

Neutral Citation Number: [2008] EWHC 693 (QB)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand
London WC2A 2LL

Wednesday, 6th February, 2008

BEFORE:

HIS HONOUR JUDGE MACKIE QC

BETWEEN:

BLACKFORD

Claimant

-v-

TATE

Defendant

The Claimant appeared in person.
MR S DATTA appeared on behalf of the Defendant.

APPROVED J U D G M E N T

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(Official Shorthand Writers to the Court)

J U D G M E N T

1. JUDGE MACKIE: This has been the trial of the claim brought by Mr Blackford against Mr Tate. It is a claim by Mr Blackford to remove a Land

Registry restriction, that restriction being in Mr Tate's favour, on a flat, 40 Pinmill, Basildon. Mr Tate says he paid £35,000 to Mr Blackford for his interest, using a trust deed structure to ensure that Mr Blackford did not sell within three years of buying the property from the local authority and so lose the benefit of a big discount. Mr Blackford says that no such arrangement was entered into and that he received no money from Mr Tate and that the deed, to the extent to which it bears his signature, is a forgery.

2. There is before the court a substantial bundle of documents put forward by the parties. I have had the assistance of Mr Datta of counsel for the defendant and Mr Blackford has represented himself as a litigant in person with the able assistance of his McKenzie friend, Mr Jason Johnson. In addition to the documents put forward, I have heard the evidence of four witnesses, which I will come to shortly. In order to save the time and expense of the parties I am giving judgment on the spot at the end of this trial and I therefore reserve the right to amend any transcript to ensure that it records not only the words I use but also what I mean to say.

3. The background is as follows. Mr Blackford is a lorry driver by trade but is currently serving a sentence of 12 years' imprisonment for various drug offences for which he was convicted in 2002. There are various allegations about Mr Tate's background too, but I put all those out of my mind because they are not really relevant to the issues with which I have to deal. Certainly there has been no cross-examination on the basis that anyone's credibility has been eroded by their previous bad character.

4. In about October 1999 Mr Blackford, who lived with his grandmother as a child, acquired the right to buy 40 Pinmill for the price of £11,660 and, having retained solicitors, that transaction went through in January 2000. The title to the property was registered in the following month. Mr Blackford places some emphasis on the fact that his approach to the purchase of the property was an entirely conventional one. The money went through the solicitors and the appropriate formalities were observed.
5. The core of the case is what happened between May and June 2001, and I will come to the competing accounts that I have to resolve shortly. I am only going to refer to some of the correspondence, but I assure the parties that I have read all of it.
6. On 13th July 2001 it appears that a call was made by Miss Sarah Darlston (now Sarah Cox, the partner of Mr Tate) on his behalf in relation to the transfer of the property into Mr Tate's name for payment of £14,000. Miss Cox's recollection, which I accept, is that she can remember nothing at all about this, and it would appear that since the matter referred to is consistent with neither parties' case it takes the matter no further.
7. On 25th July Mr Tate's solicitors wrote to the solicitor that Mr Blackford accepts he had consulted on previous occasions, stating that they had been consulted by Mr Tate and that Mr Tate had given the sum of £35,000 to Mr Blackford to enable him to purchase the property for cash. They continue:

“We are also informed that, rather than our Client, Mr Tate, executing a Legal Charge, there will in effect be a Trust Deed in the following terms:

1. At any time after the expiry of three years from the date of the

purchase Mr Blackford will at Mr Tate's expense transfer the property to him or as he may direct.

2. At any time after such transfer Mr Blackford may be required to vacate the property so that it can be sold by Mr Tate with vacant possession.

3. It is also understood that the sale proceeds will be retained by Mr Tate.

No doubt you will wish to take the instructions of Mr Blackford and, subject thereto, we will let you have a fairly standard Trust Deed for your approval in due course."

8. On 7th August there is another telephone attendance note to which Mr Blackford drew attention which refers in manuscript, underneath a typed note saying "Have we heard from Russell Tate's solicitors?", to the following:

"18/01 – Telephone attendance on Mrs Blackford. She will ask Mr Blackford to call in to make an appointment."

In cross-examination Mrs Huggett, Mr Blackford's former partner, said that she might well have been the "Mrs Blackford" referred to. Albeit she was not known as Mrs Blackford, it would be unsurprising if she was taken for Mrs Blackford by someone taking a solicitor's telephone message.

9. On 13th August Maudsley Wright & Pearson, Mr Blackford's solicitors at least on a previous occasion, wrote to confirm that their instructions were in accordance with the instructions from Mr Tate's solicitors and they were waiting for a draft deed for approval. That was then produced and the matter proceeded, at least in correspondence, and on 31st August a letter was sent to Mr Blackford at what he accepts was the home of Miss Huggett, where he was then living, by Mr Maudsley's in the following terms:

"Dear Mr Blackford,
Further to our meeting on 13th August, I enclose the declaration of trust prepared by Russell Tate's solicitor now approved by me as amended. This will have the effect of you holding the above property on trust for Mr Tate. This would mean that, if at any time the property is sold, the net sale proceeds would belong to Mr

Tate entirely. You will also have to transfer the legal estate in the flat to Mr Tate, or to such other person as he directs, at any time after 24th January 2003.

If you have any questions concerning this document please contact me. If you are happy to proceed it should be signed by you where indicated in the presence of an independent witness who of course should not be Mr Tate. Please then return the document to me left undated. When returning the document to me please let me have a cheque in the sum of £88.12 being this firm's costs for acting in this matter. I will forward to you our receipted account in due course."

10. There is a cheque for that sum of money dated 10th September 2000 drawn in favour of the solicitors on the joint account of Mr Blackford and Miss Huggett. It is signed not by Mr Blackford but by Miss Huggett. Mr Blackford said that that is consistent with his account, which is that he entered into no such transaction. Miss Huggett's recollection is that she was in the habit of signing cheques to meet payments requested by Mr Blackford, as she suggested was the practice with many couples who share their lives and finances.
11. The trust deed was sent for signing on 31st August, and on 10th September was returned by Mr Blackford's solicitors (or at any rate those who had acted for him on a previous occasion) and they wrote enclosing the trust deed signed by their client "and form 25 signed by us on his behalf". Form 25 is a reference to the application to have the interest which Mr Tate claims registered at the Land Registry.
12. The alleged trust deed is dated 10th September 2001 between, on its face, Mr Blackford, on the one hand, and Mr Tate on the other. There are recitals. These refer to the January 2000 lease between Basildon District Council and Mr Blackford. They record that the purchase price of £11,660 was provided by Mr

Tate. That is plainly an error, because the purchase price was undoubtedly provided by Mr Blackford alone and Mr Tate accepts that he had no involvement at that point. The recital is immaterial.

13. The deed then provides as follows:

“1. Mr Blackford declares that subject to matters hereinafter specified he holds the Property in trust for Mr Tate and he will at Mr Tate’s cost and expense at any time after the expiration of the period of three years from the date of the Lease hereinbefore recited transfer the Property to him or to such person or persons at such time or times and in such manner or otherwise deal with the same as Mr Tate shall direct or appoint and will at all times execute and do all such documents acts and things as may be necessary to procure the appropriate registration or entry on the Registered Title to give effect to such transfer if so required to protect the interest of Mr Tate.”

I should emphasise that the evidence of Mr Blackford is that not only did he not sign this document, but he did not receive a draft of it or any of the solicitor’s correspondence which appeared to precede it.

14. Paragraph 2 states:

“Mr Blackford further undertakes that at any time after the transfer of the property to Mr Tate he will at the request of Mr Tate vacate the Property to enable Mr Tate to sell the same with vacant possession.”

15. The document appears to have been written at the Winged Horse Public House which both Mr Blackford and Mr Tate do, or used to, drink at regularly. It was perhaps as a result of them being good customers that the witness to the deed is Mr William Wellands, the licensee of the pub. Mr Wellands has not been called by either party. I will refer to that again shortly.

16. The other contemporaneous documents that are relied upon include a record of

payments from the bank of Mr Tate. These show that in June 2001 he withdrew £10,000 and that he withdrew similar sums on the 5th and 6th September. No bank statements from Mr Blackford have been produced.

17. It is against that background that I heard from the witnesses. Mr Blackford gave evidence for himself. He described his background and was frank about where he had been for the last three years. He described the circumstances in which he came to purchase the property, and there is no controversy about that. He says that once he had bought the property he paid off his personal loans, which left him with no debts relating to this property and therefore in no need to borrow money. He then describes Mr Tate's allegations about having contracted to buy the property as "complete rubbish", although he characterises them as an allegation by Mr Tate that he had lent money in order to purchase the property, which is not Mr Tate's case. At any rate, he said that Mr Tate did not lend him any money and there was no reason for him to borrow money to purchase the property. The first time he became aware that there was any issue about the matter was when he was in custody in prison in early 2004. He said he received a form requesting that he sign his property over, he refused to do so, and points out that his position has been consistent ever since. He said he never met Mr Tate, who has been a friend since childhood, to discuss purchasing the flat, although of course he accepts that he often met him for other purposes and on other occasions and did so at the Winged Horse Public House. He says he has never received any money and never offered the property for sale to anyone. He complains that Mr Tate has gained access to the flat and placed his son in the property, and he objects to the fact that Mr Tate has subsequently let the flat and collected rent or caused it to be collected. He says that the recollections of Miss

Huggett, his former partner, are untruthful and reflect the fact that they had had a strained relationship for several years. When an affectionate letter that he had written was put to him he emphasised that the relationship had had its ups and downs but had been more strained since the time of that letter. Necessarily, Mr Blackford's evidence about those matters was relatively short because, on his account, he is seeking, as it were, to prove the negative.

18. Mr Blackford also produced a witness statement from Mr Darren Fenner. Mr Fenner did not attend to give evidence and there is some suggestion, which I cannot usefully evaluate, that this was through intimidation. The witness statement, which I consider for what it is worth, bearing in mind that Mr Fenner has not been here to be cross-examined, explains his background and his friendship with Mr Blackford, who also worked for him in the past. He says that he was not present at any "meetings" regarding any trust deed or any other document. He says he was never present when financial transactions took place where Mr Blackford was the recipient of any money from Mr Tate, and he certainly did not see the sum of £35,000 in large amounts of cash being handed to Mr Blackford by Mr Tate or any other person. He dealt with other matters.

19. That was the evidence for the claimant.

20. So far as the defendant is concerned. Mr Tate explained that in the early summer of 2001 he was approached by Mr Blackford, whom he had known since late childhood. He says Mr Blackford asked whether he would like to purchase the property for £35,000 and the restrictions on purchase and the potential loss of discount were explained. He says he knew that the property

had been offered by the claimant to others and that after a while he agreed to purchase the property for £35,000. He went to see his solicitor, who explained a possible structure, as a result of which he agreed to go ahead, and he paid the £35,000 in cash – £5,000 in June up front, apparently so that Mr Blackford could deal with certain matters, and then £30,000 in cash taken out from his building society. He says he cannot be sure what date this was, although he handed to the claimant some £30,000 in cash in a “Head” trainer bag in the Winged Horse Public House. He said that Mr Blackford did not count the money, although both Mr Fenner and Mr Wellands saw the bag and knew it contained a large sum of cash. He says that it was normal for them all to be together since they drank together in that pub. He says that the claimant executed the trust deed in front of them all and that Mr Wellands witnessed it. He says that later on, consistently with that, he was given the keys to the property, which was then tenanted, and he explained in broad terms what has happened with the rental since.

21. I also heard from Miss Cox, Mr Tate’s long-term partner. She said that Mr Tate had told her that the claimant had approached him with a view to buying the property in 2001. Her recollection was that she had urged Mr Tate to ensure that the transaction went through by cheque or banker’s draft and not by cash, which is why the matter remains in her mind. She said that she knew Mr Tate had agreed to pay £35,000 and that he took £30,000 from his Halifax savings account for that purpose. She also says that she was present at their home when Mr Blackford came to collect the cash, which she understood to be £5,000, although in cross-examination she said that she knew that it was money but did not count it.

22. I also heard evidence from Collette Huggett, who has at various times since 1994 been the partner of the claimant and has two children by him who are now aged 9 and 12. She says that she had discussions in 1999 and early 2000 with Mr Blackford about a proposal to buy the house from Basildon and then sell the property on at a profit after an appropriate number of years. She had been told by the claimant that he had been approached by the defendant and that an offer had been made. She says she was not a party to the contract, but did discuss the matter with him, and he explained that he would have some cash once he received money from the defendant. She said that the claimant had said that he had received all the money from the defendant, and at the stage when the £5,000 had come through he had shown her the money. She did not count it, but some of it had been used to buy a dishwasher at Alders and to pay for a weekend away for the family.

23. There was also evidence from a prominent handwriting expert, Dr Giles, who at the stage when the claimant was legally represented was jointly instructed by both parties to take a view about the signature on the trust deed. As is common, the handwriting expert's report is relatively lengthy, but I need only read her conclusion, which is:

“...there is sufficient similarity between the questioned and undisputed signatures to provide strong support for the view that the questioned signature on the Trust Deed dated 10th September 2001 is a genuine signature of [the claimant].”

24. Mr Blackford has raised questions which he says he sent to Dr Giles, but, if he sent them, there has been no reply. He places some emphasis on the necessarily conditional opinion which expert witnesses in this area give, and there is some

force in what he says about that.

25. In evaluating the evidence in this case there are number of things that need to be clear. First of all, I am concerned with the evidence I have in front of me, not with what evidence there might have been if other people had been here. Secondly, it is for the claimant to prove his case; not for the defendant to prove the reverse, although that is not a factor that has affected my judgment in this case as in my view the facts are clear. Thirdly, it is not simply a question of me adding up the number of witnesses on one side and on the other, and saying that one of them wins 3-1. What I have to do is make an evaluation of all the evidence, not only of what people say but of its consistency with all the other materials in the case. Included within those other materials is the expert evidence, whatever its limitations may be.

26. It is urged on behalf of the claimant that his position has been consistent throughout and that he wrote straight away once a challenge was made to his title. He says he is adamant that he never received any of the money and there is no evidence that he did. He says that there is no one other than Mr Tate who has appeared to give evidence about the veracity of the deed, the witness to the deed not having been called to give evidence in this court and Darren not having turned up. He says that it would be absurd to conduct a transaction of this magnitude in a public house when his home was almost opposite and a much more private and suitable place for transactions like that to be conducted.

27. The case for the defendant is that there is a lengthy paper trail here through the solicitors to which there is no cogent answer from Mr Blackford. There are bank book entries which support the claim of Mr Tate with no similar entries of any

kind from Mr Blackford, that there is expert evidence which supports the view that the deed is a genuine one, and that it is incredible that the solicitors should act negligently or criminally for no obvious purpose.

28. In my judgment, the position is this. The deed was, as one can see, preceded by detailed solicitors' correspondence. It is incredible to me that that solicitors' correspondence could have been carried on without reference to Mr Blackford. No solicitor could conceivably have had any motive for pretending to act for Mr Blackford in a transaction of this kind, particularly for a total fee of £88. Although Mr Blackford said he did not get the letters from the solicitors, the fact that the cheque for £88 was paid, albeit by Miss Huggett, shows that someone received it. I have no doubt that Miss Huggett had no interest in paying £88 except at the request of her then partner.

29. So the solicitors' correspondence, albeit there are one or two errors in the letters, is entirely consistent with the existence of the deed. The deed itself makes sense despite one immaterial error. The expert evidence supports the view that Mr Blackford did sign this document. The available financial records are consistent with the recollection of Mr Tate and not Mr Blackford, who has not produced his. Mr Blackford has faced many difficulties over the last few years and has had perhaps too much time to reflect on this transaction. While I have no doubt that he was being sincere in what he told me when giving evidence, there was a lack of plausibility and logic in his account. Mr Tate's evidence was, on the other hand, it seemed to me, relatively straightforward, and the irritation which he showed from time to time was consistent with a truthful witness, frustrated at what he genuinely believed to be true, being

questioned in a court of law. The evidence of Miss Cox does not take things a great deal further, albeit it was consistent with what Mr Tate said. Finally, there is the evidence of Miss Huggett, to which I do attach importance, because it seemed to me, particularly in her exchanges with her former partner, that she was frankly conveying to the court and forcefully to Mr Blackford her views about him and his operation of his personal business affairs. What she said seemed to be entirely consistent with the documents, and with logic and common sense.

30. That therefore leads me to the clear conclusion that the deed was indeed signed by Mr Blackford. He entered into the deed for exactly the purpose which has been described, namely to earn profit from the sale of the property at an earlier period than he could sell it on the market in the ordinary way in circumstances where Mr Tate saw the opportunity for a bargain for himself.

31. What then is the legal consequence of all this? That turns upon section 42 of the Land Registration Act 2002. Under that section the Registrar registers a caution under certain circumstances. But once an interest in property has been so registered, the court has power under section 14(2) of the Trusts of Land and Appointment of Trustees Act to make an order relating to the exercise of powers by trustees of land. The defendant says that the court ought to make an order in this case directing the claimant to transfer the legal title of the property into the defendant's sole name. When deciding whether or not to do that, the court has to consider various matters set out in section 15 of the Act, of which the relevant ones are the intentions of the persons who created the trust, the purpose for which the property subject to the trust is held, the welfare of any minors

(which is irrelevant), and the interests of any secured creditor of any beneficiary (there are none).

32. Mr Blackford created a trust for the benefit of Mr Tate, so that he, Mr Blackford, could realise a profit and Mr Tate could become, in effect, the owner of the property and exercise rights as an owner once the three-year period was over.

33. In all those circumstances, it seems to me that it is the duty of the court, so far as it is lawful, to give effect to what the parties intended to achieve. What they intended to achieve was the eventual registration of the property in the name of Mr Tate. For those reasons, the court will grant an order to require Mr Blackford to do that, and an order that, alternatively, should he not do so, then an appropriate officer of the court be appointed for that purpose.

34. I will now hear from counsel for the defendant on any matters arising, including, in particular, the form of order, but of course Mr Blackford and/or Mr Johnson will have an opportunity to address the court as well.
