



[2023] UKFTT 00555 (PC)

PROPERTY CHAMBER

FIRST – TIER TRIBUNAL

LAND REGISTRATION DIVISION

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

LAND REGISTRATION ACT 2002

2021/0572

BETWEEN

RUSSELL MARK FARMER

APPLICANT

and

CHARLOTTE HALE

RESPONDENT

Property Addresses: Land lying to the north-east of 9 Ashdene Avenue, Bristol BS5 6QH

Title Numbers: BL87665 and AV182699

Before: Mr Simon Brilliant sitting as Judge of the Property Chamber of the First-tier Tribunal

Sitting at: Bristol Magistrates' Court, Marlborough Street, Bristol BS1 3NU

On: 29, 30, 31 March and 13 April 2023

Applicant's representation: **Mr L Farmer (applicant's son)**

Respondent's representation: **Mr J Webb of counsel**

DECISION

Forgery - the applicant, his son and the respondent's grandfather were the members of an informal partnership to develop two parcels of land -the land became registered in the sole name of the applicant – the applicant granted or purported to grant a power of attorney for all purposes to the respondent's grandfather – the power of attorney witnessed or purported to be witnessed by a solicitor –the respondent's grandfather transfers both parcels of land to the respondent using the power of attorney - issue as to whether not the power of attorney is a forgery - failure of the respondent to call the solicitor to give evidence.

Re H (Minors) [1996] AC 563; Wisniewski v Central Manchester Health Authority [1998] EWCA (Civ) 596; Gestmin SGPS SA v Credit Suisse (UK) Ltd [2013] EWHC 3560 (Comm); Bucknell v Alchemy Estates (Holywell) Ltd (no 2) [2023] EWHC 683 (Ch).

Introduction

1. These proceedings concern two adjacent plots of development land on Ashdene Avenue, Bristol BS5 6QH. The larger of the two plots is registered at Land Registry under title number BL87665 (“the BL land”). This title originally included land upon which three houses were subsequently built. They now have their own separate titles. The smaller of the two plots is registered at Land Registry under title number AV182699 (“the AV land”).

2. I shall refer to the BL land and the AV land together as “the development land”. Where the context so admits a reference to the BL land or the development land may include the three titles which have now been removed from the BL land.

3. On 11 July 2017, Mr Russell Farmer (“Russell”), the applicant, was registered as the proprietor of the development land.

4. On 24 July 2019, Ms Charlotte Hale (“Charlotte”), the respondent, was registered as the proprietor of the development land.

5. The basis upon which the development land was transferred into the name of Charlotte was that:

(a) On 23 November 2017, Russell (who was then still the registered proprietor of the development land) gave or purportedly gave a general power of attorney over all his affairs (“the power of attorney”) to Mr Derek Adams (“Derek”), the grandfather of Charlotte.

(b) The power of attorney is said to have been executed by Russell and witnessed by a solicitor, Sarah Hickinbotham (“Sarah”), in her offices, with Derek also present.

(c) On 24 July 2019, Russell signed or purportedly signed a letter confirming that the power of attorney was still in place (“the confirmation letter”).

(d) Derek used the power of attorney and the confirmation letter on 24 July 2019 to transfer the disputed land on behalf of Russell, or purportedly on behalf of Russell, to Charlotte.

6. I should also mention that immediately before Russell became the registered proprietor of the development land its registered proprietor was Alice Baisley (“Alice”), a US citizen and resident, who was at one time the girl friend of Derek.

7. The exact contents of the power of attorney¹ and the confirmation letter are set out below.

8. Russell says that he did not execute the power of attorney or sign the confirmation letter and that both are forgeries.

9. It is common ground that if the power of attorney is a forgery then the transfers to Charlotte are void, rather than voidable. Therefore the transfers are not effective.

¹ There are at least two different original versions of the power of attorney, but they are identical in content.

The reference

10. On 04 October 2019, Russell applied to Land Registry to rectify the respective registers of the development land in order to remove Charlotte as the proprietor, and for him to be restored as the proprietor. This was on the basis that the power of attorney is a forgery and that therefore there are mistakes in the registers which need to be corrected (“the original application”).

11. The original application to rectify the registers is brought under paragraph 5(1)(a) of schedule 4 to the Land Registration Act 2002 (“the 2002 Act”). It is common ground that Charlotte is not in possession of the development land and is therefore not afforded the protection provided in paragraph 6.

12. On 15 January 2020, Charlotte objected to the original application. Charlotte disputes the allegation that the power of attorney and the confirmation letters are forgeries.²

13. The dispute was referred to the tribunal, pursuant to s.73(7) of the 2002 Act on 06 October 2021.

14. So the sole issue I have to decide is whether or not the power of attorney and the confirmation letter are forgeries. As is usual, each party was given permission to and did instruct a handwriting expert to assist me in determining this issue. The conclusion reached by both experts was that it was not possible to say whether or not the documents are forged. I shall therefore have to decide the matter without the benefit of any assistance from the expert evidence.

The hearing

15. The hearing took place over four days, with three days of evidence and one day of closing submissions. Leigh Farmer (“Leigh”) represented his father Russell. I would like to

² Although Charlotte’s written objection to the original application was put in as evidence, she did not make a witness statement in these proceedings, and she did not attend the trial. Mr Webb took instructions from his only live witness Melanie Adams (“Melanie”), the youngest daughter of Derek. This may fit in with a suggestion made at the trial that Charlotte was herself a mere nominee.

acknowledge the grip he had on the case and the clear manner in which he presented it. Mr Webb represented Charlotte. I am equally very grateful for his assistance. I would also like to thank him for helping me in a neutral way when I was unclear of Russell's case.

16. Russell gave oral evidence in chief on the first day from 1:45 PM to 5:00 PM. This was because I thought it would be appropriate for him to take the tribunal carefully through his witness statement in chief, so that I could explore what he was saying before Mr Webb cross-examined.

17. Russell also called to give oral evidence:

(a) Leigh, who gave evidence for four hours.

(b) Geraint James, a solicitor. His firm acted for Russell and Lee, and who discovered on 28 August 2019 that the registered proprietor of the development land was now Charlotte and not one of his clients.

(c) Roger Averis, a quantity surveyor. He had advised Russell and Leigh on aspects of the development since 2005.

(d) Robert Keller, an accountant. He was asked for advice after 23 November 2017 (the date of the power of attorney) by Russell and Leigh about a proposed horizontal division of the development land between them and the corporate vehicles by which they should effect this and carry out any development.

18. Mr Webb called only Melanie to give oral evidence. He put in witness statements (not made in these proceedings) from

(a) Derek.³

³ This was his objection to the original application. He had died before witness statements were exchanged in these proceedings.

(b) Sarah.⁴

(c) Charlotte.²

(d) Alice.⁵

My assessment of the witnesses

19. My impression is that all of the witnesses called to give oral evidence were doing their best to help me. Where I am unable to accept their evidence on any particular issue, this is because they have misremembered it over the passage of time. Melanie's evidence was almost entirely hearsay, but I formed the impression that she was entirely loyal to her late father and believed what he had told her. The same could be said of Charlotte's evidence. Alice's evidence was irrelevant. I have been unable to place any, or any substantial reliance on the written evidence of Derek or Sarah.

My task

20. In the course of paragraphs 21 - 33 below I gratefully take, adopt and adapt the summary of a judge's task from the magisterial judgment of His Honour Judge Matthews (sitting as a judge of the High Court) in Bucknell v Alchemy Estates (Holywell) Ltd (no 2) [2023] EWHC 683 (Ch).

21. For the benefit of the lay parties in this case I will say something about how English judges decide civil cases like this one. First of all, judges are not superhuman, and do not possess supernatural powers that enable them to divine when someone is mistaken, or not telling the truth. Instead, they take note of the witnesses giving live evidence before them, look carefully at all the material presented (witness statements and all the other documents), listen to the arguments made to them, and then make up their minds.

⁴ This was a statement made before these proceedings. She did not make a separate statement in these proceedings.

⁵ This was a Land Registry ST1 Form made in connection with adverse possession proceedings. She did not make a statement made in these proceedings.

22. But there are a number of important procedural rules which govern their decision-making, some of which I shall briefly mention here, because non-lawyer readers of this judgment may not be aware of them.

23. The first is the question of the burden of proof. Where there is an issue in dispute between the parties in a civil case (like this one), one party or the other will bear the burden of proving it. In general, the person who asserts something bears the burden of proving it.

24. Russell asserts that two documents have been forged. So, in general terms, he must prove this, and the facts and matters which he relies on for that purpose. The importance of this is that, if the person who bears the burden of proof of a particular matter satisfies the tribunal, after considering the material that has been placed before the tribunal, that something happened, then, for the purposes of deciding the case, it did happen. But if that person does not so satisfy the tribunal, then for those purposes it did not happen. That may mean that, in some cases, the result depends on who bears the burden of proof.

25. Secondly, the standard of proof in a civil case is very different from that in a criminal case. In a civil case it is merely the balance of probabilities. This means that, if the judge considers that a thing is more likely to have happened than not, then for the purposes of the decision it did happen. If on the other hand the judge considers that the likelihood of a thing's having happened does not exceed 50%, then for the purposes of the decision it did not happen. The matter is binary. Either something happened or it did not, and there is no room for 'maybe'. It is not necessary for the court to go further than this. There is certainly no need for any scientific certainty, such as (say) medical experts might be used to.

26. I shall have more to say below about the standard of proof in this case because of the serious allegation of forgery.

27. Thirdly, in our system, judges are not investigators. They do not go looking for evidence. Instead, they decide cases on the basis of the material and arguments put before them by the parties. So, it is the responsibility of each party to find and put before the court the evidence and other material which each wishes to adduce, and formulate their legal arguments, in order to convince the judge to find in that party's favour.

28. Fourthly, more is understood today than previously about the fallibility of memory. In commercial cases, at least, where there are many documents available, and witnesses give evidence as to what happened based on their memories, which may be faulty, civil judges nowadays often prefer to rely on the documents in the case, as being more objective: see Gestmin SGPS SPA v Credit Suisse (UK) Ltd [2013] EWHC 3560 (Comm).

29. Although this is formally a land registration case, this is in reality a commercial dispute. It concerns money and property, in the way that many commercial disputes do. In fact, there are few, if any, contemporaneous documents. Russell's diary is an exception. On the other hand, there are three professional witnesses who can relate what was told to them by Russell and Leigh at the material time.

30. In deciding the facts of this case, I have had regard to the more objective contents of Russell's diary. In addition to this, I have heard witnesses (who made witness statements in advance) give oral evidence while they were subject to cross-examination and re-examination. This process enables the court to reach a decision on questions such as who is telling the truth, who is trying to tell the truth but is mistaken, and (in an appropriate case) who is not telling the truth.

31. I will therefore give appropriate weight to both the documentary evidence and the witness evidence, both oral and written, bearing in mind both the fallibility of memory and the relative objectivity of the documentary evidence available. As far as the written evidence is concerned, I take the view that if the maker of the statement has neither come to give oral evidence nor given any, or any satisfactory, explanation as to why that witness has not attended, then I may place very little weight on it.

32. Fifthly, a tribunal must give reasons for its decisions. That is what I doing in this my reserved judgment. But judges are not obliged to deal in their judgments with every single point that is argued, or every piece of evidence tendered. They deal with the points which matter most.

33. Moreover, it must be borne in mind that specific findings of fact by a judge are inherently an incomplete statement of the impression which was made upon that judge by the primary evidence. Expressed findings are always surrounded by a penumbra of imprecision which may still play an important part in the judge's overall evaluation. Put shortly, judgments do not explain all aspects of a judge's reasoning, although they should express the main points, and enable the parties to see how and why the judge reached the decision given.

The allegation of forgery and the standard of proof

34. I now turn away from Bucknall to consider the standard of proof in a forgery case. Of course, it is still the civil standard of the balance of probabilities. But this needs to be finessed.

35. The matter was explained by Lord Nicholls in Re H (Minors) [1996] AC 563:

“The balance of probability standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not. When assessing the probabilities the court will have in mind the factor, to whatever extent is appropriate in the particular case, that the more serious the allegation the less likely it is that the event occurred and hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability. Fraud is usually less likely than negligence. Deliberate physical injury is usually less likely than accidental physical injury. A stepfather is usually less likely to have repeatedly raped and had non-consensual oral sex with his underage stepdaughter than on some occasion to have lost his temper and slapped her. Built into the preponderance of probability standard is a generous degree of flexibility in respect of the seriousness of the allegation.

Although the result is much the same, this does not mean that where a serious allegation is in issue, the standard of proof required is higher. It means only that the inherent probability or improbability of an event is itself a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred. The more improbable the event, the stronger must be the evidence that it did occur before, on the balance of probability, its occurrence will be established.”

The background to the development land

36. Historically, the BL land was undeveloped and unregistered land owned by members of Leigh's maternal family. The land was partly covered in trees which the family felled for the purposes of their timber business.

37. Historically, the AV was undeveloped, landlocked and unregistered land which belonged to Bristol City Council ("BCC"). It sold the land to Robert Brine on 13 June 1989.

38. In 1985, Leigh's family decided to develop the BL land for residential purposes. Planning permission was obtained to build five houses on the BL land. In fact, as I have said, only three were eventually built. Subsequently, the AV land was bought for similar purposes.

39. Although work started on the BL land in 1985, after 1986 the work ceased for a considerable amount of time for various reasons. I need not go into the details, suffice to say the reasons included ones of finance and the presence of squatters on the development land. There was also a problem about the ownership of a strip of land about 5m wide and 65m in length on the western side of the BL land ("the adverse possession land"). A claim against BCC for adverse possession of this land was raised but was not successful.

The partnership agreement

40. By 2004 an unwritten agreement had been reached whereby Russell, Leigh and Derek, who had experience in property, would form an informal partnership to develop the development land ("the partnership"). According to Russell and Leigh, it was agreed that Russell and Leigh would share between them 50% of the profits and that Derek would have the other 50% of the profits. Derek's recollection was that he would be entitled to 51% of the profits. Nothing turns on this.

41. It was also agreed that Derek's then girlfriend, Alice Baisley would become the nominal legal owner of the development land. It was to be held on trust for Russell, Leigh and Derek in the shares as set out above. There was a declaration of trust between Leigh and Alice dated 14 April 2005 as part of this arrangement.

Purchasing the development land

42. The BL land was purchased by Leigh from his family in 2005. This purchase triggered the first registration of this land on 02 September 2005.

43. The financial arrangements for the purchase of the BL land were as follows. The purchase price was £100,000. A deposit of £32,360 was required. Russell and Leigh paid £16,180 and Derek paid £16,180 as well. This left a balance of £67,640 to pay on completion. Russell and Leigh were unable to contribute to this sum at that time, and Derek paid the full amount.

44. The agreement was that Russell and Leigh would in due course pay their half of the balance, namely £33,820, together with interest of £10,000. They would also pay the solicitors' conveyancing fees. Russell and Leigh duly paid Derek a total of £46,743 on 20 November 2006.

45. On 15 November 2005, Leigh transferred the BL land to Alice pursuant to the declaration of trust. She thereby became the legal owner, holding the BL land on the same trusts as before.

46. The AV land, which was a ransom strip, was bought from Mr Brine in 2006 or 2007 for £27,000. It was paid for 50% by Derek and 50% by Russell and Leigh. It was bought in the name of Alice, and she then became the legal owner of the whole of the development land. The AV land was treated as an addition to the BL land for the purposes of the development and was subject to the same trusts.

47. The development land at present consists of about 2.1 acres and is said to be worth about £150,000. As I have said three houses had been sold off. The remainder of the land, which is the subject of these proceedings, is still undeveloped. Half of the BL land is rendered sterile for development purposes because of a TPO. The remainder is infill. The AV land consists partly of a hole in the ground and partly of infill.

Why Alice became the nominal owner

48. There is a dispute as to why Alice became the nominal owner of the whole of the development.

49. Russell and Leigh say that this was to protect Leigh personally from the opprobrium of the neighbours who were unhappy about the state of the land (including Japanese knotweed) and the presence of squatters who took up occupation of the shells of the three houses.

50. Charlotte's case is that Derek had paid initially 84% of the costs of the purchase of the BL land and that this gave him some security. I am not sure that as a matter of law that this would have achieved such a purpose, as Alice would be holding the development land on trust for the members of the partnership and not absolutely.

51. Nevertheless, I prefer Charlotte's case on this point. I think it is fanciful to suggest that this was done to protect Leigh. He was the person on site. I am not persuaded that those wishing to complain would diligently search the register at Land Registry to ascertain the person to whom their unpleasantness should be directed (I was told that some very offensive graffiti appeared on the walls of the houses). Nor do I think that his removal from the proprietorship register, but not his presence on the site, would make the slightest bit of difference to their behaviour.

52. As I have said, three houses were built on the BL land. On 20 March 2008, one of the houses was sold to Russell. On 28 June 2013, another of the houses was sold to an outside purchaser. On 20 September 2013, the final house was sold to an outside purchaser.

The events in 2017 and subsequently

53. Before I explore why the development land was transferred from Alice's name to Russell in 2017, I shall set out certain of the relevant events in chronological order.

54. In **late 2016** I find that Leigh told Roger Averis a dispute had arisen with Derek because he had used the development funds on a project of his own. Subsequently he was told that the

disputed land was going to be transferred into Russell's name as part of the settlement.

55. On **11 July 2017**, Alice transfers the development land to Russell.

56. On **20 July 2017**, Russell says that he and Derek attend Sarah's offices and Russell signs Land Registry ID1 Form. He leaves his passport at Derek's nearby house. Charlotte denies all of this.

57. On **17 November 2017**, Leigh picks up Derek from his house and gives him a lift to Bristol Bus Station. Derek flies out to Kenya for a one month holiday. Charlotte does not dispute this.

58. On **23 November 2017**, Charlotte says that Russell attends Sarah's offices where both Derek and Sarah are present and Russell executes the power of attorney enabling Derek to act on Russell's behalf. Russell denies this.

59. The power of attorney reads:

General Power of Attorney

THIS GENERAL POWER OF ATTORNEY is made *23rd November*⁶ 2017 by The Donor of this Power Russell Farmer of 57 Hatters Lane Chipping Sodbury BS37 6AA.

I APPOINT DEREK REGINALD ADAMS of 6 Laburnum Road, Hanham, Bristol to be my Attorney in accordance with section 10 of the Powers of Attorney Act 1971 generally in relation to all my affairs.

Signed as a deed by: *RM Farmer*⁶

RUSSELL FARMER

⁶ Manuscript but not in this handwriting.

in the presence of

*S: Hickinbotham*⁶
51 High St
Hanham
Bristol

[Stamped :]
SH FAMILY LAW
51 High St Hanham
Bristol BS15 3DQ
Tel 0117 960 1437

[Passport photograph of Russell attached].⁷

60. On **18 December 2017**, Derek returns from Kenya.

61. On **15 July 2019**, I find that Russell and Leigh met Robert Keller, their accountant, at his offices. They told him that they have fallen out with Derek because of his use of the development fund. They said they had reached agreement whereby title to the development land had been transferred into the name of Russell. They asked for advice as to the best way forward for them to carry on the development of their own.

62. As a result Robert Keller formed a company, Rosie Red Developments Ltd, in July 2019. Russell is the only shareholder in that company. I find Robert Keller suggested that 50% of the development land was to be transferred into that that company. He also suggested that the other 50% would be transferred to A&L Services (Bristol) Ltd, an existing company wholly-owned by Leigh.

63. Subsequently, Robert Keller was surprised to learn from Russell that he had been unable to transfer the development land as arranged because it was no longer registered his name. He had discovered this from his solicitor, Geraint James. I find that Russell seemed to Geraint Jones to be generally shocked and upset by this.

64. On **24 July 2019**, Charlotte's says that Russell signs a letter of confirmation of the

⁷ I have already said that there are at least two original versions of the power of attorney, but their contents are the same. Russell's signatures to the lay eye are not identical, but I am not prepared to say they are from a different hand.

power of attorney (“the confirmation letter”). Russell denies it.

65. The confirmation letter reads:

24th July 2019

I Russell Farmer passport number 548464313 here by Certify that general POA granted to Mr Derek Reginald Adams on the 23rd November 2017 has not been Revoked.

Signed

*RM Farmer*⁶

66. On the same day, Derek Charlotte attend Sarah’s offices to transfer the development land into the name of Charlotte.

67. On **01 August 2019**, I find that Geraint James was instructed by Russell and Leigh to transfer the development land into the two companies as suggested by Robert Keller.

68. On **27 August 2019**, Derek emailed Roger Averis that he was now back in control of the disputed land.

69. On **28 August 2019**, Derek sent a text message to Leigh in respect of the repayment of a loan. It reads:

“Youve now lost Ashdene and I’ll bankrupt you and yr father if you don’t pay just wait and see yr too big for yr boots and a bloody fool as well”.

70. On **29 August 2019**, Geraint James found to his surprise that the development land was no longer registered in Russell’s name, but in the name of Charlotte. There was a further application in respect of the development land to Land Registry which was pending.

71. I find that Geraint James shortly thereafter had a meeting with Russell and Leigh who were both visibly shocked about what happened.

72. On **03 September 2019**, Leigh spoke to Grace Cox at SH Family Law. She confirmed that her firm had not acted for Russell in any capacity. The only document the firm held in connection with Russell was the ID1 Form.

73. On **20 September 2019**, Geraint Jones' colleague, Jacqueline James, contacted SH Family Law asking whether the firm had met with Russell on 23 November 2017 to witness the power of attorney.

74. On **30 September 2019**, Sarah telephoned Jacqueline James. At no time did Sarah state that she was present when the power of attorney was signed. She was rather vague about the matter.

75. On **03 October 2019**, Sarah wrote to Jacqueline James that she had met Russell on 23 November 2017 to witness the power of attorney. She had not disclosed this in the previous telephone conversation.

76. On **04 October 2019**, the original application was made.

77. Sadly, on **23 November 2020** Derek died.

The reason for the transfer of the development land to Russell in 2017

78. Russell and Leigh say that in 2016 a serious dispute arose between them, on the one hand, and Derek on the other. According to Russell and Leigh this was because Derek had dishonestly taken money out of the development pot to fund a project of his own in Cornwall.,

79. They say the dispute was settled in 2017. At that stage there was £379,000 in the pot. So Russell and Leigh were each entitled to £94,750. Leigh had in addition undertaken some ground works. He was to receive £100,000 in cash. This was eventually repaid after a cheque bounced.

80. As far Russell was concerned, instead of receiving cash the whole of the development land was to be transferred to him. Accordingly, Alice transferred the development land to Russell on 11 July 2017. As I have said, Roger Averis' evidence is that he was told about the dispute and settlement at this time.

81. Charlotte disagrees about whether there was any dispute. Her case is that the change in the legal ownership of the development land was not due to the settlement of any dispute, but was because the relationship between Derek and Alice had come to an end. Derek did not want to appear as a legal owner because of the dispute with BCC over the adverse possession land.

82. She says that Leigh had been paid out for his share of the development pot. As a result Derek owned (on his percentage breakdown) 75.1% and Russell 24.9% of the development pot.

83. I prefer the account put forward by Russell and Leigh. I find the suggestion that Derek did not want to appear as a legal owner because of the dispute with BCC over the adverse possession land as far-fetched and unlikely.

The power of attorney: Charlotte's case

84. Since by 2017 Derek owned the lion's share of the development pot it was only logical for him to have the power to sell the development land to realise his share. Russell duly agreed to give Derek a power of attorney to enable this to be effected. Derek was present when the power of attorney was executed by Russell at the office of SH Family Law. The document was witnessed by Sarah. Russell subsequently duly signed the confirmation letter.

The power of attorney: Russell's case

85. Russell denies having signed the power of attorney or the confirmation letter. He says that his signatures on those documents were forged. As I have said, the expert handwriting evidence is that it is not possible to say one way or another whether these signatures were forged or not.

86. Russell puts forward the following arguments in support of his case:

(a) Derek was in Kenya between 18 November 2017 and 18 December 2017, so he could not have been present at Sarah's offices on 23 November 2017 when it is said the power of attorney was executed. Derek's excuse that the document must be misdated is not credible.

(b) Why is there no attendance note or diary entry made by Sarah relating to the execution of the power of attorney?

(c) Why is there no evidence of any fee charged by Sarah?

(d) Sarah's firm originally said that the only document it had any record of being signed at its offices was a Land Registry ID1 Form signed by Russell on 20 July 2017. No mention of that time was made of the power of attorney. Nor did Sarah mention it on the telephone in her conversation on 30 September 2019.

(e) Why should Russell have given Derek a power of attorney over land which had been transferred from Alice to Russell in settlement of the dispute between them?

(f) Russell was in 2017, and still is, entirely compost mentis. So why should he have given a general power of attorney in respect of all his property and affairs to Derek at a time when he already distrusted him following the dispute as to the funds in the development pot? Why was not any power of attorney limited to the disputed land?

(g) Subsequent to 23 November 2017, Russell and Leigh consulted Robert Keller, their accountant, about dividing up the development land between Russell and Leigh, and each one using a separate corporate vehicle to take the development forward. Why would this have been done if the power of attorney had been given?

(h) Leigh carried on working on the development land during 2018. Again, why would this be done if the power of attorney had been given?

(i) Russell has produced his diary for 23 November 2017 which shows that he had a crowded day (there is even a reference to where he had lunch) and there is no reference to his attending Sarah's offices in order to execute the power of attorney.

(j) Why would Russell have given Derek a power of attorney when he had discovered in 2016 that Derek been acting fraudulently?

Charlotte's response

87. Mr Webb made a number of careful submissions in reply. These include:

(a) How did Derek know of Russell's business address which was given on the power of attorney?

(b) How come a photograph of part of Russell's passport was attached to the power of attorney?

(c) It is bizarre that there is no written evidence of the underlying settlement agreement.

(d) The evidence of Russell and Leigh has evolved with time as it appears in successive written evidence.

(e) There is no reason why Russell's diary should have included every single event in a day.

(f) Why did Leigh take Derek to the Bus Station in 2017 if they had fallen out?

(g) Why was the transfer of the development land to Russell made months after the settlement agreement was reached?

(h) There is scant evidence that the figure which should have been left in the

development pot was £379,000.

- (i) Russell was not a client of SH Family Law.

Matters I propose to ignore

88. In coming to my evaluation of the relevant evidence I am not going to take into account the following five matters, which I understand Russell to be relying upon. This is upon the basis that they are either of no weight, or are irrelevant or have an innocent explanation:

- (a) Derek's private life.
- (b) Derek's use of a pseudonym on bank accounts connected with his business activities.
- (c) The two different versions of panel 14 in Alice's Land Registry Form ST1.
- (d) The two different certified powers of attorney given by Alice to Derek.
- (e) Tim Adams' dealings with Land Registry.
- (f) The fact that there are different originals of the power of attorney.

Discussion

89. I remind myself of the extract from Re H set out above.

90. I have come to the very clear conclusion, on overwhelming evidence, that both documents were forged.

91. I found Russell an entirely credible witness. He is a careful man who keeps a meticulous diary. There is no way that if he had attended the solicitors' offices on 23 November 2017 there would not have been an entry to this effect in his diary. He said with a passion that he had been

“robbed” by Derek and was bitterly hurt by this betrayal. I accept this. He would not have given a power of attorney to a man who had betrayed him.

92. Whilst I do not accept Leigh’s evidence as to why the development land was placed in the name of Alice in the first place, I accept the remainder of his evidence. Particularly, I accept his evidence regarding the reason for the transfer of the development land into Russell’s name in 2017.

93. Roger Averis, who struck me as an entirely honest witness, was told of the dispute with Russell contemporaneously.

94. Russell and Leigh would not have discussed with Robert Keller in 2018 the future plans for the development land if they did not believe the Russell continued to have an unassailable title to it.

95. There was no reason whatsoever for Russell to have given a general power of attorney when he was in full possession of his faculties, any power of attorney could have been limited to dealing with the development plan.

96. I can only conclude Derek must have known of Russell’s business address. He had also had an opportunity to access and copy Russell’s passport when he brought it in to sign the ID1 Form earlier in the year.

Sarah’s evidence

97. So far I have not specifically referred to Sarah’s failure to give evidence.

98. Mr Webb referred me to Wisniewski v Central Manchester Health Authority [1998] EWCA (Civ) 596, when it is appropriate to draw adverse inferences from the failure of a witness to attend.

99. This is a case in which I am entitled to, and do, draw an adverse influence. If ever there

was an example of “Hamlet without the Prince” it is this.⁸

100. Sarah’s evidence is pivotal in this case. It is more than surprising that an officer of the Superior Courts failed to attend the tribunal when the whole purpose of her being present at the execution of the power of attorney was for there to be to an unimpeachable witness.

Conclusion

101. To strip the matter down to the bare bones:

(1) Derek said in his witness statement that he was present when the power of attorney was executed on 23 November 2017. He clearly was not, as Charlotte now accepts.

(2) Charlotte has chosen not to call Sarah to give evidence.⁹ She failed to attend the trial. No explanation was given, only mere speculation. There is no evidence that Charlotte ever applied to the tribunal for a witness summons compelling Sarah to attend.

(3) I unhesitatingly accept Russell’s oral evidence that he did not sign either the power of attorney or the confirmation letter.

102. I will direct Land Registry to give effect to the original application.

103. Costs will follow the event. Russell must within 28 days send to Charlotte and the tribunal a schedule of costs in form N260 in respect of costs incurred since the date of the referral on 06 October 2021 to the tribunal from Land Registry (but not before).

⁸ The phrase comes from an account given in the Morning Post of September 1775. The member of a theatrical company who was to play Hamlet in a production of Shakespeare's play ran off with an innkeeper's daughter before the performance; when the play was announced to the audience, they were told the part of Hamlet [was] to be left out for that night.

⁹ Her witness statement consists of one sentence of 35 words: “I met with Derek Reginald Adams and Russell Farmer at 51 High Street Hanham Bristol on 23 November 2017 and witnessed Russell Farmer sign a document marked General Power of Attorney which I also signed”. Clearly, she did not meet Derek on that day. There is no attempt to give any context or attendance note or diary entry.

104. He should also address the issue or whether the costs should be on the standard or indemnity basis as this is a forgery case. Help on this issue can be found by a simple Google search of “When are indemnity costs justified?”

103. I will then decide whether (a) there is to be a summary assessment, and on which basis, by me on the papers, in which case I shall call for representations from Charlotte, or (b) whether the question of costs should be referred to a costs judge for a detailed assessment.

By order of the tribunal

Simon Brilliant

17 April 2023

