

Real Estate
Case Law Update
Rosling King LLP



Background

In September 1964, Mr Benjamin sold the leasehold interest of a residential property at 14 Mirabel Road, London SW6 7EH (the “**Property**”) to Mr Joseph, who was subsequently registered as proprietor of the leasehold title in October 1964. In 1971, Mr Joseph purchased the freehold reversion to the Property and was registered as proprietor.

In 1987, Mr Joseph purportedly signed a notice document which confirmed that he had been notified by the unnamed leaseholder of the Property of the latter’s intended transfer of the leasehold title to Mr Taylor “to take effect in the year 2001”. The following day, Mr Benjamin purportedly signed a leasehold document in which he appeared to surrender the leasehold title to Mr Taylor “to take effect in the year 2001” (together the “**Contested Documents**”). Given that from September 1964 Mr Joseph had himself been the proprietor of the leasehold title and Mr Benjamin was not in a position to cede the leasehold title as he had already transferred it to Mr Joseph in September 1964, the Contested Documents appeared on their face peculiar, at best.

Mr Joseph died in 1996 and administration of his estate was granted to his son, Mr Antoine. Mr Antoine retained the Property but did not register himself as proprietor or live in it and it remained unoccupied for many years.

In December 2005, Mr Taylor made an application for restrictions on both the leasehold and freehold title of the Property; HMLR sent a notice of the applications to Mr Joseph at the Property address asking for any objection thereto. Without any objection the applications were completed.

In 2006 Mr Taylor issued a claim against Mr Joseph for recovery of an alleged £11,000 loan (the “**Loan**”) or, in the alternative, possession of the Property. Mr Taylor asserted that Mr Joseph had agreed that the Property would stand as security for the Loan. In the absence of Mr Joseph, Master Moncaster made an Order to the effect that in default of payment and absent notice of intention to redeem the mortgage, Mr Taylor would be absolutely entitled to the freehold and leasehold titles of the Property (the “**July 2007 Order**”).

In September 2007, HMLR received an application from Mr Taylor to be registered as proprietor of the freehold and leasehold titles, lodged with the July 2007 Order. A notice was sent to Mr Joseph at the Property address and with no objection, the application was completed in October 2007.

In December 2007, Mr Taylor made a mortgage application to Barclays Bank plc (“**Barclays**”) seeking a loan of £70,000 to renovate the Property. A further application made by Mr Taylor to HMLR to merge the freehold and leasehold titles was effected in January 2008 and the freehold title was charged in favour of Barclays.

Mr Antoine then became aware of the July 2007 Order and in 2013, Mr Taylor died intestate and the payments to Barclays ceased. Mr Antoine subsequently made an application

pursuant to schedule 4, paragraph 2(a) Land Registration Act (“LRA”) 2002 to amend the title by reason of mistake.

The LRA 2002

The LRA 2002 provides that an application to register a disposition must be accompanied by sufficient evidence of the disposition; in this instance such evidence was a copy of the Order. It is common ground that where an application is made to the Registrar to give effect to a vesting order, he must give effect to it by registration pursuant to the duty imposed by the LRA Schedule 4, para 2(2). Once the registration requirements are satisfied, the entry of a person in the register as proprietor of a registered estate is conclusive as to title. Further, that person is conferred upon them the right to exercise “owners powers”, including charging the estate.

This is only subject to LRA Schedule 4 paragraph 2(a), which allows the Court to make an Order for alteration of the register for the purpose of correcting a mistake, bringing the register up to date, or giving effect to any estate, right or interest excepted from the effect of registration.

In this case, the Court was asked to consider whether the July 2007 Order could be disputed on the grounds of mistake for the Registrar to have entered Mr Taylor as the Registered Proprietor because the Order was made on the basis of forged documents.

Judgment

In reliance on expert evidence, the Contested Documents were found to be forgeries. This was not disputed by Barclays or the Registrar. However, the Contested Documents had no dispositive effect in themselves. The July 2007 Order effected the disposition of title, conferring title on Mr Taylor independently of the Contested Documents.

The Court found that court orders were to be treated as valid and binding until set aside. If a court order is made on the basis of a mistake it is not a nullity, rather it must be acted upon until declared void by the court.

The July 2007 Order expressly required that Mr Taylor “be registered as the proprietor of the freehold”. As a result, the Registrar had only to satisfy himself that the order had been made and a copy of the order had been enclosed with the application. It was not for him to seek to explore the validity of the order, and to do so would be outside of his statutory powers. At the time of registration, the July 2007 Order was good on its face and therefore the registration of Mr Taylor as proprietor on the basis of that Order cannot be said to be a mistake.

As a result, the registration was found to be valid until a further order is made to set it aside and accordingly the Legal Charge in favour of Barclays was also found to be valid and binds the freehold title.



Commentary

The case confirms what constitutes a mistake for the purposes of the LRA. The Court takes the view that as long as the Registrar gives effect to the court order in front of them, then that will be a valid registration. It seems only genuine mistakes by the Registrar themselves will fall under the bracket of allowing the court to make an order for alteration of the register.

For further information, please contact [Ann Ebberson](#) or the Partner with whom you usually deal.