

[2017] UKFTT 0231 (PC)

**PROPERTY CHAMBER  
FIRST –TIER TRIBUNAL  
LAND REGISTRATION DIVISION**

**IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY**

**LAND REGISTRATION ACT 2002**

**REF NO 2015/0756**

**BETWEEN**

**ASTAR SERVICES LIMITED**

**Applicant**

**and**

**STEPHEN ROY SELLARS**

**Respondent**

**Property address: 375-377 Blackpool Road Ashton on Ribble PR2 2DT and land adjoining**

**Title numbers: LA458068, LA722449**

**Before: Judge Professor Robert M. Abbey sitting at Manchester Asylum and Immigration Tribunal Piccadilly Exchange Piccadilly Plaza Manchester M1 4AH on 6<sup>th</sup> February 2017**

**Applicants Representation: In Person**

**Respondents Representation: Mr Wright of Counsel**

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**ORDER**

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**IT IS ORDERED THAT:**

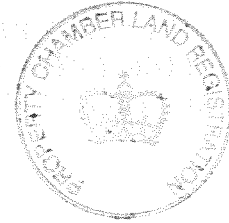
1. The application for the removal of the Applicant's Notice in Form UN4 is to proceed without regard to the Applicant's objection.

Dated this 20 day of February 2017

*Prof. Robert M. Abbey*

**Judge Professor Robert M. Abbey**

**BY ORDER OF THE TRIBUNAL**





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**Applicants Representation: In person by Mr James Mole Managing Director**

**Respondents Representation: Mr Jonathan Wright of Counsel**

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**DECISION**

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- 1. KEYWORDS – Application for cancellation of a unilateral notice –objection to application – claim to a continuing interest - HELD – No continuing interest – Land Registry to continue with application to remove Notice*

## **Cases referred to**

*Mitchell v News Group Newspapers Limited* [2013] EWCA Civ 1537

*Chartbrook Limited v Persimmon Homes Limited* [2009] UKHL 1 AC 1101

## **THE APPLICATION**

1. The Respondent is the registered proprietor of the registered property being 375-377 Blackpool Road Ashton on Ribble PR2 2DT and land adjoining (“the disputed property”) as the same is registered at the Land Registry under title numbers LA458068 and LA722449. The Respondent has applied to the Land Registry on form UN4 to remove a unilateral notice (“the notice”) on the title to the disputed property and registered by the Applicant. The notice was registered by the Applicant to protect a claimed interest in the disputed property pursuant to the terms of a contract for sale dated 16 December 2004 (“the contract”). The date of this current application was 9<sup>th</sup> January 2016 and the application in form UN4 was dated 7<sup>th</sup> January 2015. An objection to the application was made by the Applicant and which was lodged at the Land Registry by letter dated 10<sup>th</sup> February 2015 and 12<sup>th</sup> February 2015 from James Mole, on behalf of the Applicant, and the date of the objection made at the Registry was 11<sup>th</sup> February 2015
2. Thereafter it was not possible for the dispute regarding the notice to be resolved at the Land Registry and consequently the matter in dispute has been referred to the First-tier Tribunal (Property Chamber; Land Registration) pursuant to s. 73(7) Land Registration Act 2002. The case now falls to me to determine. Both parties were given lengthy notice of the dates of the hearing. At the hearing before me the Applicant appeared in person by Mr James Mole Managing Director and the Respondent was represented by her Counsel Mr Jonathan Wright.

## **SUMMARY OF THE FACTS**

3. At the commencement of the hearing both the Applicant and the Respondent confirmed that the main or core facts were not in dispute. On 16 December 2004 the Respondent and Alison Mary Sellars (Mrs Sellars) entered into the contract with the Applicant with regards to the property. The contract contained a right of pre-emption in favour of the applicant and which is triggered upon events as defined in the contract and called a disposal. Subsequently the notice was registered on the title register of the

property on behalf of the Applicant. The contract completion date was 17 December 2004.

4. During March 2013 the Respondent instructed solicitors to deal with his divorce from Mrs Sellars. On 25 November 2013 the Respondent agreed to the terms of a consent order with Mrs Sellars in relation to the property, (the consent order). The consent order was made in the Liverpool County Court under matter number LV11D01944 and was made by District Judge Clarke on 10<sup>th</sup> December 2013. The Applicant is alleging that the consent order made in divorce proceedings is an “assurance” of the property and so falls within the definition of disposal under the terms of the contract. (An assurance is now understood to mean a conveyance or other document that evidences the transfer of property). This is of course rejected by the Respondent. It should be noted that after the ten year period expired the Respondent then submitted a TR1 Transfer form to the registry whereby the property was transferred into the sole name of the Respondent, Mrs Sellars having entered into the TR1 transfer with the Respondent to give effect to the same.

5. Clause 14 of the contract covers the terms of the right of pre-emption. This provides that

*14.1 If at any time within 10 years following completion the buyer desires to make a Disposal (meaning a sale gift exchange transfer grant declaration of trust lease or agreement for lease (except for a term not exceeding 15 years at the open market rent without a premium) and every other assurance of the property or any interest in it whether or not for valuable consideration the following provisions apply....*

The clause then goes on to set out what steps should be taken after a trigger event has occurred.

6. The consent order provides that

*By consent with effect from decree absolute it is ordered that:-*

*1. The wife shall transfer to the husband within 56 days from the date of this order all her legal estate and beneficial interest with full title guarantee in the*

*freehold property 375-377 Blackpool Road Preston PR2 2DT registered under the land registry title number LA58068 subject to the mortgage thereon....*

The clause then goes on to describe who will instruct solicitors to deal with the conveyancing and that if there is no release of mortgage covenants for Mrs Sellars what will be done in that event.

### **SUMMARY OF THE APPLICANT'S ARGUMENT**

7. The Applicant maintains that the consent order triggered the pre-emption clause and as such was clearly covered by the terms of the contract. The Applicant maintains that clause 14 is what he calls a catch all provision for any eventuality that sought to or did change the beneficial ownership of the property in whatever form that took including and following a consent order such as the one that occurred in this dispute. The Applicant asserted that the beneficial ownership must have changed "via the consent order on 25 November 2013 or at the latest after 56 days given the court order". He went on to assert that "thus in effect an agreement for lease and or declaration of trust pending transfer must have applied which is also a condition of the pre-emption clause". The Applicant says that the consent order made in the Liverpool County Court was specific and ordered a transfer which is in his view a disposal under the contract.
  
8. The Applicant referred the Tribunal to the case of *Mitchell v News Group Newspapers Limited* [2013] EWCA Civ 1537 that he says reinforces CPR 3.9 (b) to enforce compliance with orders such as the consent order. The Applicant also says that the transfer made in December 2014 was done to frustrate the Applicant's claim. However, at the hearing the Applicant confirmed that he accepted that the transfer itself was not in breach of the contract, it having taken place outside the ten year period set for the pre-emption. The Applicant says that it is a contempt of court not to comply with the consent order. He then went on to highlight the effects of ignoring a court order by referring to cases where sanctions were imposed such as terms of imprisonment.

## SUMMARY OF THE RESPONDENT'S ARGUMENT

9. The Respondent says that the consent order did not trigger the Applicant's right of pre-emption. In support of this argument the Respondent makes two points. First, clause 14 does not (on a true construction) apply to disposals purely internal between the Respondent and Mrs Sellers but only covers disposals to third parties. Secondly, even if a disposal between the Respondent and his wife can fall within clause 14 the consent order is not a disposal as defined in the contract.
10. Turning to the first point, the Respondent says that clause 14 has to be interpreted according to the usual principles for construing contractual documents as set out by Lord Hoffman in *Chartbrook Limited v Persimmon Homes Limited* [2009] UKHL 1 AC 1101 at para 14

*"There is no dispute that the principles on which a contract (or any other instrument or utterance) should be interpreted are those summarised by the House of Lords in Investors Compensation Scheme Ltd v West Bromwich Building Society [1998] 1 WLR 896, 912-913. They are well known and need not be repeated. It is agreed that the question is what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean".*

Consequently the Respondent says that clause 14 only applies where the buyer desires to make a disposal and where the buyer is defined as both the Respondent and Mrs Sellers acting jointly. So if Mrs Sellers transfers her interest in the property to the Respondent this cannot involve a transfer from "the buyer", i.e. the two of them acting jointly, it involves Mrs Sellers unilaterally transferring her share to the Respondent. The Respondent says this interpretation is supported by clause 14.5.1 referring to disposals to "a third party". As such the clause is designed to prevent sales to a third party without the Applicant having first refusal. It has no application as between the Respondent and his former wife. Indeed the Respondent says that even if clause 14 was to apply to internal transfers, there was no mechanism to cover this eventuality within the clause because they are not "third parties" for clause 14.5.1.

11. Secondly the Respondent says that the consent order is not a disposal within clause 14 set out in the contract. The Respondent says this because the court provision requiring the property to be transferred is on the face of it not in a schedule to a Tomlin Order. (A Tomlin Order is a form of consent order which brings proceedings to a conclusion save for the purposes of implementing agreed terms, which are usually referred to in the schedule to that order or sometimes referred to in a separate document or documents. Like any other compromise, but unlike court orders by consent a Tomlin order constitutes a binding contract between the parties.) Thus, whereas a Tomlin Order can form the basis for a legally binding agreement, the consent order is simply the court exercising its statutory and other powers to require the future happening of events and does not involve the Respondent or Mrs Sellars actually transferring or creating an interest. The Respondent goes on to say that the definition of disposal in the agreement closely mirrors the definition of conveyance in s205 of the Law of Property Act 1925 which suggests that the definition is aimed at something very different to a consent order.

### **THE DECISION**

12. The facts in this case are not in dispute. There was a contract that contained the right of pre-emption that lasted for ten years. During that ten year period there was a court order requiring a transfer from the Respondent and Mrs Sellars to the Respondent alone. This was to be done within 56 days. It did not take place at that pace but actually took place just beyond the ten year pre-emption period. I am required to decide if the consent order triggered the right of pre-emption. I am of the view that it did not. I take this view as I prefer the arguments put forward by the Respondent as they seem to me to properly reflect the nature and effect of the contractual terms in the light of the making of the consent order.

13. I am unpersuaded by the argument made by the Applicant. The Applicant asserted that the beneficial ownership must have changed “via the consent order on 25 November 2013 or at the latest after 56 days given the court order”. I consider this to be misguided. I cannot find anything to support the view that the consent order changed the beneficial ownership. All the order did was to say that the court required this transfer to be made and set a timeframe. However there was no transfer effected in law or equity. It was open to the parties to go back to the court to seek enforcement should



the terms not be adhered to. The parties chose not to do this. The Applicant went on to assert that “thus in effect an agreement for lease and or declaration of trust pending transfer must have applied which is also a condition of the pre-emption clause”. Again I can find nothing to support this contention. There could not have been an agreement for lease as there are specific statutory requirements (see s2 of the Law Of Property Act 1989) that cannot be complied with by way of the consent order. Similarly there was no declaration of trust explicit set out in the consent order and as such this contention must fail.

14. On the other hand I find the Respondent’s argument persuasive and convincing in that it seems to me to accurately state the law as it applies to this dispute. Of the two points made by the Respondent I find the second more effective. The form of consent order was not a Tomlin Order. As such the court order did not create anything that might be a trigger event under the terms of the contract. The first point also has its merits in that it seems to me that the intention of the parties in 2004 was to create a pre-emption that enabled the Applicant to take advantage of any commercial opportunity to re-purchase and not to stop an arrangement between the two buyers names in the contract, (the Respondent and Mrs Sellars).
15. In the light of the foregoing I am simply required to consider whether a Land Registry notice is appropriate and on the evidence and for the reasons set out above, I believe it is not. Accordingly, in my judgement the application for the removal of the notice should be allowed to proceed and I will so order. In regard to the Land Registry application I am simply required to consider whether a Form RX4 removal application of the existing notice is appropriate and on the evidence and in the light of legal arguments I take the view that it is.

Dated this 20 day of February 2017

*Prof. Robert M. Abbey*

**Judge Professor Robert M. Abbey**

**BY ORDER OF THE TRIBUNAL**

