

Yuen v Wong (2020) First-tier Tribunal 2016/1089, 8 January 2020

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07 April 2020

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Facts

The applicant (Y) and the respondent (W) had been joint registered proprietors of a property and W had become the sole registered proprietor as a result of a transfer by Y and W to W.

Y was alleged to have signed the transfer deed during a meeting with W in Hong Kong. The witness (G) was W's London-based solicitor, who witnessed the execution via a Skype video link. The transfer deed was then sent to G who added her signature as attesting witness on its arrival a few days later (and then dated the document).

Several years later, Y claimed that the transfer to W was invalid and registered a unilateral notice on W's title claiming a right to have the title register altered to correct a mistake. W applied to have the notice cancelled.

Issues

1. Was Y's execution of the transfer deed ineffective because G had witnessed Y's signature via a Skype video link?
2. Was Y's execution of the transfer deed ineffective because it had not been signed by G as attesting witness until a few days after Y's signature?

Decision

1. Although there is no direct authority on the point, the judge relied on the 2019 Law Commission report on the 'Electronic execution of documents', whose preliminary view was that the current law required a witness to be physically present for a deed to be validly executed. On that basis, the judge ruled that Y had a reasonable prospect of persuading a court that the transfer to W had not been validly executed as a deed.
2. Section 1(3) of the Law of Property (Miscellaneous Provisions) Act 1989 (the 1989 Act) (the section dealing with the execution of deeds by individuals) did not require G's attestation as a witness to be contemporaneous with Y's signature.

Points to note/consider

1. Under section 1(3) of the 1989 Act, a witness must both observe the execution of a document and attest it (i.e. record on the document that the witness has observed the execution). Whilst the Law Commission's view is that the current law requires a witness to be in the same room to observe the execution of a document, there is nothing in section 1(3) which requires attestation of a deed to be contemporaneous with the execution of it (nor for the signatory still to be present at the time the witness attests it).

- Given that the Law Commission's view in its 2019 report that electronic signatures to documents are as valid as wet-ink ones (as long as the signatory intends to authenticate the document) does now seem to be accepted by the courts, it seems that legislation is needed in relation to the video witnessing of deeds to allow electronic signatures to reach their full potential. The Law Commission recognised this and recommended in its 2019 report that an industry working group looks at solutions to the practical and technical obstacles that exist to video witnessing of electronic signatures on deeds and that, following this work, the government considers legislative reform to allow for video witnessing (assuming that is still considered to be an attractive option).

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