[2017] UKFTT 0802 (PC)

REF/2017/0114

PROPERTY CHAMBER LAND REGISTRATION
FIRST-TIER TRIBUNAL
IN THE MATTER OF A REFERENCE
UNDER THE LAND REGISTRATION ACT 2002

BETWEEN

WANDLE HOUSING ASSOCIATION LIMITED

APPLICANT

and

NATALIE STEVENS

RESPONDENT

Property Address: Flat 25, Evan Cook Close, London SE15 2HL

Title Numbers: TGL309918

Before: Judge Owen Rhys

Sitting at: 10 Alfred Place, London WC1E 7LR

On: 25th September 2017

Applicant representation:	Mr Bowker of Counsel instructed by HPLP Solicitors
Respondent representation:	In person

D E C I S I O N

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1. The Respondent is the proprietor of the leasehold title relating to the property known as Flat 25, Evan Cook Close, London SE15 2HL, registered under title number TGL309918 ("the Leasehold Title"). The Applicant is the registered proprietor of the freehold reversion, registered under title number TGL249697. The registered lease ("the Lease"), under which the Applicant granted to the Respondent a term of 125 years commencing on 1st November 2006, is dated 9th

May 2008. There was a premium charged of £70,500, of which £3,600 was provided by the Applicant, and the balance of £66,500 by a mortgage from Nationwide Building Society. It was what is commonly known as a "shared ownership" lease, whereby the tenant is able, by over-paying rent, to acquire an increasing share of the "equity" in the term of years. On 22nd June 2016 the Applicant applied to Land Registry in Form AP1 to close the Leasehold Title, on the grounds that the Lease had been disclaimed by the Respondent's Trustee in Bankruptcy. The Respondent objected, and the dispute was referred to the Tribunal on 28th January 2017. On 13th March 2017 the Applicant served its Statement of Case, and there was a response from the Respondent on 20th March 2017. In its Statement of Case, the Applicant contended that there was no reasonable prospect of the Respondent's case succeeding, and the Tribunal was invited to strike it out. The Respondent subsequently made a cross-application to strike out. Both applications came on before me on 25th September 2017. Mr Bowker of Counsel appeared for the Applicant, and Ms Stevens represented herself. In view of the nature of the applications, no live evidence was called and the matter must be decided on the basis of the documents and submissions.

2. The Applicant relies on the following facts:

    a. By an Order dated 4th July 2013 of District Judge Lambert in the Central London County Court, the Respondent was adjudged bankrupt.

    b. On 4th November 2014 one of the Respondent's Trustees, Wendy Jane Wardell, disclaimed her interest in the Leasehold Title. I should say that the Notice of Disclaimer is a three-page document, signed on the first page by Mrs Wardell, and on the signature page dated 4th November 2013. However, the notice is dated 4th November 2014 on the second page, and the covering letter enclosing the Notice, and sent by the Trustee's solicitors to the Applicant, is dated 4th November 2014. Furthermore, an email dated 25th July 2016 from a representative of the Trustees in Bankruptcy confirmed that the correct date for the Disclaimer was 4th November 2014. I do not think it can realistically be argued that the Disclaimer was signed on 4th November 2013, even if that had been a

material factor (since it postdates the bankruptcy), and the error in the date does not in any way invalidate the document.

c. The Applicant commenced possession proceedings against the Respondent in the Lambeth County Court. It seems that the claim was based on a number of different grounds. Primarily, the Applicant claimed rescission of the Lease on the basis of an alleged fraudulent misrepresentation. The Lease is a shared ownership lease, which may only be granted to first-time buyers who intend to reside in the demised premises as their principal residence. It was alleged that the Respondent fulfilled neither requirement. Mr Bowker, for the Applicant, told me that these allegations have never been made the subject of any judicial findings. In fact, the Order sealed on 1st June 2015 indicates that possession was granted because the Lease had been disclaimed. Whatever the basis for the Order however, the Respondent was required to deliver possession to the Applicant, and the warrant was executed on 3rd July 2015. The Respondent told me that there had been attempts to stay execution of the warrant, and to appeal the possession Order itself, but these came to nothing. As matters now stand, therefore, she has no right to possession of the previously demised premises.

3. On 22nd June 2016 the Applicant applied to Land Registry ("LR") to close the Leasehold Title. LR raised a number of issues with the Applicant, some of which became formal Requisitions. The issues were as follows:

a. LR queried the validity of the DS1 form of discharge provided by the Nationwide Building Society, for a variety of reasons.

b. LR queried whether a shared ownership lease is an assured tenancy and therefore one which does not fall within the bankrupt's estate. On this basis, the Trustee in Bankruptcy could not disclaim it. The High Court decision of Richardson v Midland Heart Ltd (formerly Focus Homes Options) [2008] L&T.R 31 was cited.

c. LR also queried the validity of the Disclaimer itself, since it was only executed by only one of the two appointed Trustees in Bankruptcy.

d. LR queried the effect of the Disclaimer which post-dated the Respondent's discharge from the Bankruptcy, which took place on 4th July 2014.

4. The Applicant responded to all these queries. The criticism of the DS1 was well-founded and in the event a valid DS1 was executed by the Nationwide Building Society and has now been accepted by LR as an effective discharge. As to the sole Trustee point, the Applicant lodged a Certificate from the Secretary of State, dated 18th December 2013, stating that "*Any act authorised under any enactment to be done by the trustee(s) is to be done by one or more of the above named persons*" – one of them being Mrs Wardell. Accordingly, LR accepted that Mrs Wardell could effectively disclaim the bankrupt's property on behalf of both Trustees. With regard to the timing issue, LR was referred to section 281(1) of the Insolvency Act 1986. This provides that:

> (1) .... *where a bankrupt is discharged, the discharge releases him from all the bankruptcy debts, but has no effect –*
>
> *(a) on the functions (so far as they remain to be carried out) of the trustee of the estate, or*
>
> *(b) on the operation, for the purposes of the carrying out of those functions, of the provisions of this Part.... .....*

5. The effect of section 281(1), therefore, is to preserve the Trustee's power to disclaim onerous property even after the bankrupt has been discharged. LR accepted this analysis.

6. That left only the Assured Tenancy point outstanding. The argument runs as follows. Following the decision in Richardson v Midland Heart Ltd (formerly Focus Homes Options) [2008] L&T.R 31, it is clear that a shared ownership lease constitutes an Assured Tenancy, unless otherwise excluded from that definition by legislation. An Assured Tenancy does not form part of the bankrupt's estate and therefore could not be validly disclaimed by the Trustee. These issues are considered in LR's Technical Manual, as referred to in its letter to the Applicant dated 13th July 2016.

7. The Applicant's response to this point was that the disclaimer is deemed to be valid and effective unless it is proved otherwise. LR's attention was drawn to Rule 6.185 of the Insolvency Rules 1986, which is in these terms:

> *"Any disclaimer of property by the Trustee is presumed valid and effective unless it is proved that he has been in breach of his duty with respect to the giving of notice, or otherwise under Sections 315 to 319 or under this Chapter of the Rules."*

Mr Bowker, for the Applicant, submits that the only means of challenging the disclaimer would be for the Respondent to make an application in the bankruptcy court to set it aside. For whatever reason, this has not been done and therefore the disclaimer "*is presumed valid and effective*". He also points to the fact that the Trustee took legal advice before disclaiming the Lease – this appears from the email dated 25th July 2016 referred to above. He says that the Applicant has always taken the stance that the Respondent did not use the demised premises as her "*only or principal home*" and therefore the Lease did not fall within the definition of Assured Tenancy under section 1 of the Housing Act 1988. He stressed that there has never been a judicial or other finding to this effect, but suggests that the status of the Respondent's Lease is not clear-cut. This may have been the view taken by the Trustee, but this is of course speculation. At all events, LR appears to have accepted the Applicant's argument on this point.

THE APPLICATION AND CROSS-APPLICATION

8. As I have said, the Applicant notified an application to strike out the Respondent's case in the Statement of Case itself. This has been met by a cross-application by the Respondent. The Applicant's application is made under Rule 9(3)(e) and (7) of the Tribunal's procedural rules, namely that *"the Tribunal considers that there is no reasonable prospect of the [Respondent's] ..... case ..... succeeding."* There is a cross-application by the Respondent to the same effect. As has been held in the Tribunal – see, for example, Quinn v Unique Pub Properties Alpha Ltd [2016] EWLandRA 2015_0546 – the test to be applied is broadly equivalent to that which is used on an application under Part 24 of the Civil Procedure Rules.

9. The Respondent has submitted a Statement of Case dated 20th March 2017, to which a number of documents were attached. She has also submitted a Skeleton Argument in relation to the hearing before me. It is, I think, fair to say that she feels a very strong sense of injustice with regard to the conduct of the Applicant, of Southwark Council (which petitioned for her bankruptcy), of the Trustee in bankruptcy, of the Courts (in particular Deputy District Judge Sofaer who granted a possession order) , and the mortgagee Nationwide Building Society. She told me that Lambeth County Court was a corrupt institution in general, and that in particular Deputy District Judge Sofaer had taken bribes to induce him to make the possession order. She refused to accept the statement made by Mr Bowker, on instructions from his solicitor Mr Eaton, who was sitting in court, that the Applicant had paid off the liability owing to Nationwide Building Society under the terms of a settlement agreement made last year. She stated that Mr Bowker's instructing solicitors were unreliable and had a conflict of interest since they were (according to her) an arm of Southwark Council. She stated that this Tribunal was itself a corrupt institution and she would not receive a fair hearing. As these statements make abundantly clear, she has no confidence whatsoever in the justice system. That is the context within which she attempted to answer the Applicant's application.

10. Much of the argument addressed by her to me orally, and contained in her Statement of Case and Skeleton Argument, are not relevant to the matters raised by the Applicant. Much of it amounts to an attack on the bona fides of the various judges and office-holders who have dealt with her in relation to the Lease. She is very exercised by the fact that she will be deprived of her share in the equity – whatever it may be – if the Leasehold Title is closed. She criticises the Trustee for failing to seek a sale of the Lease and pursuing the disclaimer route. However, she also relies on the points which were raised by LR, both of its own motion and on the basis of the Respondent's correspondence and objections. These are the issues, with the Applicant's responses, which I have described in paragraphs 3 to 7 of this Decision.

11. None of the Respondent's submissions has dealt with the Applicant's central argument, namely that the disclaimer, unless and until it has been set aside by the court, is conclusive. This Tribunal cannot go behind the disclaimer, which, for as

long as it remains unrevoked, is effective to terminate the Lease and the Applicant's and Respondent's rights thereunder. It brings the Lease to an end, just as a forfeiture or effluxion of time will do. Since the disclaimer was in effect at the date of the Applicant's application dated 22nd June 2016, and had brought the Lease to an end, there could be no valid objection to closure of the Leasehold Title. In my judgment, therefore, the Applicant has more than satisfied the requirement under Rule 9(3)(e) of the Tribunal's Rules, and the Respondent's case must be struck out. For the same reasons, there is no basis for the Respondent's cross-application.

12. I shall therefore direct the Chief Land Registrar to give effect to the Applicant's application as if no objection had been received. I do not see why costs should not follow the event, and direct the Applicant to lodge and serve on the Respondent (on or before 4 pm on Wednesday 11th October 2017) a statement of costs for the purposes of a summary assessment. The Respondent may lodge and serve any objections (both as to the liability to pay and the amount claimed) by Friday 20th October 2017.

Dated this 2nd day of October 2017

Owen Rhys

BY ORDER OF THE TRIBUNAL

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On: 25th September 2017

O R D E R

IT IS ORDERED that the Chief Land Registrar shall give effect to the Applicant's application in Form AP1 dated 22nd June 2017 as if no objection had been received

Dated this 2nd day of October 2017

Owen Rhys

PROPERTY CHAMBER LAND REGISTRATION

BY ORDER OF THE TRIBUNAL