

[2018] UKFTT 0060 (PC)

**PROPERTY CHAMBER
FIRST –TIER TRIBUNAL
LAND REGISTRATION DIVISION**

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

LAND REGISTRATION ACT 2002

REF NO. 2016/0858

BETWEEN

WAI WONG

Applicant

and

TANIA SAMANTHA LEVIN

Respondent

**Property addresses: 32 and 34 Carew Close, Chafford Hundred, Grays, Essex RM16
6RZ and 94 Galleon Road, Chafford Hundred, Grays, Essex RM16 6BD
Title numbers: EX695093, EX677869, EX651357**

Before: Judge Daniel Gatty

Sitting at: 10 Alfred Place, London WC1

On: 20 November 2017

ORDER

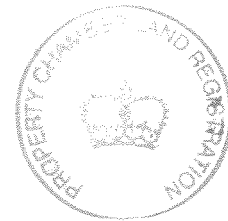
IT IS ORDERED THAT:

1. The Chief Land Registrar is directed to cancel the Applicant's applications for the entry of restrictions on the above titles.

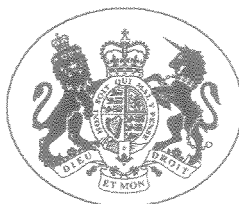
2. Any application for costs should be made in writing accompanied by a schedule of costs and evidence of the disbursements claimed and served on the Tribunal and the other party by 4.30 pm on 18 February 2018.
3. Any response to an application for costs should be served on the Tribunal and the other party by 4.30 pm on 1 March 2018.
4. Any reply to a response to an application for costs should be served on the Tribunal and the other party by 4.30 pm on 15 March 2018.



JUDGE DANIEL GATTY



Dated this 11th day of January 2018



[2018] UKFTT 0060 (PC)

**PROPERTY CHAMBER
FIRST –TIER TRIBUNAL
LAND REGISTRATION DIVISION**

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

LAND REGISTRATION ACT 2002

REF NO. 2016/0858

BETWEEN

WAI WONG

Applicant

and

TANIA SAMANTHA LEVIN

Respondent

**Property addresses: 32 and 34 Carew Close, Chafford Hundred, Grays, Essex RM16
6RZ and 94 Galleon Road, Chafford Hundred, Grays, Essex RM16 6BD
Title numbers: EX695093, EX677869, EX651357**

Before: Judge Daniel Gatty

Sitting at: 10 Alfred Place, London WC1

On: 20 November 2017

**Applicant Representation: In person assisted by Charles Pycraft, lay representative
Respondent Representation: David Nicholls of counsel instructed by Solomon Taylor &
Shaw, Solicitors**

DECISION

Cases referred to:

Jones v Kernott [2011] UKSC 53

1. These matters were referred to the First-tier Tribunal in October 2016. They concern applications to HM Land Registry by the Applicant, Mr Simon (aka Wai) Wong, for restrictions to be entered against three residential properties (“the Properties”) registered in the sole name of the Respondent, Tania Samantha Levin. The Properties are:
 - (a) 32 Carew Close, Chafford Hundred, Grays, Essex RM16 6RZ, title no. EX695093 (“32 Carew”);
 - (b) 34 Carew Close, Chafford Hundred, Grays, Essex RM16 6RZ, title no. EX677869 (“34 Carew”);
 - (c) 94 Galleon Road, Chafford Hundred, Grays, Essex RM16 6BD, title no. EX651357 (“Galleon”).
2. Mr Wong’s case as set out in his Statement of Case is that the Ms Levin did not pay to acquire the Properties which are held on trust for the Applicant or for Charles Pycraft or for what is referred to by Mr Wong as the Jen Wai Tong Buddhist Temple Trust. He seeks restrictions to be placed on the registered title of the Properties pending the outcome of litigation, although there is no litigation concerning ownership of the Properties presently afoot other than these proceedings. Ms Levin’s case is that she is the sole beneficial owner of the Properties and so Mr Wong is not entitled to the entry of restrictions on their titles.
3. The hearing of this reference took place before me, sitting at 10 Alfred Place, London, on 20 November 2017. Ms Levin was represented by counsel – Mr David Nicholls. Mr Wong appeared in person assisted by his friend and student (in Buddhism), Charles Pycraft. At his request the Tribunal Service provided an interpreter for Mr Wong although it became apparent that he had a good enough grasp of at least spoken English that he was able to understand and respond to questions without the interpreter’s assistance almost all of the time. Nonetheless, at least in part because of the language

issue Mr Pycraft acted as advocate for Mr Wong and conducted his case before me. I am grateful to him and to Mr Nicholls for their assistance.

4. At the beginning of the hearing Mr Nicholls sought to make an oral summary judgment application on behalf of Ms Levin which I refused permission for her to do for the reasons I gave then. I also ruled that a substantial number of invoices which Mr Wong and Mr Pycraft had brought to the hearing but which had not previously been disclosed would not be admitted into evidence because of their late production, which would have necessitated an adjournment.

The factual background

5. Mr Wong is a Buddhist and martial arts teacher or Master. My Pycraft is one of his pupils. Ms Levin met Mr Wong in 1998 when she was 19 and he was 42 years old. They commenced a relationship which lasted until 2015 and had four children together, Aaron now aged 17, Brian aged 15, Catherine aged 12 and Dylan aged 7. Their relationship ended when Ms Levin obtained a non-molestation order against Mr Wong on a without notice basis on 23 March 2015. I understand that the order was not made final. Ms Levin alleges that her relationship with Mr Wong was not conventional in that Mr Wong had relationships with other women at the same time. That was not accepted by Mr Wong.
6. It appears that for the duration of their relationship both Mr Wong's and Ms Levin's lifestyles were funded in part by monies generated by companies administered by Ms Levin ("the Companies") which marketed Mr Wong's services and those of his pupils such as Mr Pycraft. A company named Yellow Dragon Ltd was incorporated in January 1999 and struck off the register in February 2006. Ms Levin was sole director and shareholder and Mr Wong was company secretary. It provided Feng Shui services, Chinese choreography and the like. In the mid 2000s Mr Pycraft and other pupils of Mr Wong took to paparazzi photography as a means of earning money for companies associated with Mr Wong and Ms Levin. A company named YD Image Ltd was incorporated in January 2005 and struck off in June 2009. Ms Levin was company secretary and Mr Pycraft was director. YD Photos Ltd was set up in November 2005 and struck off in June 2013. The directors of that company were Jacqueline Morgan and Davis Williams. YD PR Ltd was incorporated in July 2012 and struck off in

September 2015. Ms Levin was that company's sole director. Although the evidence was not altogether clear about the activities of these companies, I gathered that the latter three were mainly engaged in taking photographs of celebrities and selling them to newspapers and magazines. Mr Pycraft and Mr Gareth Jones (another student of Mr Wong) were the main photographers it seems. Ms Levin was responsible for administration and sales. Mr Wong was not actively involved in the photography enterprises and was not a director or shareholder in any of the companies but received at least some of his income from them because of his Master-student relationship with Mr Pycraft, Mr Jones and others.

7. 34 Carew was purchased on 30 May 2002 for £281,950. It was purchased in Ms Levin's sole name. 90% of the purchase price was obtained by a mortgage from the Halifax (also in Ms Levin's sole name). There is a dispute as to how the balance of the price (which seems from the sale contract to have been discounted by £5,639 and so would have been £22,000 odd) plus costs of purchase was funded. Ms Levin alleges that she provided it partly with the aid of a gift from her mother and partly with her own money which she had obtained by selling a "kiss and tell" story to a newspaper. Mr Wong alleges his students, Charles Pycraft and Desmond Williams, and Mr Pycraft's father provided the money. No documentary evidence was provided in support of either contention. Ms Levin's mother, Bettina Stierli, who lives in South Africa, made a statement dated 26 May 2017 to the effect that she gave her daughter an unspecified sum of money to assist with the purchase of 34 Carew. She did not attend the hearing, however, so only limited weight can be placed on her statement.
8. The conveyancing solicitors were a firm named Nairnsey Fisher & Lewis. Within the hearing bundle (p. 327) was a letter dated May 31, 2002 addressed to Ms Levin which acknowledged receipt of the funds required for completions and contained the following sentences:

"For the record, I confirm our conversation at our recent meeting when you assured me that there would be no other adult occupier of the property upon completion apart from yourself, and that the property was to be occupied solely by yourself and your young child [Aaron]. This statement was of course confirmed by Mr Wan, who attended at my office with you."

9. Mr Wong accepted when giving evidence that the reference to “Mr Wan” in that letter was to him, that he did attend the solicitors’ office and did say that he would not be living at 34 Carew. He said that this was not his or Ms Levin’s true intention but he had been told by her to say that. In any event, it was common ground that Mr Wong did occupy 34 Carew at least some of the time. Ms Levin’s case in that regard was that Mr Wong was merely a sometime lodger and paying her rent. Mr Wong’s case is that he lived there with Ms Levin and their child, and subsequent children as a family (Ms Levin was pregnant with Brian when 34 Carew was bought). It appears that Mr Wong claimed housing benefit as if he was Ms Levin’s lodger or tenant until 2010 when a Housing Benefit investigation led to his housing benefit being stopped. I accept Mr Wong’s evidence that in reality he co-habited with Ms Levin in 34 Carew as part of a family unit, however the arrangement may have been presented to the authorities for Housing Benefit purposes.
10. On 23 December 2005 Galleon was purchased in Ms Levin’s sole name for the sum of £166,000. There is no dispute how that purchase was funded. 34 Carew was remortgaged and part of the proceeds of the re-mortgage was used to pay that part of the purchase price of Galleon which was not raised by a mortgage over the latter property. So the purchase of Galleon was funded by a mortgage over Galleon in Ms Levin’s name and by the remortgage of 34 Carew, also in Ms Levin’s name. Galleon was purchased on a buy-to-let basis and has been let out to tenants ever since its purchase. The tenancy agreements are in Ms Levin’s name.
11. Not long later, in March 2006, the property next door to 34 Carew, 32 Carew, was purchased in Ms Levin’s sole name for the sum of £340,000. There is no dispute how that purchase was funded either. It was funded in the same way as Galleon. So the purchase of 32 Carew was raised by a mortgage in Ms Levin’s name and by the remortgage of 34 Carew, also in Ms Levin’s name.
12. Ms Levin states that she moved into 32 Carew when it was purchased and Mr Wong remained at 34 Carew, paying her rent for two rooms there. On 20 August 2011 Mr Wong entered into a one year assured shorthold tenancy agreement in relation to 34 Carew. Ms Levin states that she moved back into 34 Carew with the four children in 2012. It is common ground that she still lives there, as did Mr Wong until the non-molestation order in March 2015. Ms Levin alleges that he was merely there as a lodger

but as already indicated I doubt that this is a correct characterisation of their relationship. Ms Levin states that she let out rooms at 32 Carew after moving out.

13. There was no dispute that the mortgage payments in relation to the three properties were paid out of Ms Levin's bank account. Ms Levin's evidence was that she paid the mortgages on her own account from a combination of her salary from the Companies and rental income from the Properties. There was not, in reality, much dispute that the mortgages have been paid using monies derived from the Companies and from rent, but there is a dispute as to whether those monies are properly characterised as Ms Levin's.
14. It is Mr Wong's case that all of the Properties were purchased with a view to raising enough money to establish at some future time a Buddhist temple, the Jen Wai Ton Buddhist Temple. He says that Ms Levin knew that and that the photography and other services which generated income for the Companies were provided by himself and his students, especially Mr Pycraft and Mr Jones, with that intention. So, on his case, the monies used to buy the Properties and service their mortgages were not really Ms Levin's at all, even if they passed through her bank account. Ms Levin's evidence was that there was no mention of establishing a Buddhist temple until after her separation from Mr Wong in 2015.
15. Mr Wong also refers to various sums of money which were paid to Ms Levin by his students and members of his family over the last several years, at least some of which Ms Levin admits receiving. They appear to have been treated by those who advanced the money as loans, at least on Mr Wong's case. Whether any of those sums were utilised to make mortgage payments was not apparent from the evidence.

Restrictions - the law

16. By s. 42 of the Land Registration Act 2002, a restriction may be entered when it would be necessary or desirable for the purpose of
 - (a) preventing invalidity or unlawfulness in relation to dispositions of a registered estate or charge,
 - (b) securing that interests which are capable of being overreached on a disposition of a registered estate or charge are overreached, or
 - (c) protecting a right or claim in relation to a registered estate or charge.

17. Section 43(1) of the Land Registration Act 2002 sets out who may apply for a restriction under s.42(1) of the Act. A person who wishes to apply for the entry of a restriction must fall into one of three categories. He must be —
- (a) the relevant registered proprietor, or a person entitled to be registered as such,
 - (b) a person who has the consent of the above, or
 - (c) a person who otherwise has a sufficient interest.
18. Restrictions are one of the two means by which third party interests in registered property can be registered. The other means, a notice, cannot be entered in respect of a trust interest. So when A successfully asserts a beneficial interest under a trust in B's registered property, it is a restriction that is entered on the title to that property. Rule 93 of the Land Registration Rules 2003 identifies persons who have an interest in a registered estate held under a trust of land as amongst the classes of persons entitled to apply for a restriction under s. 43 of the Act

The Issues

19. Consequently, the issue that falls to be decided here is whether Mr Wong has an interest in any or all of the Properties under a trust. If he does, he is entitled to have restrictions entered on the register. If he does not, he is not so entitled. There is no suggestion that the Properties were acquired on an express trust, which by s. 53 of the Law of Property Act 1925 would require writing to at least evidence the trust and there is nothing in writing. Accordingly, the question is whether Mr Wong has an interest in the Properties under a resulting or a constructive trust. The applications were for restrictions in favour of Mr Wong, not Mr Pycraft nor the Jen Wai Tong Buddhist Temple Trust, so it is an interest in Mr Wong that must be shown.

Discussion

20. The burden lies on Mr Wong to establish a beneficial interest in the Properties under a trust. Beneficial ownership is presumed to follow legal ownership unless the contrary is proved and Ms Levin is the sole legal owner. So, it is for Mr Wong to show either that he is entitled to an interest under a resulting trust by reason of payments he made to acquire the Properties, or to an interest under a constructive trust because of circumstances giving rise to such a trust.

21. Ultimately, the resolution of this application is fairly straightforward despite the complex history and relationships between the individuals involved. Mr Wong accepted in his evidence that he had not personally put any money into their purchase of the Properties nor into the payment of the mortgages over them. He said that he personally was not intended to and did not have an interest in any of the Properties. He said that the funds used to buy the Properties and service the mortgages were provided, whether through the Companies or otherwise, for the purposes of the Buddhist temple project, so he was making this application to protect the interests of those such as Mr Pycraft who had provided money or labour in the expectation that the Properties would ultimately be used to provide funds for that project, rather than his own interests.
22. I have significant doubts whether 34 Carew was purchased in order eventually to fund the creation of a Buddhist Temple rather than to provide a home for Mr Wong, Ms Levin and their children, even if 32 Carew and Galleon might have been acquired with a view to their eventual sale for such a purpose, but I do not have to decide that for the reasons that follow.
23. In my judgment, it is fatal to the application insofar as it is based on a resulting trust that Mr Wong's own money was not invested in the Properties. A resulting trust may arise by operation of law when A buys property using B's money or B transfers property to A gratuitously, to reflect a rebuttable presumption that B did not intend A to take the property beneficially. Even on Mr Wong's own case, however the Properties were not bought nor the mortgages paid using his own money. He was not a shareholder in any of the Companies so the Companies' funds cannot be treated as his in some way, even if he could overcome the fact that the Companies had separate legal personalities. His evidence did not even go so far as to support a finding that the monies used to pay the deposit and costs of purchases of 34 Carew were lent or given to him and so were to be treated as his, if I were to reject Ms Levin's evidence that she herself provided those funds. On Mr Wong's evidence those monies were provided to allow purchase 34 Carew to be purchased with a view to it later being sold for the purposes of the Temple trust, but were not given or lent to Mr Wong personally. As stated above, I doubt that can have been the purpose of buying 34 Carew but in any event it was not Mr Wong's case that monies were given or lent to him so that he could buy 34 Carew for himself or for himself and Ms Levin.

24. There has never been a Jen Wai Tong Buddhist Temple Trust in any sense recognisable to the law. There is no trust instrument setting up a Jen Wai Tong Buddhist Temple Trust, nor is there a registered charity by that name. There is therefore no Temple Trust to make a claim to the Properties but it does not follow from the non-existence of the Temple Trust that Mr Wong has an interest under a resulting trust instead, even on his own evidence.
25. For similar reasons, Mr Wong has not established an interest in the Properties under a constructive trust. Broadly speaking, B may acquire an interest in property held in A's name under what is referred to as a common interest constructive trust if (1) A and B have a common intention that B is to have such an interest and (2) B acts to his detriment in reliance on that common intention. The Court, or Tribunal, can infer a common intention from A and B's conduct where there were no express discussions between them, but common intention there must have been. See, for example, *Jones v Kernott* [2011] UKSC 53. It was Mr Wong's evidence that he personally was not intended to have any interest in the Properties. Indeed he denied having any interest in the property in which he was living, 34 Carew, when applying for legal aid in his matrimonial proceedings with this former wife in 2004. In the face of his evidence that he was not to have an interest in the Properties it is not possible to infer an intention that Mr Wong was to have such an interest and there was no evidence of any express discussions with Ms Levin that he was to have one. So, no common interest constructive trust arises. There are other specific circumstances where a constructive trust can arise as a matter of law, for example to prevent certain types of wrong, but none of those circumstances have been alleged or proved here.
26. Having reached the above conclusions, I do not consider it necessary to make a finding as to who (other than the Halifax) provided the funds to purchase 34 Carew, and hence indirectly funded the acquisition of the other two Properties. Neither party adduced any contemporaneous evidence about that and I did not find either of their accounts to be entirely convincing. So in circumstances in which I have concluded that Mr Wong did not obtain an interest under a trust in the Properties even if his account of how 34 Carew was purchased is true, I do not propose to make a finding about whether it is accurate or not.

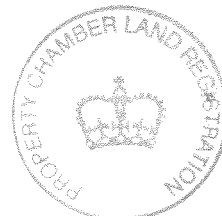
27. I therefore conclude that Mr Wong does not have an interest in the Properties entitling him to enter a restriction on their titles. In so concluding, I am not making a finding whether Ms Levin is the sole beneficial owner of the Properties. The circumstances of their acquisition raise the possibility that others, perhaps including the currently struck off Companies, might be able successfully to lay claim to an interest in them and it is unnecessary for me to reach any conclusion other than that Mr Wong has not proved before me that he has an interest in them.

Decision

28. For the reasons that I have sought to explain above, I will direct that the Applicant's application to enter restrictions against the titles of the Properties be cancelled.

29. The usual rule in this jurisdiction is that costs follow the event: the loser pays the winner's costs since referral to the Tribunal. However, that is not the invariable rule. By para. 9.1 (b) of the Practice Directions, Property Chamber, First-Tier Tribunal, Land Registration I can make a different or no order as to costs. The Applicant has been the loser in these proceedings but I have not yet heard any submissions on costs, which I propose to decide with reference to written submissions. So, if either party wishes to apply for costs they should make a reasoned application in writing, including a schedule of costs and evidence of the costs incurred, within 28 days. Such an application should be served on the other party who will then have 21 days to respond to the application by way of written submissions sent to the Tribunal, copying any submissions to the applying party or parties. Any response to such submissions should be provided to the Tribunal and the other party or parties within 14 days of receipt of the submissions.


JUDGE DANIEL GATTY



Dated this 21st day of December 2017