Neutral Citation Number: [2013] EWHC 4842 (CH)

Case No: HC13A01787

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

The Rolls Building
7 Rolls Buildings Fetter Lane
London
EC4A 1NL

Date: Wednesday, 11 December 2013

BEFORE:

MR JEREMY COUSINS QC
Sitting as s Deputy Judge of The Chancery Division

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BETWEEN:
QUADRACOLOUR LIMITED Claimant

- and -

CROWN ESTATE COMMISSIONERS Defendant

- -

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Mr Philip Sissons (instructed by **Messrs Ashfords**, of Bull Wharf, Redcliffe Street, BRISTOL BS1 6QR) appeared on behalf of the **Claimant**
The **Defendant** was not represented

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APPROVED JUDGMENT

Mr Jeremy Cousins QC:

1. This is an application for summary judgment under CPR 24.2 for an order under section 181 of the Law of Property Act 1925, to vest in the claimant, Quadracolour Limited, a legal and beneficial freehold interest in the land, formally registered under title number SGL369600, of which Columbia (International) Limited ("Columbia"), was formerly the registered proprietor. Columbia has since been dissolved, and its interest is now escheat to the Crown. The application is in respect of the same interest as that which was vested in Columbia prior to Columbia's dissolution.
2. The application is put on two further alternative bases for the vesting of such an interest in the claimant; first, that there should be an order under section 3(5) of the Law of Property Act 1925, and, secondly, under section 44 of the Trustee Act 1925.
3. The background to this application, which is not opposed, is that Columbia, prior to 9 December 1997, was the registered proprietor of property known as Unit 2, Kangley Bridge Road, Lower Sydenham, London SE26. The property, until that time, was registered in Columbia's name under title number SGL369600 at HM Land Registry.
4. Pursuant to a transfer which was effective on 9 December 1997, part of the land, which formerly had belonged to Columbia, was transferred to the claimant. The land which was transferred was shown on a plan attached to the transfer, and the land transfer was edged red on that plan. A smaller parcel of land, edged green on that plan, to which I shall refer to as the green land, was retained by Columbia. That land was used, and has continued to be used,

   as a car park.
5. The green land at the time of the transfer suffered from a contamination problem because chemical storage tanks containing solvents were located under the car park. The tanks leaked and the claimant did not wish to take the transfer of the green land until remedial works had been completed. However, ultimately the claimant had an interest in taking a transfer of the green land. Therefore, the transfer, by way of an option in respect of the green land, provided that in certain circumstances the claimant should be able to acquire that land.
6. Clause 10 of the transfer stated as follows:

   > "If at any stage in the future the Seller [that is Columbia] no longer requires the use of the Tanks the Seller shall serve notice to that effect on the Buyer. The Seller shall then use all reasonable endeavours to procure the release of the rights to which the Retained Land [that is the green land] is subject pursuant to clause 3 of the Transfer and the release of covenants in clause 4 of the Transfer. The Seller shall not be required to make any payment or provide any other consideration for the release of those rights and covenants. In the event of those rights being released the Seller shall ensure that the Tanks are emptied and made safe. Within seven days of the release of the rights or if later the date three months from the date of the Seller's notice that the use of the Tanks is no longer required the Seller shall serve a further notice on the Buyer indicating as the case may be that the rights have been released or that a release cannot be obtained after which the Seller shall be under no further obligation in relation to the release of the covenants and rights. The Buyer may then within 28 days of receipt of such notice serve a counter notice on the Seller requiring the Seller to convey the Retained Land to the Buyer in consideration of which the Buyer shall pay to the Seller the sum of £1.00."

7. The claimant's case is that the grant of the option had the effect of creating a registerable equitable interest in the car park for the benefit of the claimant which was duly registered. The evidence in the case, which had been obtained from Mr Matthew Robson, a director of the claimant, is that the land has consistently been used as a car park on the part of the claimant going back many years and, to the best of his knowledge, to the time when the land was acquired.

8. That evidence is confirmed by a statement from a Mr Terry Shannon who was employed by the claimant from 1992 until 2008. Mr Shannon says in his evidence that from about the end of March 2001, Quadracolour's staff used the car park as the company's own exclusive car parking area. The staff made sure no-one other than Quadracolour staff, or legitimate visitors to the company, were allowed to park on the car park. Anyone else who attempted to do so was turned away. So, there is good evidence with regard to the usage of the car park by the claimant over a period of many years.

9. From this material, and from the evidence of Mr Robson, I infer that the claimant would, on an

indefinite basis, have continued to wish to use the car park for its purposes and to exercise the option conferred by the deed of transfer, were it able to do so, and if the conditions were satisfied.

10. On 5 February 2001, Columbia wrote to the claimant concerning final works on the tanks in the yard. There was reference to a conversation which had taken place with a Mr Grima, a former director of the claimant. The author of the letter from Columbia, a Mr Wilby, said that he was pleased to be able to inform the claimant that the level of contamination in the water sample taken from under the building in October of the previous year had indicated that the relevant contaminants had been removed and he gave further confirmation in similar terms in relation to other related contamination. He went on to state that further contaminated water had been extracted although it was considered that no further general removal was necessary. He also enclosed supporting analytical data in respect of that matter.

11. The letter continued:

> "As you are aware, the final action required by Columbia before the yard can be handed over to Quadracolour, is to pump out and dispose of the stored contaminated water from the four smaller tanks in the yard and then have them filled with suitable material in order to make them permanently safe. It is proposed these works are carried out on Wednesday 14 February starting at about 8am. I will be in attendance to oversee and help if required. Except for tankers and trucks involved, with the work entering and leaving the site, there should be no problems with access for lorries to your premises, but it will require the whole of the yard in the front of the building to be free of your vehicles during the operation. I have been informed that the operation should be completed in this one day. I regret the inconvenience that this work will involve you in, but it should finally draw a line under the saga of the last two years."

12. Then, on 26 February 2001, Mr Wilby wrote to Mr Grima again, confirming that the pumping out and cleaning of the tanks had been completed, and that in a further couple of weeks the foam injected into the tanks would be completely set. He expressed the view that there would be no further need for Columbia personnel to be involved with it. The "it" I take to be referring to the process of doing anything that was necessary, in terms of practical activity, to complete the handover of the yard to the claimant.

13. The letter proceeded to state that Mr Martin Rees, the financial director of Columbia, would be in touch shortly to tie up any loose ends. The letter then continued:

> "I understand that you wish to do work on it in order to make it into a flat parking area for your people to use. May I suggest that if you do this, the small access hole, along the edge, near to the pavement is not filled in but has a small cover put over it. In this way, as with the access in your building, we will still be able to take water sample, should environmental questions arise in the future.
>
> One further point arises. If you tarmac the yard, please do not do so in the area where our tankers unload. If this is coated, any spill that may occur will attack it, turning it very sticky and could lead to problematical environmental contamination."

14. It is true to say that neither of those letters actually addressed clause 10 of the transfer in terms. There was no formal notice that Columbia no longer required the use of tanks, but in my judgment, the manner in which Columbia expressed itself was only consistent with that understanding. The tanks, after all, had been filled so that they were no longer usable on the part of Columbia. Columbia had done that with a view to handing over the land to the claimant.

15. On 16 November 2004, Columbia was struck off the Register of Companies pursuant to the provisions section 652(5) of the Companies Act 1985, and on 23 November 2004, it was dissolved by notice in the London Gazette.

16. Upon the dissolution of Columbia its assets became subject to the provisions of section 654(1) (since repealed) of the Companies Act 1985, which provided as follows:

> "When a company is dissolved, all property and rights whatsoever vested in or held on trust for the company immediately before its dissolution (including leasehold property, but not including property held by the company on trust for any other person) are deemed to be bona vacantia and–
>
> (a) accordingly belong to the Crown, or to the Duchy of Lancaster or to the Duke of Cornwall for the time being (as the case may be), and
>
> (b) vest and may be dealt with in the same manner as other bona vacantia accruing to the

Crown, to the Duchy of Lancaster or to the Duke of Cornwall."

17. However, under the 1985 Act, the Crown could disclaim the interest which so arose and in this case, the Crown did so by notice of disclaimer given under section 1013 of the Companies Act 2006, which was a statutory provision then in force when the notice of disclaimer was given on 16 May 2012.

18. The effect of the notice of disclaimer given is set out in sections 1014 and 1015 of the 2006 Act. Where notice of disclaimer is given, the property concerned is deemed not to have vested in the Crown under section 1012, and under section 1015 the disclaimer operates so as to terminate, from the date of the disclaimer, the rights interests and the liability of the company in or in respect of the property disclaimed.

19. Counsel for the claimant, Mr Philip Sissons, in his helpful submissions this morning, drew to my attention the decision of Mr Stanley Burnton QC, as he then was, sitting as a Deputy Judge of the Chancery Division in the case of Scmlla Properties Limited v Gesso Properties (BVI) Limited [1995] BCC, page 793. In that case, the learned deputy judge considered with great care the authorities with regard to the law of escheat and, in particular, the position upon disclaimer. That case, I should add, was concerned with disclaimer by a liquidator. The learned deputy judge said, at page 804:

> "Thus the great weight of authority is in favour of automatic escheat. So is the principle of the thing. If the effect of disclaimer is that there is no tenant of the freehold, and clearly it is, then there is no one holding any interest below, or adverse to, that of the Crown. The Crown therefore has an unfettered right to the land; to put it more accurately, the Crown's seignory is no longer encumbered by the freehold interest.
>
> The principle of nulle terre sans seigneur referred to at p. 34 of Megarry & Wade, in the sentence cited above, compels the same conclusion. After the conclusion of oral argument in this case, Mr Thom brought to my attention the recently reported decision of the Privy Council in Ho Young v Bess [1995] 1 WLR 350 . In that case the Privy Council stated at p. 355E, 'the general proposition that the law abhors a vacuum and that title to land must always be in someone, whether the Crown or a subject', and on the basis of that proposition decided, consistently with A-G v Parsons , that the words 'shall be forfeited' in the statute under consideration meant 'shall be liable to be forfeited' and did not operate so as automatically to forfeit land to the Crown. Since disclaimer of a freehold ipso facto determines the company's interest in the land, this general proposition requires title on disclaimer to be immediately and automatically in the Crown."

20. The deputy judge went on to say that any doubt that he might otherwise have had was resolved by the terms of the Crown Estate Act 1961, section 8(3), the terms of which I need not refer to in this judgment.

21. Mr Sissons also drew my attention to what was said in Scmlla a little later in the judgment at page 805:

> "I conclude that I am bound to hold, and I do hold, that on an escheat brought about by a disclaimer under the 1986 Act the Crown becomes the owner of the land in question freed from the previous freehold interest, without any action on the part of the Crown to bring about this result."

22. He continued:

> "There is a curious result of this conclusion. Section 654 of the Companies Act 1985 deems all property whatsoever vested in a dissolved company to be bona vacantia and provides that it accordingly belongs to the Crown. Curiously, as in the case of the disclaimer provisions of the Insolvency Act, leaseholds are specifically mentioned, but not freeholds: however, as in the case of s. 178 of the Insolvency Act , the wording is quite general and clearly includes freeholds. I note that under s. 654 of the 1985 Act acquisition by the Crown is automatic. However, by s. 656 , the Crown is empowered to disclaim such property, and s. 657 provides that, as regards property in England and Wales, s. 178(4) and s. 179-182 of the Insolvency Act apply as if the property had been disclaimed by the liquidator immediately before the liquidation of the company. The result of the disclaimer by the Crown of a freehold of a dissolved company appears to be, therefore, that the property ultimately comes back to the Crown as an escheat. It is difficult to see the object of these provisions, in so far as they concern freeholds. The boomerang effect of disclaimer by the Crown under what are now s. 651 et seq. of the Companies Act was the subject of comment at (1954) 70 LQR 25, but has not been explained. One is left with the impression that the draftsman forgot that bona vacantia could, by reason of the statutory deeming provision, include freeholds, or that no

consideration was given to the effect of disclaimer of a freehold under s. 178 of the Insolvency Act ."

23. In my judgment, any peculiar problems attaching to the Insolvency Act to which the learned deputy judge referred do not stand in the way of the principle that there has been an automatic escheat in the circumstances of this case. That, I find, is the status of the land.

24. By an e-mail of 6 June 2012, the claimant's solicitors made contact with the solicitors for the Crown Estate Commissioners, the defendant in this application. The e-mail recited the history of the acquisition of the red land and explained the desire of the claimant to acquire the green land. The e-mail concluded by indicating that the solicitors concerned would be grateful if the defendant could commence investigation into the property and advise the terms on which the claimant could acquire it for the Crown.

25. That inquiry produced a response on behalf of the defendant to the effect that the Crown Estate does not propose to take any action which might be construed as an act of management, possession or ownership in relation to the green land since to do so might incur upon it liabilities which the property is or might become encumbered. That was plainly, from the terms of the correspondence, sent on behalf of the defendant its standard position.

26. The response on behalf of the defendant continued:

> "However, in any event, it is our understanding that the option agreement in favour of your client creates a trust and the legal estate in property held in trust by a company does not come to an end on the dissolution of the company, but continues in existence. In which case, property held on trust does not become subject to escheat. As such, the Crown Estate does not have the remit to deal with this parcel of land and you should consider applying for a vesting order pursuant to s44 of the Trustee Act 1925."

27. It is by reason of that suggestion that the claimant has included in its application for summary judgment, and in its Particulars of Claim, an alternative claim for relief under the Trustee Act 1925, section 44.

28. Following on from that, the claimant's solicitors drew to the attention of the defendant's solicitors the decision of Mr Justice Woolf in UBS Global Asset Management (UK) Ltd v Crown Estate Commissioners [2011] EWHC 3368, to which decision I was taken to this morning by Mr Sissons, and to which I shall return a little later in this judgment.

29. The effect of the communication to the defendant's solicitors, in which that authority was mentioned, was to point out that in the light of Mr Justice Roth's decision, reliance upon the suggestion that there was a subsisting trust was misplaced, but the defendant's solicitors did not wish to be drawn upon that point for understandable reasons. Nonetheless, in subsequent correspondence from Messrs Burges Salmon, acting on behalf of the Crown Estate, it is perfectly apparent that there is no objection to the relief that is sought on behalf of the claimant today and I need not refer further to that correspondence.

30. It is in those circumstances that the claimant invites the court to make an order under the Law of Property Act 1925, section 181(1), which provides:

> "Where by reason of the dissolution of a corporation either before or after the commencement of this Act, a legal estate in any property has determined, the court may, by order, create a corresponding estate and vest the same in the person who would have been entitled to the estate which determined had it remained a subsisting estate."

31. By virtue of the statutory provisions and the authorities to which I have referred earlier in this judgment, it is perfectly clear that the legal estate which previously vested in Columbia has determined. The question which, therefore, has to be considered arises under the second limb of the subsection; namely whether the court should create a corresponding estate and vest the same in the claimant, and whether the claimant would have been entitled to the estate which determined had it remained a subsisting estate.

32. This problem was considered in the UBS case which was factually quite similar to the present case. In that case, a company, which was an overseas company, called Aramis Properties Incorporated, granted, in May 2003, a long leasehold interest of property to the claimant in that case. Aramis subsequently granted an option to purchase a freehold to the tenant and that option was exercisable during the 21-year period for the price of £1.00. In 2009, the tenant sought to exercise the option by written notice to Aramis's London office but the letter was returned undelivered and it transpired that Aramis had been struck off the Register and dissolved in the British Virgin Islands on1 November 2004.

33. Mr Justice Roth explained that there was a significance in the fact that Aramis was an overseas company, in that if its freehold had been held by an English company then its real property interests would have vested in the Crown as bona vacantia pursuant to what is now section 1012 of the 2006 Act, but that was not the case with an overseas company to which the Companies Act did not apply. Accordingly, in the UBS case, the feudal law of tenure continued to be relevant so the land was escheat to the Crown. His lordship, therefore, went on to explain the nature and effect of escheat and referred to the decision in Scmlla. I need not do so again.

34. In the present case, of course, the position is not quite as straightforward as it was in the UBS case because Columbia was not an overseas company and, therefore, there is no escheat arising upon dissolution of the company. However, for reasons which I have given earlier in this judgment, ultimately there nevertheless arose an escheat and, therefore, the position in this case is, for all practical purposes, entirely comparable to the position in the UBS case.

35. In the UBS case, Mr Justice Roth dealt with the suggestion that the land was held on trust where a similar point that raised in this case was suggested on behalf of the Crown Estate. His lordship referred to the of the decision of the Court of Appeal in Wood Preservation Ltd v Prior (Inspector of Taxes) [1969] 1 WLR 1077 in connection with the question of whether the land, the subject of an option, was to be taken as held on trust by the grantor of the option. Wood Preservation was not a case concerned with an option over the land but Mr Justice Roth held that Wood Preservation did not drive him to the conclusion that land, the subject of an option, was to be regarded as held on trust by the grantor.

36. In particular, in reaching the conclusion that the land was not so held, Mr Justice Roth referred to the decision of the House of Lords in Jerome v Kelly [2004] 1 WLR 1409 to the speech of Lord Walker, with whose speech Lords Nicholls, Scott and Brown agreed. Mr Justice Roth drew attention to what Lord Walker said at paragraph 32 in that case and in particular the following passage:

> "It would be wrong to treat an uncompleted contract for the sale of land as equivalent to an immediate and irrevocable declaration of trust or assignment of beneficial interest in the land. Neither the seller nor the buyer has an unqualified beneficial ownership. Beneficial ownership of the land was, in a sense, split between the seller and buyer on the provisional assumptions that specific performance is available and the contract would, in due course, be completed if necessary by the court ordering specific performance. In the meantime, the seller was entitled to enjoy the land or its rental income ... but provision or assumptions may be falsified by events such as rescission of the contract either under contractual term or a breach. If a contract proceeds to completion, the equitable interest will be due as passing to the buyer in stages at the time it was made and accepted and as the purchase price is paid in full."

37. Mr Justice Roth concluded that there was no basis for holding that the land in the UBS case was held subject to a trust. I gratefully adopt his reasoning and I reach the same conclusion in this case.

38. There is, therefore, I conclude, no impediment to consideration of the question posed by the second limb of section 181(1) of the Law of Property Act 1925.

39. In paragraph 20 of his judgment in the UBS case, Mr Justice Roth referred back to section 181(1) and pointed out that it was not inevitable that the court would exercise its power conferred by that subsection. But he said that in the circumstances of that case, it would be clearly appropriate for the court to do so. He said that the claimant had complied so far as he was able with the conditions of the option agreement by seeking to exercise the option. Had Aramis continued to exist, the freehold would, therefore, have passed to the claimant in that case. The Crown Estates Commissioners who held land pursuant to the escheat did not object to the court's making of a vesting order. He referred to the letter concerned. He continued that there was no basis for impugning the option agreement, and he said that the claimant had acted in good faith throughout and he, therefore, proposed to make that order as sought.

40. In the course of argument this morning, I raised with Mr Sissons whether it could be said that in this case had the interests of Columbia not determined, the claimant would have been entitled to the estate which had determined because, of course, it has not been possible for the claimant to go through all of the procedure as provided in the transfer for the exercise of the option.

41. Mr Sissons argued, and in my judgment was correct to do so, that the claimant would have been entitled to the estate because once Columbia no longer had any need for the tanks (as I have held that it did not), Columbia would have been bound to perform its obligations under the option had the claimant taken the necessary steps. Mr Sissons argued further that the material before the court quite clearly demonstrates that the claimant would have, but for the dissolution of Columbia, gone through all

necessary steps so as to exercise the option and would, thereupon, undoubtedly have been entitled to the conveyance to it of the green land.

42. It seems to me to be perfectly clear that but for the intervening dissolution of Columbia in those circumstances, the claimant would have been entitled to the estate which has, in fact, determined because the claimant would have followed the necessary procedure.

43. In those circumstances, I am satisfied that the provisions of the section are fully engaged and that an order should be made under section 181(1) of the 1925 Act.

44. That leaves just one outstanding matter that I should deal with, albeit briefly, and that is the alternative claim which was advanced on the grounds of adverse possession of the green land by the claimant. I raised with Mr Sissons the question of whether the evidence in respect of adverse possession was sufficient to satisfy the guidance given in the decision of Mr Justice Slade, as he then was, in Powell v McFarlane [1979] P&CR, 452 as to what evidence there must be before the requirements of the law as to adverse possession will be satisfied. I pointed out to Mr Sissons that on the evidence as it is before me, I had doubt as to whether or not the requirements outlined in Powell v McFarlane had been satisfied. Very realistically, Mr Sissons indicated that if the court were minded to make an order under section 181, as I indicated I was so minded, that he would not wish to press the alternative ground on the basis of adverse possession.

45. In those circumstances it is not necessary for me to make any findings in the alternative with regard to the adverse possession claim. I shall, therefore, make an order under section 181 of the Law of Property Act 1925.