

RELIANCE ON DOCUMENTS
CONTAINING FORGED SIGNATURES

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April 2015

1. Your client makes a claim relying on a conveyance or mortgage. The (apparent) transferor or mortgagor defends the claim by disputing that he signed the document. He says that his signature on the document is a forgery. The parties jointly instruct a forensic handwriting expert to examine the signature. The expert, having compared the signature with comparator signatures provided by the defendant, concludes that the signature is not genuine. Is all lost? What remedies might remain available?
2. This paper offers some practical suggestions.

Has the expert got it wrong?

3. One possibility that should not, necessarily, be discounted is that the handwriting expert has simply got it wrong.
4. The discipline of forensic handwriting analysis is (quite rightly) regarded with great respect by the courts. A handwriting expert's view that the signature is not genuine will be accorded considerable weight. However, sometimes it will be possible to persuade a court that a handwriting expert's view about the authenticity of a signature is mistaken. The focus of a handwriting expert's enquiry is, necessarily, narrow. The only evidence that the expert is likely to consider will be the disputed signature and comparator signatures provided by the person whose signature it is meant to be. There may well be other evidence, which the court should take into account, suggesting (perhaps strongly) that the signature is genuine.

5. In one of my recent cases, my client was suing on a loan agreement. The debtor alleged that his signature on the loan agreement was a forgery. A jointly instructed handwriting expert agreed. During the trial, to help me prepare my cross examination of the jointly instructed expert, we sought Dr Giles' help. She agreed with the jointly instructed expert that the signature was a forgery. Nevertheless, we persuaded the judge that the signature was genuine. We succeeded because there was another piece of evidence, falling outside of the material considered by the joint handwriting expert, indicating that the signature was genuine. Namely, the evidence of a solicitor who said that she had witnessed the defendant signing the loan agreement. She said that she knew that the person signing the document was the defendant because, when she witnessed the signature, she had been provided with his passport.

The liability of other signatories to the document

6. Even if the signature of a transferor or a mortgagor is established to be a forgery, it may be possible to establish liability on the part of *other* signatories to the document.
7. If the conveyance or mortgage was executed, not only by the person whose signature was forged, but also by a co-owner, that co-owner will be bound by the document. Section 63(1) of the *Law of Property Act 1925* provides: "*Every conveyance is effectual to pass all the estate, right, title, interest, claim, and demand which the conveying parties respectively had, in, to, or on the property conveyed, or expressed or intended so to be, or which they respectively have power to convey in, to, or on the same*". So, if a mortgage is apparently executed by two co-owners and one of the co-owner's signatures is a forgery but the other signature is genuine, the co-owner who did execute the mortgage, whilst he was unable to grant a mortgage over the legal estate, will have created an equitable charge over his beneficial interest. In Bowers v Bowers (unreported, 3 February 1997), Hoffmann J said (at page 7 of the transcript):

“...it is hard to see why the addition of a forged signature which is not relied upon should make any difference. It would allow the [mortgagor whose signature is genuine] to repudiate his own deed because a superfluous, forged signature had been added...I therefore do not accept that the addition of the forgery made any difference and I adhere to the view that the building society took an equitable charge over the husband’s beneficial interest under section 63.”

8. The same type of thing can happen when, on a conveyance, the signature of one of two transferors is forged. In Ahmed v Kendrick (1988) 56 P&CR 120 a husband and wife appeared to have executed a conveyance of a house. However, it turned out that the husband had forged his wife’s signature. The Court of Appeal held that the conveyance had nevertheless operated to transfer to the purchaser the husband’s beneficial interest in the house. So the purchaser was entitled to be substituted for the husband as the joint owner of the legal estate and it was ordered that the house be sold (with the purchaser being given an opportunity to buy the house at its market value).
9. Whoever has purported to witness a forged signature might also be liable. If someone puts his name to a document as the witness of a signature that would seem to amount to a factual representation that he reasonably believed the signature to be genuine. So a forged signature may give rise to a misrepresentation claim against whoever witnessed the signature.

The liability of the person whose signature is forged

10. What of the person whose signature has been forged? Might he nevertheless be liable under the conveyance or mortgage? Or might he have incurred a liability somehow as a result of the conveyance or mortgage?
11. Circumstances vary widely. But set out below are five possible ways in which an (apparent) transferor or mortgagee whose signature on the document is not genuine may nevertheless incur a liability.

12. First, a transferee or mortgagee, if he has parted with money, may be subrogated to someone else's rights which are capable of being enforced against the person whose signature has been forged. So a mortgage lender whose own security has failed due to the mortgagor's signature being forged may be able to establish that his money was used to discharge an earlier security, and, to the extent that its money was so used, the lender will be subrogated to that earlier security.

13. Secondly, it may be possible to establish that the person whose signature has been forged was (in some sense) responsible for the circumstances that led to the forgery. That might make it unfair to allow him to escape liability. If the conveyance or mortgage has been registered at HM Land Registry, the court might, in those circumstances, be persuaded simply to decline to exercise its discretion to remove the registration of the conveyance or mortgage.

14. This is illustrated by Commercial Acceptances Ltd v Shaikh (unreported, 22 June 2001). Mr Shaikh (who lived in Pakistan) owned a flat in London. A fraudster obtained a loan secured by a mortgage over the flat by impersonating Mr Shaikh. That mortgage was duly registered against the flat's leasehold title. The fraudster then made off with the loan. The lender commenced possession proceedings. HHJ Reid QC (sitting as a deputy High Court Judge) found that, in reckless disregard of any sound business practice, Mr Shaikh had failed to take any active interest in the acquisition and management of the properties that he owned in the UK. Instead, he had entrusted his affairs to the fraudster and also to a Miss Shaikh (who was a friend and business associate). Both the fraudster and Ms Shaikh were, as Mr Shaikh should have known, untrustworthy characters. Properties had previously been acquired by the fraudster for Mr Shaikh where, to enable the purchase of those properties to complete, the fraudster had forged Mr Shaikh's signature. It was the way in which Mr Shaikh carried on business that enabled the fraud to take place.

15. Even though the fraudster had forged Mr Shaikh’s signature on the mortgage, the “statutory magic” of land registration meant that, so long as the mortgage remained registered, the lender had a valid legal mortgage. Rectification of the land register is not automatic. The power to rectify is discretionary: section 82(1) of the *Land Registration Act 1925* (which was in force at the time) provided that, in specified circumstances, the Land Register “may” be rectified. The judge said (at page 12 of the transcript) that, when considering whether to exercise the power to rectify the register, the court “*must look to the justice of the case and see whether the party who is seeking rectification has been guilty of conduct of such a nature as to render it unjust that the register should be rectified.*” Given that it was Mr Shaikh’s reckless conduct that had allowed the fraud to be perpetrated, it would be unjust to rectify the register to cancel the charge.

16. Thirdly, an estoppel might have been created to prevent the person whose signature has been forged disputing that he is bound by the document. Indeed, in Commercial Acceptances v Shaikh, the judge said that, had the flat been unregistered, he would have expressed his conclusion by saying that Mr Shaikh, by creating the circumstances in which the fraud was able to occur, had become estopped from denying the validity of the mortgage.

17. Fourthly, in a couple of my cases, what seemed to have happened is that a transferor or mortgagor wanted the transaction to go through, but got someone else to sign the conveyance or mortgage to enable him, subsequently, to deny that he was bound by the document. In such a case, should the transferor or mortgagor should be regarded as having “signed” the document even though the signature was not made by his own hand?

18. This possibility raises the (apparently straightforward but, in fact, rather difficult) question: what is a signature? You might think that Denning LJ was correct when he said (at page 561) in Goodman v J Eban Ltd [1954] 1 QB 550 that “*when a document is required to be “signed by” someone, that means that he must write his name with his own hand upon it...The virtue of*

a signature lies in the fact that no two persons write exactly alike, and so it carries on the face of it a guarantee that the person who signs has given his personal attention to the document". However, in Goodman v J Eban Ltd, Denning LJ was in a minority in the Court of Appeal. The majority disagreed with his view. They held that a solicitor could "sign" a bill of costs by impressing a copy of the solicitor's signature onto the bill using a rubber stamp.

19. Indeed, it has been held that a person can "sign" a document even if he personally had nothing to do with putting the "signature" on the page. In London County Council v Agricultural Food Products Ltd [1955] 2 QB 218 a council granted a tenancy. The tenancy agreement provided that any notice to quit served by the council must be "*a written notice signed by the valuer to the council*". The council served a notice to quit but it was signed, not by the council's valuer himself, but instead by an assistant valuer (but in the valuer's name). The Court of Appeal held, nevertheless, that the notice to quit should be regarded as having been signed by the valuer. Romer LJ said (at pages 223 to 224) that "*at common law a person sufficiently "signs" a document if it is signed in his name and with his authority by somebody else.*" That principle probably explains the stance adopted by the parties in the recent case of Ramsay v Love [2015] EWHC 65 (Ch). The issue was whether Gordon Ramsay (the well-known chef) was liable under guarantees that had been "signed" by his father in law by placing an imprint of Gordon Ramsay's signature on the guarantee using a "signature writing machine". It was common ground between the parties that Gordon Ramsay should be regarded as having "signed" the guarantee (and therefore bound by the guarantee) so long as he had authorized his father in law to affix his signature to the guarantee using that "signature writing machine".

20. So, if it is established that a signature of a transferor on a conveyance, or the signature of a mortgagor on a mortgage, is not "genuine" (in the sense that someone else has placed the signature on the document), nevertheless the transferor or mortgagor will be regarded as having signed the document

himself so long as he authorized the placing of his signature on the document. That must cover a situation in which the transferor or mortgagor has deliberately got someone else to sign the document to enable him, subsequently, to deny that is bound by the document.

21. Finally, a person whose signature has been forged may be held to be bound by a conveyance or mortgage if, subsequently, he conducted himself so as to adopt (or, perhaps, ratify) the document.

22. That is illustrated by English v English [2010] EWHC 2058 (Ch), (2010) 107 (32) LSG 14. Mrs English owned the freehold of a bungalow. Her son (Colin) forged his mother's signature on a joint application for a loan and also on a legal charge the provided security for that loan. Colin pocketed the money. The first that Mrs English knew about all this was when the lender commenced possession proceedings. She then realized that Colin had committed a fraud against her. But Colin said he was sorry and promised to reimburse her the borrowed money. That persuaded Mrs English to sell the bungalow herself and to repay the loan to the lender. However, perhaps predictably, Colin did not keep his side of the bargain. He failed to reimburse his mother with the borrowed money. So Mrs English brought proceedings against the lender for the repayment of the money that she had paid to the lender to redeem the charge.

23. HHJ Cooke (sitting as a deputy High Court judge) held that Mrs English was bound by the loan and the charge. By redeeming the charge on the sale of the bungalow (without any protest) she accepted the binding effect of the loan and charge. At paragraph 57, the judge said *that "the effect of the ratification is to constitute Colin retrospectively as the claimant's agent to enter into the transaction on her behalf...In those circumstances, it does not matter that the signatures on the documents were not hers. The resulting position goes beyond an estoppel and the transaction is actually binding on her."*

Conclusion

24. It will be apparent from these cases that there are various legal tools that can be deployed to enable a purchaser under a conveyance, or a mortgagee under a mortgage, to obtain a satisfactory remedy even if the signature of a transferor or a mortgagor has been forged.
25. If a transferor or mortgagor has suggested that his signature on a conveyance or mortgage is a forgery, it is usually a good idea, at an early stage, to explore these possible ways of formulating a claim that can survive even if the signature is forged. In my experience, if a transferor or mortgage says that his signature is a forgery, more often than not that is likely to be supported by a handwriting expert. The transferor or mortgagor will have been advised that, by putting the signature in issue, their signature will be examined by a handwriting expert. They are unlikely to adopt that course if the signature is genuine.

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