document in the presence of Mr West. Having seen Mr Penhaligon give evidence, I consider that it is improbable that he would have forgotten signing the November TR1 if he had done so.

53. What does the TR1 itself tell me? If it is not genuine it would have required the forgery of two different signatures. Neither Mr West nor Mr Penhaligon suggested that there were any obvious differences between how they sign their names and the signatures on the TR1. Mr West indeed seems to accept that the signature was originally written by him but on another document and suggests it was by some mechanism transposed to the November TR1. In that regard, this case is very different from the vast majority of cases coming before the Tribunal where it is alleged that the signature on a deed was written by someone else who was attempting to copy the signature of the purported signatory. Mr West did not produce or identify any other signature and address of himself and Mr Penhaligon written in an absolutely identical way to that on the November TR1. Mr West and Mr Penhaligon both accepted in cross-examination that Mr Chester did not have any example of Mr Penhaligon's signature and address other than that on the 20<sup>th</sup> June 2015 TR1. They both also accepted that there were some differences between their signatures and writings of the addresses on the 20<sup>th</sup> June 2015 and the signatures and addresses on the November TR1.

54. There is nothing in the November TR1 itself to point to Mr West not having signed it in the presence of Mr Penhaligon.
55. I now turn to consider whether the background circumstances make it more probable than not that Mr West did not sign the November TR1. As Mr West accepts that the signature is identical to his signature, I consider that it is for Mr West to satisfy me that it is not what it appears to be, namely a signature put on the document by Mr West.
56. It is relevant that Mr West did not believe that he was the beneficial owner of the woodland. He had paid nothing for it or given anything of significant value in return. I do not accept that he gave a cooker as consideration for the transfer of the woodland. His answer in cross-examination is highly significant here. He said, "I am not saying it is my land". Mr Chester continued to act in relation to the woodland after the transfer to Mr West as if it were his land and Mr West allowed him to do so. I find that both Mr Chester and Mr West knew that the true owner of the woodland was Mr Chester. That being the case, it is not surprising if Mr West transferred the woodland back to Mr Chester without receiving any substantial consideration for it.
57. Mr West claimed he thought he was rendering himself liable for £24,000 by taking the woodland subject to the local land charge but I do not accept that he thought he would be personally liable to pay £24,000. He would not have taken the woodland if he had so thought. In cross-examination he accepted that he did not obtain any valuation of the woodland before taking the transfer. He knew at the time he took it that there was a problem over vehicular access to it. He would have been prepared to have put in his name for no consideration land over which there was a local land charge because the worst that could happen is that the sale of the land would have been forced and the proceeds taken to satisfy the charge. There would not have been any personal liability against Mr West and I do not accept that he thought there could be.
58. Mr West did investigate the possibility of growing Christmas trees on the woodland and investigated getting vehicular access to the woodland by having discussions with Mr Egerton. I accept that he had hopes of being able to grow Christmas trees commercially on the woodland in a venture with Mr Chester but that did not mean that Mr West thought he had some interest as a beneficial owner in the woodland.

Whether the woodland could be used for the growing of Christmas trees as a joint venture between Mr Chester and Mr West did not depend on in whose name the land was registered but Mr Chester in his own witness statement said that Mr West wanted to use the woodland for growing Christmas trees and wanted the strip transferred into his own name for gaining access to the woodland. On Mr Chester's own evidence, Mr West wanted to be able to exploit the woodland financially for his own benefit.

59. Mr Chester's explanation for Mr West agreeing to transfer the woodland back to him is that Mr West realised in October 2015 that he would not be able to exploit the woodland financially in any way. Doing so would involve obtaining the removal of the bollards which prevented vehicular access from the highway onto the woodland. However, this explanation does not sit happily with the letter from Mr Egerton dated 7<sup>th</sup> November 2015 setting out a way for Mr West to seek the removal of the bollards. There is no evidence that Mr Egerton or anyone else had previously told Mr West he would not be able to obtain the removal of the bollards. I do not accept this explanation from Mr Chester.

60. The allegations made by both parties against each other are very serious. Mr West alleges that Mr Chester forged his signature and that of Mr Penhaligon and lied on oath when giving evidence that Mr West signed the November TR1. Mr Chester alleges that Mr West lied to HM Land Registry when he objected to registration of the transfer and lied on oath when he gave evidence that he did not sign the November TR1. Unfortunately, for the reasons set out above when considering the general credibility of both Mr Chester and Mr West and having seen both of them give evidence, I cannot say that it is more likely that one would lie than the other.

61. I have asked myself the question, why would Mr Chester have forged the signatures of Mr West and Mr Penhaligon rather than ask Mr West to sign a TR1? An indication of a possible reason is in Mr Chester's own witness statement. Mr Chester said that Mr West had become reluctant to transfer the woodland and wanted to exploit it financially for his own benefit. As I have rejected Mr Chester's explanation for Mr West having had a sudden change of mind and agreed to transfer in late October 2015, I consider it probable that Mr West remained unwilling to transfer back the woodland because he thought he could make some financial advantage out of it while it was in his name and to that end was still endeavouring to obtain the removal of the barriers.

That would have worried Mr Chester and made him more determined to have the woodland (which he regarded as being his own in reality) transferred back to his name.

62. If Mr Chester had thought that Mr West would not agree to the transfer then he should have known that Mr West would have found out if his signature on the TR1 was forged and would have objected. Mr Chester had himself transferred land to another person and so would have known that HM Land Registry would have given notice to the transferor of the application to register the transfer. I do not accept Mr West's argument that Mr Chester was relying on Mr West not discovering that it was a transfer of the woodland and sought to ensure that he did not do so by telling him that Mr Chester was going to transfer the narrow strip between the highway and the woodland to Mr West. The notice from HM Land Registry would have given the title number of the land being transferred and more importantly, would have said that it was a transfer by Mr West to Mr Chester. Mr West cannot have thought the notice was not about a transfer of land by him but about a transfer of land to him and Mr Chester is unlikely to have thought that he would so think. However, Mr Chester may have thought that once the TR1 was signed, Mr West could be persuaded to accept the position. Mr Chester would have known that there had been no serious adverse consequences for him when he brought proceedings in the name of Mr West and he may have thought the same in relation to the November TR1. I have in mind that Mr Chester is a somewhat eccentric individual and he might not have acted entirely rationally.

63. I have also asked myself the question why would Mr West have alleged the TR1 was a forgery and tried to keep the woodland if he in fact signed the TR1? If Mr West had been tricked into signing the November TR1 and signed thinking it related to some other land, he would have said so. He did not. Instead he asserts boldly that he did not sign the November TR1. For Mr West to have denied signing the TR1 if he did sign it is a very serious step to take. If Mr West chose to do so, he would have to risk Mr Penhaligon coming forward to say that he had in fact seen Mr West sign the November TR1. Counsel for Mr Chester submitted that Mr West may have learned from Mr Egerton after the 2<sup>nd</sup> November 2015 that he could get the road barriers removed so as to enable vehicular access to the woodland and having done so, he may

have regretted signing the November TR1 so strongly that he decided to allege that he did not sign it. The problem with that suggestion is that the transfer into Mr Chester's name would not have wholly prevented the use of the woodland for a joint Christmas tree growing venture. To have falsely denied signing the November TR1 would be a disproportionate step for Mr West to have taken simply to have kept open the possibility of having a Christmas tree venture on the woodland when there was no certainty that permission would be given for growing the trees and access was by no means guaranteed. I can see no reason why Mr West would have taken the enormous step of denying he signed the November TR1 if he had in fact done so. In so saying, I have also in mind that Mr West denied knowing who Mr Penhaligon was when he objected to the application to register the transfer. This was a very odd thing for him to have done but I do not consider that it suggests that he did sign the November TR1 more than it suggests that he did not.

#### Conclusions

64. Having considered all the evidence, I find on the balance of probabilities that Mr West did not sign the November TR1 in the presence of Mr Penhaligon. The following matters appear to me to be particularly significant:
- (1) Though Mr West had said that the woodland was land that beneficially belonged to Mr Chester, Mr West wanted to exploit it for his own benefit in a joint venture with Mr West and wanted it in his own name for that purpose. Mr Chester's own evidence states that. There is no satisfactory explanation for him having changed his mind in late October/early November 2015 and transferred it to Mr Chester. It is improbable that he would have done so while Mr Egerton was continuing to help him to have the barriers removed so that vehicular access from the highway could be obtained.
  - (2) I acknowledge that the forgery of Mr West and Mr Penhaligon's signature would not have been an easy exercise. However, I consider that Mr Chester thought it necessary because Mr West would not transfer the woodland to him and was seeking to use it for his own benefit.
  - (3) It does not appear from the evidence how Mr Chester was able to forge the signatures of Mr West and Mr Penhaligon and the evidence does not show how he obtained a signature and address from Mr Penhaligon that was identical to that on the November TR1. However, Mr Penhaligon, though he accepted that he could have been in Mr West's shop in Lemon Street on 2<sup>nd</sup> November 2015, was clear that he did not sign the

November TRI. I consider that Mr Penhaligon is more likely to have remembered how many times he witnesses a legal document being signed by Mr West in front of Mr Chester than he is to remember on what days he was working in the shop. Mr Penhaligon has no interest in the outcome of these proceedings and there is no reason to doubt his honesty.

- (4) If Mr Chester did not copy Mr Penhaligon's signature onto the November TRI then it must have been put on the document by Mr Penhaligon. If Mr Penhaligon signed the November TRI then he did so as witness to the signature of Mr West, meaning that Mr West signed the document also. For Mr Penhaligon then to have denied doing so, would be very serious. I do not find him to be the sort of dishonest person who would do this.
- (5) Mr Chester had previously signed Mr West's name to bring proceedings in Mr West's name. This makes it less surprising than it would otherwise have been that he forged Mr West's signature on the November TRI.

The November TRI was not validly executed because it was not executed by Mr West. I shall direct the Chief Land Registrar to cancel the application to register the transfer.

65. My preliminary view is that Mr Chester must pay Mr West's costs to be assessed. Mr West has succeeded and I know of no reason why the usual order should not be made, namely that the unsuccessful party pay the costs of the successful party to be assessed on the standard basis. Any party who wishes to submit that some different order should be made as to costs, should serve written submissions on the Tribunal and on the other party by 5pm on 26<sup>th</sup> February 2019.

BY ORDER OF THE TRIBUNAL

*Michael Micher*

DATED 8<sup>TH</sup> February 2019

