



# Restriction to Resolution: A practical guide to Restrictive Covenants

Pearse Johnson

# Ground b: agreement

S.84(1)(b)

*“that the persons of full age and capacity for the time being or from time to time entitled to the benefit of the restriction...have agreed, either expressly or by implication, by their acts or omissions, to the same being discharged or modified”*

# Ground c: no injury

S.84(1)(c)

*“that the proposed discharge or modification will not injure the persons entitled to the benefit of the restriction”*

# Ground a: obsolescence

s.84(1)(a)

*“that by reason of changes in the character of the property or the neighbourhood or other circumstances of the case which the Upper Tribunal may deem material, the restriction ought to be deemed obsolete”*

# Ground aa: reasonable user

s.84(1)(aa)

*“that in a case falling within subsection (1A) below the continued existence thereof would impede some reasonable user of the land for public or private purposes or, as the case may be, would unless modified so impede such user”*

s.84(1A)

*“...in any case in which the Upper Tribunal is satisfied that the restriction, in impeding that user, either—*

*(a) does not secure to persons entitled to the benefit of it any practical benefits of substantial value or advantage to them; or*

*(b) is contrary to the public interest;*

*and that money will be an adequate compensation for the loss or disadvantage (if any) which any such person will suffer from the discharge or modification”*

# Practical tips

1. Consider whether: (i) damages would be an adequate compensation for the practical benefit in question; and (ii) whether modification of the restriction would be better than full discharge
2. Each application turns on its own facts. Do not rely on other cases by analogy
3. Conduct a site visit if cost permits
4. Negotiation is king!



# TLATA Issues: Informal Dispositions of Property

Ella Vacani

# Formalities



# Formalities: A refresh

- A disposition of land must be in signed writing (s.53 LPA 1925)
- A contract for disposition of land must be in writing and incorporating all the terms into one document (s.2 LP(MP)A 1989)
  - NB exception for resulting, implied or constructive trusts (s.53(2) LPA 1925)

# What is “signed writing”?

- Initials (Jenkins v Gaisford & Thring (1863) 3 Sw & Tr 93)
- Description that was intended to represent the name of the person, e.g. “*your loving mother*” (Re Cook [1960] 1 All ER 689)
- Automatically included email signature (Neocleous v Rees [2019] EWHC 2462 (Ch))

# Discussion and Application

# The Scenario: Neil & Sonia

- Neil (N) and Sonia (S) were in a relationship for just over 5 years. They were briefly engaged to be married, but N called off the wedding shortly before it was due to take place, on 1 July 2024. They have been separated ever since.
- N & S own two properties in Essex:
  - 1 Ash Road, Billericay (A);
  - 2 Blue Rose Lane, Basildon (B).
- N & S have been in and out of touch on email and Whatsapp to debate their positions. Their discussions have gotten so heated at times that N has now changed S's name on Whatsapp to "DO NOT TRUST".
- A few months ago S threatened that she will issue TLATA proceedings to obtain full title to both A and B.

# Event 1: messages on Sonia's birthday

- At 10pm on S's birthday N sent S an email which read:
  - *"The house in Basildon. I've had enough. Take it. It's yours. All you have to do is drop this claim you've said you'll bring."*

## Valid disposition?

- Likely that it has been signed sufficiently
- But it is conditional, so invalid: Begum v Miah [2024] EWHC 697 (Ch)
- What if S did then take steps to drop her claim – e.g. dis-instructed solicitors?

# Event 2: messages on Neil's birthday

- Early in the morning of N's birthday S sent a series of messages to N on Whatsapp which read:
  - *"I'm fed up of being linked to you."*
  - *"Keep Ash Road, I don't want it."*
  - *"I don't want it now. I won't ever want it. I want this fight to end."*
- N replied within 2 minutes and said:
  - *"Yes, I absolutely accept."*

## Valid disposition?

- Whatsapp likely to mean that there is signed writing: NB Reid-Roberts v Lin [2024] EWHC 759 (Ch) re Whatsapp headers
- The messages *"evince a clear intention to divest [herself] of that interest immediately"*: Hudson v Hathaway [2022] EWCA Civ 1648 [2023] KB 345
- What if S simply responded with *"Whatever"*?

# Event 3: call on 1 July 2025

- At midday on 1 July 2025, N rang S and thanked her for relinquishing A to him. He explained that some decorating works he had been doing to it had uncovered various structural issues and he was about to start some time off to repair it himself.

## **Valid disposition?**

- Oral, so no valid disposition.
- (Hudson v Hathaway [2022] EWCA Civ 1648 [2023] KB 345)

# Conclusions



# Conclusions

- Think broadly about what could constitute signed writing – and check for legal updates!
- If no signed writing, ask: is there a constructive (or other) trust analysis?
- Argue in the alternative.
- Think of the bigger picture: what is the Judge likely to think when stepping back from the situation?

Any Questions?

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