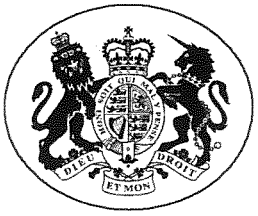


[2017] UKFTT 0678 (PC)

REF/2015/0576

THE LAND REGISTRATION DIVISION OF THE PROPERTY CHAMBER OF THE FIRST-TIER TRIBUNAL

LAND REGISTRATION ACT 2002

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

BETWEEN

(1) ALAN GOODLAD
(2) ROSEMARY GOODLAD

APPLICANTS

and

(1) RAYMOND BOB TONKINSON
(2) CHRISTOPHER ROBERT TONKINSON
(3) JANET PARKINSON

RESPONDENTS

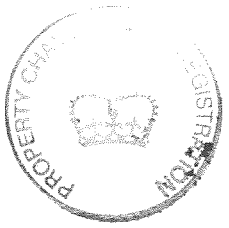
Property Address: The Coach House, Barton Lane, Armthorpe DN3 3AA

Title Number: SYK196094

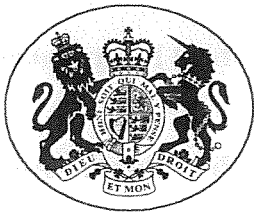
Before: Mr Simon Brilliant sitting as Judge of the Property Chamber of the First-tier Tribunal

The Chief Land Registrar is directed to cancel the Applicants' original application dated 16 October 2014 to alter the register.

Dated 29 August 2017



BY ORDER OF THE JUDGE OF THE PROPERTY CHAMBER OF THE FIRST – TIER TRIBUNAL



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RESPONDENTS

Property Address: The Coach House, Barton Lane, Armthorpe DN3 3AA

Title Number: SYK196094

Before: Judge Brilliant

Sitting at: Leeds Employment Tribunal, City Exchange, 11 Albion Street, Leeds LS1 5ES

On: 24, 25 and 26 July 2017

Applicants' Representation: **Mr O Khub, solicitor**

Respondents' Representation: **Mr N Duckworth of counsel**

DECISION

Option – purchasers of land agree to grant the vendors an option to purchase back part of the land if required by the vendors for planning purposes - benefit of the option protected by a notice entered in the charges register of the purchasers - application by the purchasers to remove the notice on the grounds that the option was invalid for a number of reasons – principally as the version which was executed by them had not been agreed by them.

Harrison v Battye [1975] 1 WLR 58, McCausland v Duncan Laurie Ltd [1997] 1 WLR 38, AMB Generali Holding AG v SEB Trygg Liv Holding Aktiebolag [2005] EWCA Civ 1237.

Introduction

1. These proceedings concern an option agreement dated 5 July 2002 made between the applicants and the respondents ("the option agreement").

2. The respondents are siblings. Their business interests include property development. They are the owners of a substantial area of farmland in Armthorpe, near Doncaster ("Low Farm"), which is accessed from Barton Lane. For a long time, the respondents have been trying, without success so far, to have Low Farm zoned within the Unitary Development Plan for residential purposes and to obtain planning permission to build housing on part of Low Farm.

3. In 1991 the respondents, together with their stepbrother the late Mr Claude Robinson[1], bought The Coach House, Barton Lane, Armthorpe, Doncaster, South Yorkshire DN3

[1] Mr Claude Robinson died on 12th December 2014. For the sake of simplicity any reference to the respondents in this decision will include Mr Claude Robinson during his lifetime.

3AA ("the Coach House"). The Coach House has an orchard attached to it ("the orchard").

4. The Coach House is located near to the top of Barton Lane and behind the Post Office. Traffic congestion at the top of Barton Lane, aggravated by the traffic generated by the Post Office, has been regarded as an obstacle to the granting of planning permission to redevelop Low Farm. The respondents bought the Coach House with a view to turning the orchard into a car park. This would alleviate the traffic congestion along Barton Road, and enhance their prospects of obtaining planning application.

5. The respondents paid £125,000 to purchase the Coach House. This was £10,000 more than the next highest offer. The respondents were prepared to pay this to enable the orchard to be turned into a car park if required.

6. Mr Goodlad is a surveyor who specialises in housebuilding development. In 1981, he started working for the respondents. He advised them on property development and managed projects for them.

7. In 1991, the applicants and their children moved into the Coach House. The respondents did not charge any rent. The applicants carried out repairs and improvements to the Coach House.

8. On 5 July 2002, the respondents sold the applicants the Coach House for £100,000. The Coach House is registered at Land Registry under title number SYK196094, and the applicants were registered as the proprietors on 30 August 2002.

9. At the same time, the respondents were anxious to preserve their ability to turn the orchard into a car park if the need to do so should arise in the future.

10. Accordingly, the parties entered into the option agreement at the same time as the Coach House was transferred to the applicants. The option agreement gave the respondents an option to buy back the orchard in certain circumstances for £25,000 index linked ("the option").

11. The option was exercisable for a period expiring on 1 June 2017.

12. On 23 December 2016, the respondents served notice exercising or purporting to exercise the option [708]. I must emphasise that these proceedings are not concerned with whether the respondents have validly exercised the option or whether it is now too late for them to do so. These proceedings are solely concerned with the earlier question of whether the option agreement is valid.

13. The priority of the option agreement (if valid) is protected by notice in entry C4 in the charges register of the Coach House [4].

The proceedings

14. On 16 October 2014, the applicants applied in form CN1 to cancel the notice ("the original application") [760-764]. This was on the grounds that the option agreement had been altered and was not what the applicants had agreed or signed.

15. On 27 January 2015, the respondents objected to the original application [748-754]. On 17 August 2015, Land Registry referred the dispute to the Tribunal under section 73(7) of the Land Registration Act 2002.

16. The applicants gave oral evidence. Mr Raymond Tonkinson and Mr Christopher Tonkinson each gave oral evidence. The respondents called Mr Jamie Robinson (Mr Claude Robinson's son). The respondents also put in the witness statement of Ms Shelly Tune (Mr Claude Robinson's daughter), which was not challenged.

The events leading up to the execution of the option agreement

17. On 1 February 2001, e.surv Ltd, chartered surveyors, prepared a written valuation report of the Coach House on the instructions of Mr Goodlad [150-153]. The valuation was to take into account the proposed construction of a car park and access to the front garden area.

18. The report concluded that the proposed car park development would considerably reduce the privacy currently afforded to the property, and that the extra noise associated with vehicular movement was likely to further detract from the value of the property.

19. The report concluded that the Coach House was worth £100,000 in its current condition, and worth £75,000 subject to the proposed car parking scheme. This explains why the cost of exercising the option was calculated as £25,000 index linked.

20. On 8 February 2001, Mr P Robertshaw FRICS of Chapell and Company, chartered surveyors, prepared a report ("the report"). The purpose of the report was to provide advice relating to the potential future disposal of the orchard. The report used the valuation figures provided by e.surv.

21. In paragraph 24 of his witness statement [30], Mr Goodlad says that the agreement between the parties was that the option agreement would be as advised by Chapell and Company in the report. This suggests that the report was intended to be determinative of the agreement between the parties.

22. I am satisfied that Mr Goodlad is mistaken about this. The report on the face of it makes it clear that it has been prepared on behalf of Mr Goodlad, and Mr Goodlad alone. It was he who gave the instructions. There is no suggestion on the face of the report that it was a joint report.

23. I shall now set out the recommendations in the report based on the e.surv valuation [200]:

- *The whole of the property edged red [the Coach House] to be conveyed to Mr A Goodlad with a covenant that if the land edged blue [the orchard] is required for a car park at some future date, Mr Goodlad will enter into an agreement to transfer the ownership of the land.*

- *The covenant can only be exercised in the event that the car park is required as a result of a grant of planning permission for residential development on the land forming part of the vendors current ownership or alternatively its zoning within the Unitary Development Plan for residential purposes is conditional upon the provision of the car park.*

- *In the event that the land is required a consideration of £25,000 will be payable to Mr Goodlad based on present day values but subject to annual increases in accordance with the Halifax or Nationwide house price indices.*

- *It is appropriate that a time limit should be imposed as to when this covenant can be implemented which we suggest is five years.*

- *The beneficiaries of the covenant should be responsible for erecting a suitable boundary fence or hedge along the points marked A to B on the attached plan in the event that the covenant is exercised.*

- *In the event that the covenant is exercised the beneficiaries of the option to be responsible for both parties legal costs.*

- *We are of the opinion that it would be appropriate for the beneficiaries to agree to the payment of an amount of compensation equating to 10% of the purchase price to reflect the uncertainty and inconvenience caused to Mr Goodlad and his family during the period the covenant is in place.*

24. It will be noted that the second bullet point contained two separate triggers entitling the respondents to exercise the option. The first trigger contemplated the granting of planning permission for the residential development of Low Farm. The second trigger contemplated Low Farm being zoned within the Unitary Development Plan for residential purposes on condition that the car park was provided.

25. As Mr Duckworth demonstrated in cross examination, not one of the six last bullet points made its way into the final draft of the option agreement. It would therefore be very surprising if the parties had ever made an agreement that they would be bound by

the recommendations of the report. I am satisfied that the report was no more than a negotiating document prepared for the benefit of the applicants.

26. In September 2001, a firm of solicitors, Attey Dibb & Clegg, was asked by both parties to represent them in the sale and purchase of the Coach House and the granting of the option to repurchase the orchard. Both parties were existing clients of the firm and they gave their written consent to this arrangement.

27. Mr Morpeth and Mrs Mckay acted for the applicants. Mr Jones acted for the respondents.

28. On 2 January 2002, Mr Jones sent the first draft of the option agreement ("version 1") to Mr Morpeth, under cover of a memorandum [278]. We do not have a clean copy of version 1, but we do have it as subsequently amended by Mr Morpeth ("version 2") at [355-366].

Best endeavours clause

29. Clause 2(b) of version 1 [358] was as follows:

the Purchaser [the respondents] hereby agrees to endeavour to obtain planning permission for the property for residential development

30. In clause 1.1 of version 1 [356], "the Property" was defined as the property described in the first schedule. The first schedule [359] referred to:

ALL THAT the land situate at Barton Lane Armthorpe and shown on the Plan "A" annexed hereto and thereon coloured red

31. For some reason, there is no such plan with version 1 in the trial bundle. However, there is a plan in subsequent versions 3 at [63] and 4A at [384], which show the orchard as the land coloured red.

32. There was no suggestion in the report that the respondents should be under an obligation to endeavour to obtain planning permission for the residential development of Low Farm.

33. Clause 2(b) is clumsy in that if the word "property" is to have the same meaning as the word "Property" as defined in clause 1.1, then the respondents would be under a contractual obligation to use best endeavours to obtain planning permission for the residential development not of Low Farm, but of the orchard. This would make no sense at all.

34. In my judgment, clause 2(b) should be construed as requiring the respondents to endeavour to obtain planning permission for the residential development of Low Farm.

Trigger clause

35. Clause 3.1 of version 1 was as follows:

> *The Option shall be exercisable in respect of the property by notice in writing from the Purchaser to the Vendor at any time during the Option Period if any part of the property is required by the Purchaser to facilitate the development of [Low Farm].*

36. It will be noted that the trigger clause does not require either that planning permission to redevelop Low Farm has been granted, or that its zoning within the Unitary Development Plan for residential purposes is conditional upon the provision of the car park. This was one of the recommendations in the report, and is one of the many recommendations not making its way into version 1.

37. On 17 January 2002, Mr Morpeth met the applicants to take their instructions on version 1. The attendance note of this meeting is at [274]. The meeting lasted 66 minutes. Many proposed amendments to version 1 were discussed. However, there is no note of the applicants instructing Mr Morpeth to vary the trigger clause to make it harder for the respondents to exercise the option.

38. In a note following this meeting at [219], Mr Morpeth asked Mrs McKay to instruct a member of staff, Mr Andrew Wallis, to draft amendments to version 1. These amendments are shown on version 2, which is at [355-362]. There is no substantive amendment to clause 3.1 in version 2. Moreover, in a note to Mr Morpeth dated 21 January 2002 [273], Mr Wallis said:

I have been through the Option agreement and made further amendments in line with your note to Jill. I have also made additional amendments in line with Chappell & Co's recommendations contained in their report. Please check therefore to make sure that my amendments are indeed in line with the parties intentions.

I took it from your note however, that the Option is not now only exercisable in the event that the Car Park is required as a result of the grant of planning permission for residential development as mentioned in Chappell & Co's report. If this is still relevant, then please let me know as the Option Agreement will need to be made conditional upon this event occurring.

39. In his closing submissions, Mr Khub suggested that some things had been missed out of Mr Morpeth's note at [274]. He asked me to accept the applicants' oral and written evidence that they had given express instructions to Mr Morpeth that the option could only be triggered by the granting of planning permission for the redevelopment of Low Farm.

40. Mr Khub properly relies upon a letter sent by Mrs Mckay to the applicants' mortgagees, Halifax plc, dated 22 January 2002 [50]. It says:

The option will only be exercised if the Sellers obtain planning consent for land they own within the Village of Armthorpe and the planners require additional car parking space to relieve congestion on Barton Lane.

41. I am unable to accept the suggestion that express instructions were given that the option could only be triggered by the granting of planning permission for the redevelopment of Low Farm. I can see no reason why such an important amendment to version 1 should

have been missed out on what is a careful note, and why clause 3.1 in version 2 had no material amendments made to it. Mr Wallis' memorandum is completely at odds with this suggestion. It is more likely that Mrs McKay's letter contains a mistake.

42. In any event, whatever may have passed between the applicants and their solicitors, there is no evidence of any draft varying clause 3.1, so as to make the triggering of the option agreement harder, ever having been put forward to the respondents.

43. On 22 January 2002, Mr Morpeth sent version 2 to Mr Jones [355-365]. It contained several manuscript amendments - many based on the recommendations in the report - but no material changes to either the best endeavours clause (clause 2(b)) or the trigger clause (clause 3.1).

44. There was then a delay until 15 March 2002, when Mr Jones sent version 3 to Mr Morpeth [55-63]. This version was a retyped one. It took out the substantial amendments proposed by Mr Morpeth in version 2. The best endeavours clause (clause 2(b)) and the trigger clause (clause 3.1) were left unchanged substantially.

45. Mr Jones sent version 3 under cover of a memorandum dated 15 March 2002 [53]. This read:

We have taken instructions from our clients regarding this long outstanding matter and have retyped the Option Agreement to cover the amendments which are acceptable. The other amendments to the Option Agreement are not acceptable to our clients and if your client wishes to proceed with his purchase the Option Agreement as presently drafted must stand as it represents the agreement made between our clients and not as amended in the original draft.

46. On 20 March 2002, Mrs Mckay wrote to the applicants [54]:

We enclose herewith a copy of [version 3] for your urgent approval. The other amendments you wish to make are not acceptable to the Seller and if you wish to proceed with your purchase, the Option Agreement, as presently drafted, must stand as

it represents the agreement made between the Sellers and yourselves and not as amended in the original draft.

47. On the same day, Mrs Mckay wrote again to Halifax plc [64], repeating the mistake she had made in her earlier letter set out in paragraph 40 above.

48. On 27 March 2002, Mrs Mckay received an undated letter from Mr Goodlad [590], in which he thanked her for her letter dated 20 March 2002 and said:

We can confirm we accept the original terms of the agreement in respect of the time period for the option and method of valuation for the affected area of land.

Please accept this letter as instructions to proceed with the purchase, on the above basis.

49. On 2 May 2002, some six weeks later, Mr Morpeth sent Mr Jones a memorandum [248]:

I refer to my recent conversation with you, and wonder whether you have yet managed to take your clients instructions as to the erection and maintenance of any fences and regarding costs if the option is exercised.

50. This suggests that the applicants had no concerns about either the best endeavours clause (clause 2(b)) or the trigger clause (clause 3.1), as no mention is made of them by Mr Morpeth.

51. On 3 May 2002, Mr Jones replied to Mr Morpeth in a memorandum [247]:

We thank you for your memo, our Clients are not prepared to make any further concessions or alterations to the original option. If your Clients wish to complete the same we look forward to hearing from you.

52. Mr Morpeth attached a yellow Post-it note to the memorandum addressed to Mrs Mckay:

We can proceed. Clients were happy last time I'd spoken to them and will sort out the fencing if it ever becomes an issue also OK each side pay own costs if and when option exercised.

53. On 15 May 2002, Mr Jones sent version 3 to Mr Morpeth for signature by the applicants [114]. He also sent version 3 to Mr and Mrs Christopher Tonkinson for their signature [113].

54. On 16 May 2002, Mrs Mckay sent version 3 to the applicants under cover of a letter [67] in which she wrote:

We enclose herewith the Option Agreement for Signing by you both where we have pencilled your initials and return to us. Would you both also sign the plan.

Your signatures require witnessing on the back page where we have indicated in pencil and your witness who should not be a close relative should add his/her signature, name and address were indicated.

55. On 28 May 2002, Mr Goodlad returned version 3 to Mrs Mckay under cover of a letter [68] in which he wrote:

Thank you for your letter dated 16th May in respect of the above house purchase. Please find attached the signed option agreement, together with a cheque in the sum of £10,000...

56. The position at the beginning of June 2002, was that both sides had been sent version 3, both sides had executed their respective original document and had returned the same to their respective solicitors pending exchange.

57. The plan was that contracts for the sale and purchase of the Coach House were to be exchanged on 26 June 2002, with completion to take place on 5 July 2002. The engrossed originals of the Option agreement were to be exchanged on 26 June 2002,

and to be held in escrow until 5 July 2002 when the option agreement was to take effect.

58. On 10 June 2002, Mr Jones sent Mr Morpeth a memorandum [212], which is of critical importance in these proceedings:

Following the engrossment of the Option Agreement the pages 1 and 3 were incorrectly inserted and we were advised that Clause 2(b) should be deleted.

We have therefore prepared amendments to the Option Agreement which we enclose herewith.

Perhaps you could arrange for them to be substituted to the documentation previously issued and we look forward to hearing from you when you are ready to conclude matters.

59. The amended option agreement, which Mr Jones sent to Mr Morpeth under cover of this memorandum, was version 4B [367-374].

60. Version 4B contains two material changes to version 3. First, a typographical error in clause 1.3 of version 3 was corrected [368]. This concerned the length of the option period. In version 3, clause 1.3 had mistakenly said that the option period expired on 1 June 2117 [56]. This was, of course, a mistake for 1 June 2017.

61. Secondly, the whole of the best endeavours clause (clause 2(b)) in version 3 [58]), was deleted in version 4B [369-370]. What had been clause 2(a) in version 3 [57-58], became clause 2 in version 4B [369–370].

62. It is common ground that clause 1.3 did contain a typographical error.

63. The applicants are adamant that the best endeavours clause (clause 2(b) in version 3) was not an error, but was an important provision.

64. I am unable to agree with that. The applicants wish to argue that it was their intention that the option would only become exercisable if the respondents required the orchard for development as a car park as a result of a grant of planning permission for residential development on Low Farm, or alternatively its zoning within the Unitary Development Plan for residential purposes was conditional upon the development of the orchard as a car park.

65. In fact, the trigger clause (clause 3.1) makes no reference whatsoever to the grant of planning permission or zoning within the Unitary Development Plan.

66. The applicants seem to believe that the reference to obtaining planning permission in the best endeavours clause (clause 2(b)) somehow has a bearing on the trigger clause. It does not.

67. In fact, it seems to me, that the best endeavours clause was unfavourable to the applicants. It is quite clear that the last thing the applicants want to happen is for the respondents to be able to exercise the option. This is because the applicants themselves have planning permission to develop the Coach House, but they are unable to sell to a developer because of the option agreement.

68. If the respondents were under an obligation to use their best endeavours to obtain planning permission, it would be more likely, rather than less likely, that the option would be exercised.

69. I agree with Mr Duckworth that the inclusion of the best endeavours clause (clause 2(b)) was a mistake. It is a clause typically inserted in a joint venture agreement, but makes no sense in the context of an option agreement.

70. I am satisfied that Mr Morpeth regarded the two changes in version 4B as the correction of mistakes. He wrote at the foot of Mr Jones' memorandum [212]:

I have amended our copy which I am happy with them.

71. Mr Morpeth chose not to prepare another original of version 4B to send to the applicants so that they could execute a fresh document. Instead, he made manuscript corrections to the executed version 3 in his possession. This is version 4A [4-18]. In clause 1.3 he altered "2117" in manuscript so that it read "2017". As far as clause 2(b) is concerned, he simply crossed it out in manuscript.

72. Mr Morpeth did not initial either of the alterations on behalf of the applicants. He did not tell the applicants about these changes, or send them version 4A so that they could initial the alterations.

73. On 21 June 2002, Mr Jones sent Mrs Mckay a memorandum in which he said that the respondents were now ready to exchange contracts for the sale and purchase of The Coach House. On 26 June 2002, Mr Morpeth endorsed the memorandum to the effect that contracts for the sale of purchase of the Coach House had been exchanged with completion on 5 July 2002.

74. On 26 June 2002, Mr Jones delivered version 4B, which had been executed by the respondents [372], to Mr Morpeth be held in escrow until 5 July 2002. Mr Morpeth delivered version 4A, which had been executed by the applicants [14], to Mr Jones to be held in escrow until 5 July 2002.

75. On completion on 5 July 2002, the Coach House was transferred to the applicants and, on the respondents' case, the option agreement took effect.

76. On 16 July 2002, Mrs Mckay sent a memorandum to the completions department at her firm asking for the option agreement, at the request of Mr Jones, to be registered at the same time as the transfer was registered.

77. It was version 4A which was sent to Land Registry and has Land Registry's barcode on it [10]. Version 4B was not sent Land Registry. Nothing turns on that. If the option agreement was validly made, it has been validly registered.

The applicants' submissions

78. The applicants' principal submission is that the option agreement is void because the parties were not ad idem. The applicants intended to contract upon the basis that the best endeavours clause was included. It was improperly deleted by their solicitor without his having been instructed to do so. The respondents intended to contract upon the basis that the best endeavours clause was deleted. Accordingly, it is said, the parties were never ad idem.

79. Mr Khub relies upon Lord Denning's observations in Harrison v Battye [1975] 1 WLR 58, 60, that if the parts exchanged differ in material respect, there is no contract. The reason is plain. Each party must be able to act on the faith of the part which he receives signed by the other. He can only safely do this when they are in the same terms in all material respects.

80. Mr Khub argues that Mr Morpeth had no authority - actual, implied or ostensible - to alter version 3 into version 4A.

81. The applicants accordingly submit that the version of the option agreement lodged at Land Registry, which was version 4A [9-18], was not the version, version 3 [55-63], which was agreed or executed by the applicants.

82. The applicants further argue that the option agreement did not comply with the formalities required by section 2 of the Law of Property (Miscellaneous Provisions) Act 1989. Moreover, the variation introduced by the deletion of the best endeavours clause (clause 2(b)) needed to be signed by all parties in order to comply with section 2. Mr Khub relied upon McCausland v Duncan Laurie Ltd [1997] 1 WLR 38, 44 and 49.

83. The respondents' response to these arguments are set out in paragraphs 89 and 90 below. For the sake of completeness, I now set out a number of arguments also advanced by the applicants which, in my judgment, have no merit.

84. Mr Khub asserted that the option agreement was void for uncertainty. The option

agreement envisages the parties entering into an agreement if and when the option is exercised. That agreement is by clause 1.9 [11] said to be an agreement in the form annexed and marked "A". The agreement is at [15-16] and space is left for it to be signed by both parties. Mr Khub submits that the failure of the parties to sign this annex is fatal. With respect, this is a hopeless point, as the document is only to be signed if and when the option is exercised, and I say no more about it.

85. As I have already said, the property which is the subject of the option is referred to in the first schedule as the land shown on Plan A annexed and coloured red [14]. Mr Khub says that the option agreement is also void for uncertainty because there is no plan which is marked "Plan A". Literally speaking, he is correct in this.

86. However, immediately before Plan B, there is a page [17] which is a location plan prepared by Chappell and Company. It shows the Coach House with the orchard marked in red. It is obvious that this is Plan A, and the court would rectify the omission of the words "Plan A" by construction. There is no merit in this argument, nor the argument also advanced that the area marked red on the plan is insufficiently precise for the agreement to be valid. Any competent surveyor could measure the area of the orchard from this plan.

87. It is also argued that version 4B never contained Plan A, so the parties did not exchange documents which are identical. It is true that the copy of version 4B in the bundle [367-374] does not contain a copy of Plan A. We do not, however, have the original of version 4B. We only have the original of version 4A which was handed to me at the hearing. But even if I were satisfied that the original of version 4B lacked Plan A (which I am not), section 2(2) of the 1989 Act permits documents to be incorporated by reference. Again, this point cannot succeed.

88. Finally, it is submitted that the option agreement is void because it had been tampered with by Mr Morpeth. Again, this point cannot succeed. There was no agreement at the time when Mr Morpeth altered version 3. The agreement only came into being when versions 4A and 4B were exchanged, which is after Mr Morpeth made his changes.

The respondents' submissions

89. Mr Duckworth argues that Mr Morpeth had ostensible authority to do all those things that conveyancing solicitors usually do on behalf of their clients in conveyancing transactions. He relies upon AMB Generali Holding AG v SEB Trygg Liv Holding Aktiebolag [2005] EWCA Civ 1237. Accordingly, identical versions (4A and 4B) were duly exchanged which created a binding contract.

90. The respondents submit that the option agreement did comply with the formalities required by section 2 of the Law of Property (Miscellaneous Provisions) Act 1989. Moreover, there was no variation of a concluded contract, as the deletion of the best endeavours clause (clause 2(b)) took place before the contract came into being.

91. As a fall-back position, the respondents argue that the applicants have waived any defects in the option agreement or are estopped from asserting that the option agreement is not valid. Further it is argued that the option agreement has been ratified by the applicants.

Discussion

92. On the issue of a conveyancing solicitor's authority, I prefer the submissions of Mr Duckworth to those of Mr Khub. In my judgment, Mr Morpeth had ostensible authority to make the alterations to version 3 which became version 4A. Accordingly, version 4A was properly registered at Land Registry.

93. In my judgment, the option agreement does comply with the formalities required by section 2 of the Law of Property (Miscellaneous Provisions) Act 1989. The option agreement was made in writing by incorporating all the terms which the parties had expressly agreed in each of the documents exchanged (section 2(1) of the Act).

94. Had it been necessary, I would have found that the applicants are estopped from asserting that the option agreement is not valid for the reasons set out in paragraph 73(1) –(3) of the respondents' statement case [340-341], alternatively they have ratified the

option agreement.

Conclusion

95. I shall direct the registrar to cancel the original application.

96. The usual rule is for costs to follow the event, and in a case such as this which lasted three days it would be appropriate for me to direct a detailed assessment. If the applicants wish to argue for a different costs order, they must provide written representations to the respondents and the Tribunal within 14 days.

Dated this 29th day of August 2017

Simon Brilliant

BY ORDER OF THE LAND REGISTRATION DIVISION OF THE PROPERTY CHAMBER OF THE FIRST-TIER TRIBUNAL