PROPERTY CHAMBER
FIRST –TIER TRIBUNAL
LAND REGISTRATION DIVISION

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

LAND REGISTRATION ACT 2002

REF NO 2016/0710

BETWEEN

KRISTY HOLLAND
NANA KARIKARI

Applicants

and

WAYNE SIMMONDS
LINDA SIMMONDS

Respondents

Property address: 62-64 Main Street, Newbold Vernon LE9 9NP
Title number: LT337539

Before: Judge Hargreaves

ORDER

The Chief Land Registrar is directed to give effect to the Respondents' application in Form UN4 dated 17th June 2016.

BY ORDER OF THE TRIBUNAL

Sara Hargreaves

DATED 18TH DECEMBER 2017

[2018] UKFTT 0054 (PC)

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Property address: 62-64 Main Street, Newbold Vernon LE9 9NP
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Before: Judge Hargreaves
Leicester ET
15th December 2017

Applicants' representation: in person
Respondents' representation: David Bendell, Advantage Law

DECISION

Key words – mixed contract for the sale of land and rental agreement pending completion parties prepared contract themselves – dispute about amending terms and condition for early termination – s2 Law of Property (Miscellaneous Provisions) Act 1989

Case cited

McCausland v Duncan Lawrie [1996] 4 AER 995

1. For the following reasons I direct the Chief Land Registrar to give effect to the Respondents' application in Form UN4 dated 17th June 2016 to cancel a unilateral notice under *s36(1) Land Registration Act 2002* entered on the register of the property on 7th June 2016 pursuant to a UN1 application dated 3rd June 2016. By that time it is arguable that the relevant contract, dated 1st June 2015, had to all intents and purposes come to an end, and certainly Mr Karikari accepted in the course of his submissions that the contract has now ended, though he maintained the Applicants were entitled to make the UN1 application when they did. However, it seems to me, given that the parties had embarked on an arguably complicated legal relationship without taking legal advice, the sensible approach is to review the contract, the facts, and my conclusions for giving effect to the Respondents' UN4 application, and ignore the temptation to make an order purely based on Mr Karikari's concession, though he is correct about the fact that the contract has now ended.

2. References are to the trial bundle prepared by the Respondents. Although the Applicants complained about the contents of the bundle, it appeared that they wanted to rely on documents which they had not disclosed earlier, and that Mr Bendell had taken all appropriate steps to include the right documents. In any event, whether there are further documents available, they could not impact on the conclusions I have reached.

3. The background facts have not in fact been set out in any useful detail in the pleadings or the evidence, and this being a case based on the construction of a contract for the sale of land, the facts are not highly relevant. The property is a commercial property. The Respondents wanted to sell it, and the Applicants wanted to buy it. But they could not fund the purchase price. Furthermore, it appears that the property required building works, though I have no details.

4. The parties came to an agreement on 1st June 2015. There are various forms of contracts in the bundle. The first, at p31, is a draft of the signed versions which are

at p33 and p36 and provided the working draft. Each party had a typed version of the documents at p33 and p36. All four parties signed both. The typed words are identical, as are the handwritten clauses added in capitals. These documents, without the additions later superimposed, form the contract dated 1st June 2015, and that date is significant because it is the date on the contract relied upon by the Respondents in their UN1 application.

5. The hand written amendments on the version at p33-35 are in Mr Simmons' handwriting and were, as his annotation indicates, added during a meeting on 25th October 2015. The handwritten amendments on the version at p36-38 were added at the same meeting by the Applicants.

6. The versions at p40 and p44 are dated 25th October, prepared by the Respondents, discussed on 25th October, but not signed.

7. In my judgment the only documents which comply with *s2 LP(MP) Act 1989* are those at p33 and p36 to be construed without the handwritten annotations (apart from the three particular clauses added in identical terms above the parties' signatures). Both are in writing, signed by all four parties and contain the same clauses. I reject the Applicants' case that these terms were varied by the handwritten annotations added by the parties on 25th October. There are two main reasons. First, the handwritten notations are comments, not capable of being construed as revised or amended terms, and are not identical on the two versions of the contract dated 1st June. They reflect no more than discussions at a meeting. Secondly, the changes (if I am wrong about the first point) were not expressly agreed by the parties who failed to sign the "revised" contracts. The Applicants' contention that the contracts were signed anyway on 1st June and so effectively varied by implication on 25th October is wrong: those changes would have had to be incorporated by "re-signing" the document in order to comply with *s2* (and the amendments would have to be identical). As Mr Bendell submitted, *McCausland* is clear authority supporting his submission that variations to contracts for the sale of land must still comply with *s2*. However, I reiterate that the alleged variations do not amount to such: there is no evidence that anything was actually agreed on 25th October, though there was clearly a lot of discussion and some consensus that

the contract made on 1st June needed a redraft. But an agreement that something needs redrafting and a discussion about revised terms, does not of itself provide a *s2* compliant contract. That the discussions did not produce a revised agreement is clear from what happened a few weeks later.

8. The terms agreed on 1st June 2015 are as follows. During the hearing we went through the contract clause by clause and I bear in mind the parties' written and oral submissions on each point. The contract identifies the parties, property and sale price of £145,000 and provides that the underlying agreement is *"the rental is not a traditional rental contract in that the property is rented solely to allow [the Applicants] to buy the property within the next 24 months"* at a price of £145,000. The Respondents would take the property off the open market on 2nd June 2015 and the Applicants would move in on or from 1st October 2015 and pay £860 pcm rent in advance (these events happened). The contract provided for the Applicants to carry out building works at their own expense, and to be responsible for all outgoings. The Respondents would not market the property unless the Applicants broke the contract (in the opinion of the Respondents) or the Applicants said they could no longer afford the rent (clause 5). Clause 12 provides that *"Either party can give 3 months' notice to end the contract and therefore the rental agreement."* Clause 15 provides *"The [Applicants] can end this contract at any time by paying in full the agreed purchase price of £145,000 to the Respondents."* As the parties arguably agreed that the long stop date for completion would be 1st June 2017 (subject to clause 17: see below), clause 15 is really a provision for earlier completion on payment of the purchase price by the Applicants.

9. By clause 16 the parties provided for a review of the contract on 1st October 2016 *"unless a non-refundable deposit of £10,000 has been paid to the [Respondents]."* If the long stop date was not 1st June 2017 then it would, alternatively, be 1st October 2017 as clause 17 provides *"In any case this contract will renegotiate on 1st October 2017. [The Respondents] on this date reserve the right to take full re-possession of the property, grounds, outbuildings ...."*. In the case of termination of the contract by the Respondents, the rental is to be refunded to the Applicants (clause 18).

10. The conditions referred to above are those which apply to the facts of the case. Even though there is some suggestion that the Respondents thought the contract had been *"reworded"* on 25th October (see eg p51), nothing in the parties' correspondence or submissions (particularly the Applicants' arguments) changes my mind about the conclusions I have reached on the application of *s2*.

11. I accept Mr Bendell's submissions as set out in his skeleton argument. The contract has come to an end whether terminated under clause 12 or even clauses 16 or 17, as Mr Karikari accepted himself. On any view the Applicants walked away from the property and the contract and accept that they do not have the £10,000 deposit or the means to purchase the property for £145,000. At no time have they been in a position to offer either of these payments. They have clearly been offended by the Respondents' termination of the contract on the suggested grounds that the Applicants had indicated that they wished to exit the contract, but whether that is justified or not is in my judgment irrelevant; in any event, that is what they did. The 1st June contract as drafted enabled the Respondents to terminate the contract and they did. On my analysis the UN1 application was made extremely late and after the contract had come to an end.

12. The real problem as appeared from the Applicants' submissions is that in the short period of time that they were in possession, they spent a sum of money on the property (the figure £49,000 was mentioned) which they would like to recover. I say no more about this claim because it is not relevant to the issue I have to decide.

13. Clearly, for numerous reasons, the relationship between the parties broke down. In my judgment the reasons do not actually matter on the basis of the 1st June contract. I reject the Applicants' submission that clause 12 (three months' notice) could only be triggered by the Respondents if clause 5 applied because that is not what the agreement of 1st June provided. The handwritten notes written by both parties on their contracts on 25th October are not identical in this respect and I have already explained why the contract was not varied on 25th October, though clearly the Applicants wanted to elaborate the clause 12 grounds. A revised contract might have inserted conditions into clause 12 but the contract was not revised. It follows that the Respondents were entitled to give three months' notice of termination

which they did by email dated 13th November 2015 (p62). The way to avoid that would have been for the Applicants to pay the £10,000 deposit: see clause 16 (both parts).

14. The Applicants made no attempt to assert that the Respondents could not terminate the contract. Instead they handed back the keys and were repaid the rent they had paid. They did not serve a notice to complete and have never been in a position to do so. The Applicants maintain they were forced out of the premises but neither the email exchanges nor the facts suggest that this was the case. See for example the email sent by the Applicants on 29th November 2015 on p57. Any dispute about how and where the keys were to be handed over does not affect the basic facts, which is that the Applicants posted the keys through the letter box on 7th December (p54) then they were refunded.

15. Undoubtedly there were aspects of the contract which were ill-advised for one or other of the parties, but that is not enough for me to conclude that the terms were renegotiated as the Applicants seek to allege or that (should I have the jurisdiction, which I do not in this application) it should be rectified. When asked precisely what terms were re-written, apart from suggesting that the clause 5 conditions should apply to the exercise of the clause 12 notice, it was hard to pin down precisely what the Applicants contended should be the varied terms.

16. In the circumstances I must direct the Chief Land Registrar to give effect to the UN4 application.

17. The usual rule in this Tribunal is that costs follow the event. If the Respondents wish to apply for their costs they should file and serve a brief application claiming their costs in form N260 from 7th September 2016, by 5pm 5th January 2018, and the Applicants have until 5pm 16th January 2018 to file and serve a response. Costs will be dealt with after 16th January 2018.

By order of the Tribunal

Sara Hargreaves

18th December 2017