



[2018] UKFTT 330 (PC)

REF NO 2016/0882

PROPERTY CHAMBER
FIRST-TIER TRIBUNAL
LAND REGISTRATION DIVISION

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY
LAND REGISTRATION ACT 2002

B E T W E E N:

SK PROPERTIES (MIDLANDS) LIMITED

Applicant

And

MR PETER BYRNE

Respondent

Property address: 11 Esme Road, Birmingham, B11 4NH

Title number: WM105449

Before: Judge David Taylor
Birmingham Employment Tribunal
9 March 2018

Representation: Applicant - in person (through its director Shakeel Afsar)
Respondent - in person

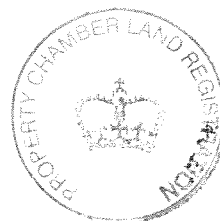
ORDER

THE TRIBUNAL ORDERS as follows:-

1. The Chief Land Registrar shall give effect to the Respondent's application dated 19th April 2016 as if the Applicant's objection had not been made.

BY ORDER OF THE TRIBUNAL

David Taylor



DATED 16th May 2018



[2018] UKFTT 0330 (PC)

REF NO 2016/0882

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DECISION

1. The Respondent is the registered proprietor of the freehold property at 11 Esme Road, Birmingham, B11 4NH ('the Property'). By a written agreement dated 8th December 2015, he agreed to sell the Property to the Applicant. On the 14th March 2016, the Applicant entered an unilateral notice against the registered title to the Property, to protect the Applicant's claimed interest under that agreement.
2. On the 8th April 2016 the Respondent applied to cancel that unilateral notice. His application was objected to by the Applicant, with the result that HM Land Registry referred the dispute to this Tribunal for determination under s.73(7) of the Land Registration Act 2002.
3. The central issue which I need to decide in this case is a narrow question of law which concerns the validity of the agreement of the 8th December 2015.

Background Facts

4. Mr Byrne acquired the Property from Birmingham City Council on the 1st September 2014. From the evidence which I heard, it is clear that the purchase took place in difficult circumstances. Mr Byrne's mother had enjoyed a secure tenancy of the Property, but she had died from cancer in October 2013. Mr Byrne, who had lived at the Property with his mother, had a statutory right to succeed to his mother's tenancy. But he was nevertheless faced with the threat of eviction because the property was larger than he needed. The only way in which he could continue living at the Property was by exercising the right to buy under the Housing Act 1985, as successor to his mother's tenancy. However, the price which needed to be paid, even allowing for the discount under the Housing Act 1985, was more than Mr Byrne could afford.
5. It was in this context that Mr Byrne first had discussions with a neighbour, who was called Sajit Mahmood, about the possibility of entering into some arrangement under which Mr Mahmood would assist in the funding of the purchase of the Property. Mr Byrne told me that Mr Mahmood's extended family members own a number of properties in the vicinity of the Property, and that he was therefore aware that Mr Mahmood might have a long term interest in acquiring the Property. A number of different possible schemes were discussed

with Mr Mahmood, but eventually those discussions came to nothing, because Mr Byrne was able to proceed with the purchase of the Property using funds which had been loaned to him by his sister.

6. Having acquired the Property, Mr Byrne then engaged in further discussions with Mr Mahmood, and with various members of Mr Mahmood's family (including a gentleman called Najib Afsar, who was referred to in evidence as 'Naj'), about the possibility of selling the Property to them. Mr Byrne produced in evidence a transcript of exchanges of text messages which he had with Naj. It appears from that transcript that, by the 25th October 2015, an agreement in principle had been reached for the sale of the Property to Mr Mahmood at a price of £145,000. By a text message to Mr Byrne on that date, Naj told Mr Byrne that Sajit Mahmood *'is committed at 145,000 and will exchange during the week with 10% deposit with completion date to be fixed.'*
7. The exchange of texts shows that, after that date, Mr Byrne became increasingly frustrated with Mr Mahmood's failure to enter into a binding commitment to purchase the Property. On the 5th December 2015, apparently in an attempt to prevent the agreement from unravelling, Naj sent a text message to Mr Byrne in which he wrote *'...I will draft a agreement where you and company director will sign in front of me and a cheque of £1000 will be given to you toward the purchase price as a token of goodwill ...'*. Subsequent text messages show that Mr Byrne tried to negotiate an increased goodwill payment and I find (although there is a gap in the transcript) that Naj eventually agreed that the token of goodwill would be increased to £3,000.
8. The company to which Naj had referred in his text message was the Applicant. On the evidence which was adduced before me, the precise relationship between Mr Mahmood and SK Properties (Midlands) Limited is unclear. Mr Shakeel Afsar, who represented SK Properties (Midlands) Limited at the hearing, told me that he and a gentleman called Naeem Khalique are the directors of the company. But he appeared to accept, during cross-examination, that Sajit Mahmood was connected with the company. Suffice to say, for present purposes, that I am satisfied that there is some form of connection between Mr Mahmood and SK Properties (Midlands) Limited which explains how it was that

SK Properties (Midlands) Limited, rather than Sajit Mahmood, which came to be a party to the agreement of the 8th December 2015.

9. A meeting was then arranged, for the 8th December 2015. The meeting took place at the Property. It was attended by Mr Byrne, Mr Shakeel Afsar, and Naj. At that meeting, Mr Byrne was handed a cheque for £3,000. Those monies were subsequently paid into his bank account.
10. Mr Byrne gave evidence that, during the course of the meeting, he was assured that completion of the sale and purchase of the Property would take place within '*about 4 weeks*'. That evidence was not accepted by Mr Afsar, who said that he had told Mr Byrne at the meeting that he needed 8 to 12 weeks before completion, but that Mr Byrne had replied that he could have '*as much time as he wanted*'. None of that evidence fits entirely comfortably with the content of a text message which was sent by Mr Byrne to Naj on the 5th February 2016 (at a time when he was chasing for completion of the sale), in which he wrote '*Naj this is not exceptable we had an agreement which we shook hands on that this would be completed with in six weeks ...*'.
11. Looking at this evidence in the round, I find that the discussions which took place at the meeting about the completion date were wide ranging, that all of the various timescales to which I have referred were mentioned, but that they were mentioned as aspirational targets, and that the parties did not reach any oral agreement that completion would take place within a specific period of time.
12. During the course of the meeting, the agreement was signed by Mr Byrne, as well as being signed by Mr Shakeel Afsar on behalf of SK Properties (Midlands) Limited. Both signatures were witnessed by a Najib Afsar. Mr Byrne, for his part, told me that when he signed the document he believed that he was simply signing a receipt for the £3,000 deposit which is referred to in paragraph 1(d) of the agreement. I do not accept that evidence. The text messages produced by Mr Byrne show that he had been chasing for exchange of contracts for the sale and purchase of the Property for many months, and the text message to which I have referred in paragraph 7 (above) made clear that one of the intended purposes of the meeting on the 8th December 2015 was so that such an

agreement could be signed. Those points apart, the document was plainly something more than a receipt (given the amount of text which appeared on its face), Mr Byrne did not strike me as the sort of person who would have signed the agreement without reading it. But in any event, nothing turns upon Mr Byrne's assertion that misunderstood the nature of the document which he signed, because it was not suggested by Mr Byrne that either Naj or Mr Shakeel Afsar had misrepresented the purpose of the document, and nor has it been suggested that this is a case of *non est factum*.

13. Turning now to the agreement itself, it is a simple document which has the appearance of being home-drawn. Having regard to the text messages which I have previously described, I find that it was probably prepared by Naj.
14. The document is headed 'Sale Agreement'. After defining the Respondent and the Appellant respectively as 'the vendor' and 'the purchaser', the operative provisions of the agreement were as follows (what follows is a verbatim transcript of Clause 1 of the agreement):

1. Vendor agrees to to sell the following property to the purchaser on the following conditions and consideration:

- a. Property: 11 Esme Road, Sparkhill, B,ham, B11 4NH **Land Registry Title No. WM105449***
- b. Purchase Price: £145,000 (one hundred and forty five thousand pounds) for FREEHOLD with vacates possession in the present condition.*
- c. Purchaser shall complete the purchase as soon as their legal and bank formalities' are completed.*
- d. Should purchaser fails to purchase the property, in such event the vendors will not return the deposit paid today towards the purchase price by the company for sum of £3000 cheque number 000002.*
- e. Should vendor refuse to sell once purchaser legal and bank formalities are completed, in such case the vendor shall be responsible for loss and Damages suffered*

- f. *Purchaser shall have full right to sub sale this property within stipulated time frame or alter the name, to purchaser choosing and vendor shall have no objection.*
- g. *Vendor has no objection for purchaser to register caution against the property at land registry to protect their position.'*
15. The transcript of text messages produced by Mr Byrne shows that, after the meeting on the 8th December 2015, he repeatedly chased Naj for completion of the sale and purchase of the Property. The texts messages show that Naj made regular promises that progress was being made towards completion, and that Mr Byrne became increasingly frustrated when those assurances came to nothing. In a text message of the 5th February 2016, Mr Byrne wrote '*I want this matter completed in the next week or I will find someone else.'* That text message elicited no response. Eventually, in late February, Naj indicated that '*we hope to complete the purchase by next Friday ... please confirm if this is ok with you.'* Mr Byrne did not respond to that message. Nor did he respond to a number of subsequent messages which Naj sent to him, indicating that he was in a position to proceed. Eventually, on the 5th March 2016, Naj texted Mr Byrne to say '*Peter, I have made application at the land registrars for registration of sale agreement between you and SK Properties ... as you will appreciate if you are selling to any other party, then as per agreement the sale will be blocked by land registry until you discharge SK Properties ...'*
16. The Respondent's application to enter the Unilateral Notice against the registered title to the property was in fact made on the 14th March 2016. Very swiftly thereafter, on the 8th April, Mr Byrne applied to cancel it.

The Issue for Determination

17. Mr Byrne complains that clause 1(c) of the agreement, which provides for completion '*as soon as [the purchaser's] legal and bank formalities' are completed'* is vague and ambiguous. He complains that the Applicant seems to think that this provision '*gives the right to take as much time as they want.'* In legal parlance, the question which I need to decide is whether clause 1(c) is so unclear as to render the Agreement void for uncertainty.

18. The submissions which I received on this issue, from the parties, were very brief. The gist of Mr Byrne's submissions were as I have described in paragraph 17 (above). Mr Afsar, for his part, submitted that the Applicant was entitled under the clause '*to have 6-7 or 8-9 months*', or even that the Applicant '*could have delayed for years*' before completing, if it had wanted to do so.
19. It seems to me that there are two respects in which clause 1(c) might be said to give rise to uncertainty. The first is that the clause does not define the '*legal and banking formalities*' which were required to be completed. The second is that the clause does not attempt to impose any time-limit upon completion of those formalities, nor to impose any duty upon the purchaser to pursue completion of those formalities within any particular time frame, thus leaving the completion date potentially uncertain.
20. In approaching the question whether these uncertainties are such as to render the agreement void, I recognise the natural reluctance of the courts and tribunals to strike down any ostensible agreement as void for uncertainty, and I bear in mind also that it is, in appropriate circumstances, possible to cure uncertainty by implying terms into contracts. I appreciate that, in a case in which a contract for the sale of land contains *no* term which specifies the completion date, the courts will readily infer that completion is to take within a reasonable period of time. (See, for example, Johnson v. Humphrey [1946] 1 All ER 460).
21. In this case, however, the agreement *did* provide for a completion date. Because there was an express agreement that completion would take place '*as soon as [the purchaser's] legal and bank formalities are completed*', there is no room for implication of a term that completion was to take place within a reasonable period of time, because there can have been no obligation upon SK Properties (Midlands) Limited to conclude the contract within any period of time (reasonable or otherwise) unless its legal and banking formalities had been completed.
22. What, then, were the legal and banking formalities which needed to be completed? In the context in which this expression appears (ie. in an agreement for the sale and purchase of land) I do not think that the lack of definition of these formalities is fatal to the validity of the agreement. The reference to '*legal*

and banking formalities' must be taken to be a reference to the steps which needed to be taken (a) to put in place finance to fund the purchase and (b) to undertake the normal conveyancing processes.

23. The more difficult issue arises out of the fact that clause 1(c) neither required those formalities to be completed within a particular period of time, nor imposed any duty upon the Respondent to pursue completion of those formalities, (whether diligently, within a reasonable period of time, or otherwise). I have considered whether these omissions can be cured by implication of a term, for example, that the purchaser was obliged to complete its '*legal and bank formalities*' within a reasonable period of time. But on the evidence which I heard, there is no material from which I can be satisfied that the parties must have intended that the purchaser should be under any form of absolute obligation to complete its legal and banking formalities (whether within a reasonable period of time or at all). It is entirely possible that the parties contemplated the possibility that the Applicant might be unable to raise funding, and thus unable to complete its banking formalities, and that the parties may have intended that in that eventuality the Applicant should not be obliged to complete at all. It is even possible that the agreement might have operated as a conditional contract, conferring upon the Applicant an entitlement to call for completion if its legal and banking formalities were completed, but placing no obligation upon the Applicant to pursue those matters.
24. In the absence of having heard any evidence directed to these issues, I have reached the conclusion that this uncertainty in clause 1(c) is fatal to the validity of the contract. The contract being void, the Applicant's unilateral notice must be cancelled, and I will direct the Chief Land Registrar accordingly.

Other Matters

25. There are two other matters that I should mention, for the sake of completeness
26. First, I record that in his oral and written evidence Mr Byrne made serious allegations against the Applicant and its associates, which included allegations of bribery of Birmingham City Council officials. I was told that these allegations have been communicated by Mr Byrne to the police, and to Birmingham City

Council. These are not matters which I need to consider for the purpose of my decision, and in any event the evidence which was adduced before me was wholly inadequate to enable me to make findings on such a serious matter.

27. Second, it seems to me that the probable consequence of the conclusion which I have reached about the validity of the agreement is that the £3,000 which was paid to Mr Byrne is recoverable by the Applicant on the ground that the consideration for which it was paid has wholly failed. However, I have heard no evidence or argument on this point, and in any event I have no jurisdiction to direct that the money should be repaid by Mr Byrne. The Applicant will therefore have to take such action as it sees fit if it wishes to pursue recovery of that sum.

Costs

28. The normal consequence of the outcome which I have directed is that the Applicant, as the unsuccessful party, would be ordered to pay the costs of the Respondent. I will, however, consider any submissions that the parties may wish to make, either in connection with the principle of who should pay costs, or in connection with the assessment of those costs. I invite the parties to file and serve upon each other their written submissions upon these issues, together with any other material upon which they wish to rely in connection with an assessment of costs, by 1st June 2018.

BY ORDER OF THE TRIBUNAL

David Taylor



Dated this 16th day of May 2018