



[2019] UKFTT 0106 (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 2017/0650
BETWEEN

MOSES MEISELS
DAVID MEISELS

Applicants

and

SPFB LIMITED

Respondent

Property: Land on the east side of Chester Hall Lane, Basildon

Title number: EX708226 and EX877798

Before: Judge McAllister
Alfred Place, London
25 January 2019

Representation: The Applicants were not represented and did not attend. The Respondent was represented by David Taylor of Counsel instructed by Paul Robinson Solicitors.

ORDER

The Chief Land Registrar is ordered to give effect to the application dated 14 October 2016 by SPFB Limited to cancel the unilateral notice dated 8 September 2016.

REASONS

1. The substantive issue in this case is the validity of a purported contract of sale ('the Contract') of a property known as Chester House ('the Property') in Basildon dated 13

May 2016 made between SPBF as vendor and Moses and David Meisels (who are father and son) 'and/or associated companies' as purchasers. The purchase price was £742,500. The deposit was 5%, ie £37,125. The Property is registered under two titles.

2. Completion of the contract was due to take place on 31 August 2016. This did not happen (because of a dispute as to the effect of the contract) and a Notice to Complete was served on that day. The Notice expired and the contract was terminated by SPFB on 11 October 2016.
3. On 8 September 2016 Moses and David Meisels applied for and obtained the entry of unilateral notices under section 34 of the Land Registration Act 2002 claiming an interest in the Property by virtue of the Contract. On 14 October 2016 SPFB applied to cancel the unilateral notices.
4. The matter was referred to the Tribunal on 4 July 2017. Thereafter the procedural history is as follows. The two references in respect of each title were consolidated and Moses and David Meisels were designated as Applicants and SPFB as Respondent.
5. The Applicants were due to file and serve their Statement of Case by 14 August 2017. The solicitors then acting for the Applicants came off the record on 17 July 2017. On 15 August 2017 Moses Meisels asked for an extension of time due to the ill health of his daughter. By an order dated 13 September 2017 time for the Applicants to serve their Statement of Case was extended to 16 October 2017.
6. The Applicants Statement of Case was dated 4 October 2017. In essence their case was that the Notice to Complete was invalid because SPFB could not complete the Contract on the agreed terms, namely to sell the Property with a rental income of £102,500.05. Accordingly the Applicants were entitled to terminate the Contract and retain the deposit, or the Contract should be completed with an abatement of price to reflect the rental income which SPFB stated (on the Applicants' case after the date of the Contract) to be true income, namely £32,500.05.
7. A mediation was then due to take place on 30 April 2018. I am told this did not take place because of the illness of a Meisel family member. Standard directions were sent to the parties on 8 May 2018.

8. The timetable for disclosure and witness statements was extended at the Applicants' request to 22 June and 6 July 2018 respectively. On 21 November 2018 the case was set down for hearing on 25 January 2019.
9. The Applicants instructed a new firm of solicitors on 19 December 2018. They were dis-instructed the week before the hearing.
10. On the day before the hearing Moses Meisels rang the Tribunal asking for an adjournment on the grounds of his father's ill health. The solicitors for SPFB were not prepared to agree to an adjournment, at least not without evidence of Mr Meisel's father's ill health.
11. Shortly before the hearing on 25th January 2019 the Tribunal received a copy of a letter from Dr Sayan Sen, a Consultant Cardiologist, stating that Mr Vilmos Meisels had been admitted to Wellington Hospital as an emergency admission on 24 January 2019. He was acutely unwell, and in need of the support of his family.
12. Mr Taylor of Counsel submitted that in all the circumstances of the case it would not be right to grant an adjournment, and that in any event even if Moses Meisels could not attend because of his father's ill health there was no reason why David should not attend. Enquiries made by his solicitors of the hospital were to the effect that Vilmos Meisels was in a general ward.
13. At 10.54 on 25th January 2019 a further email was received from Moses Meisels. This reads as follows: *'To the honorary Judge. I would like to have this matter adjourned as I cannot attend today as I have to be at my father's bedside in the Wellington hospital, however if the Hon.Judge decides that the adjournment is refused I WISH TO WITHDRAW MY OBJECTION TO THE REMOVAL OF THE UNILATERAL NOTICE.'*
14. Just before the hearing resumed, a Mr Hochhauser appeared on behalf of the Applicants. He repeated that Moses Meisels wanted to withdraw his objection to the removal of the notice if the case proceeded. He also stated that David Meisels was in America and would not in any event have attended the hearing.

15. In all the circumstances I refused the application for an adjournment. Whilst I fully accept that Moses Meisel's father is in hospital, and clearly unwell, I do not accept that Moses Meisel could not have attended a one day hearing in central London. Moreover there is no satisfactory explanation for David Meisel's absence. He is one of the parties and would be expected to attend.
16. I also bear in mind the history of delays in this case, and the very real inconvenience caused to SPBF Limited who is not in a position to sell the Property so long as the matter remains unresolved. Mark and Diana Smith, directors of the company, are due to emigrate to the United States in early March 2019.
17. In view the position taken by Moses Meisel's – that he would withdraw his objection to the cancellation of the unilateral notices if I refused an adjournment – it was not strictly necessary for me to consider the case in any detail. Nonetheless, as Mr and Mrs Smith were in court, I asked Counsel to open the case, and call his evidence.
18. Having heard Mr and Mrs Smith I am satisfied as to their account of the meeting with Moses Meisels on 13 May 2018 and in particular that he was not concerned about the level of rental income received from the Property, and that at no time did either Mr or Mrs Smith indicate that the rent was anything more than £32,500 as indicated in the auction pack, and as confirmed in a subsequent email dated 25 August 2016.
19. I have also had the benefit of reading the skeleton argument prepared by Mr Taylor, and agree with his analysis of the legal position, which I will not repeat here.
20. In conclusion therefore, the appropriate order is to give effect to the application by SPBF to cancel the unilateral notices. This leaves the question of costs. A schedule in Form N260 has been filed with the Tribunal and served on the Applicants. Costs are sought on an indemnity basis. The Applicants may raise such objections as they deem fit by 11 February 2019. Subject to any reply, which is to be filed within 14 days of the Applicants' response, I will consider the question of costs on paper.

BY ORDER OF THE TRIBUNAL

Ann McAllister
Dated this 29th day of January 2019

