

Judgments

CA, CIVIL DIVISION

Neutral Citation Number: [2016] EWCA Civ 848

B2/2015/2555

IN THE COURT OF APPEAL (CIVIL DIVISION)

ON APPEAL FROM THE COUNTY AND FAMILY COURT

SITTING AT TAUNTON

(HIS HONOUR JUDGE DENYER QC)

Royal Courts of Justice

Strand

London, WC2A 2LL

Tuesday, 26 July 2016

B e f o r e:

LORD JUSTICE SALES

Between:

H & S DEVELOPMENTS LTD

Appellant

v

CHANT

Respondents

DAR Transcript of the Stenograph Notes of

WordWave International Limited

A DTI Company

165 Fleet Street London EC4A 2DY

Tel No: 020 7404 1400 Fax No: 020 7404 1424

(Official Shorthand Writers to the Court)

Mr A Corbin appeared on behalf of the **Appellant**

Mr C Newington-Bridges appeared on behalf of the **Respondents**

J U D G M E N T

(Approved)

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LORD JUSTICE SALES:

1. This is a renewed oral application for permission to appeal in relation to a decision of His Honour Judge Denyer QC given in the County Court at Bristol on 15 July 2015 in which Judge Denyer refused an appeal by the Defendants in the action from a decision of District Judge Woodburn, also in the Bristol County Court. Accordingly, this is an application for permission to appeal in a second appeal case.
2. The background, put very shortly, is that the Claimant entered into an option agreement with the Defendant land owners dated 24 February 2010 by which it acquired an option to purchase land from the Defendants if detailed planning permission were obtained in respect of it by a particular date, being 23 February 2015.
3. As the judges below found, on 29 January 2014 planning permission in an outline form was granted by the Local Planning Authority. On 5 February 2014 the Claimant served its first notice of option. The Defendants declined to transfer the land on the basis of that notice of call of option. In April 2014 the Claimant issued proceedings seeking specific performance and damages.
4. On 19 December 2014 there was a determination by the Local Planning Authority to grant permission in respect of reserved matters in relation to the outline planning permission. At that point, it was open to whoever was in possession of the land to commence the development in accordance with the outline permission and the reserved matters approval.
5. On 13 January 2013 the Claimant served a second notice of call of option. That was done before the end of the option period.
6. Subsequent to the end of the option period on 27 February 2015, the Claimant put in a second application for the determination of reserved matters. That second application was determined by a further grant of reserved matters approval which was eventually given on 30 September 2015.
7. The principal issue before the District Judge was whether the outline planning permission obtained by the Claimant in January 2014 qualified as a planning permission according to the relevant definition in the option agreement between the Claimant and the Defendants. Having considered Court of Appeal authority, the District Judge came to the conclusion that it did cover such planning permission as had been obtained in January 2014 and accordingly that the first limited call of option was valid and should have been complied with.
8. The Defendants appealed, but their appeal was dismissed by His Honour Judge Denyer QC, who came to the same conclusion on the construction of the particular option agreement between the parties. Judge Denyer also noted at paragraph 10 that the reserved matters left open by the outline planning permission had been resolved by the end of 2014 and before the second notice of call of option.
9. The application for permission to appeal was refused on the papers by Longmore LJ. He said this:

"(1) The only question is whether the phrase "detailed planning permission" in a non-standard agreement covers the

grant of planning permission when certain reserved matters remain to be dealt with. There is no important point of principle or practice or other compelling reason to grant permission for a second appeal.

(2) In any event, paragraph 10 of the judgment of HHJ Denyer QC says that the reserved matters were dealt with by the end of 2014."

10. By the second reason, I understand Longmore LJ to be indicating that an appeal in this case, even if successful on the first point, would amount in substance to a Pyrrhic victory because the second notice of call of option would, even on the interpretation of the contract proposed by the Defendants, have been a valid exercise of the option rights under the option agreement because by that stage a detailed planning permission was in place, taking the outline planning permission in conjunction with the reserved matters approval of 19 December 2014. In practical effect, the appeal would be academic.

11. On this application, Mr Corbin for the Defendants/Appellants submits that there is an important point of principle or practice involved in this case because the definition of planning permission in the option agreement is in a form which reflects a common precedent for a landowner's option agreement which indicates as a proposed test in respect of planning permission, one should put:

"[Detailed capital or outline] planning permission for the proposed development on the property."

12. The relevant definition used in the particular option agreement made in this case, however, was:

"Planning permission: detailed planning permission for the proposed development."

13. It is clear that the drafter has not directly used the precedent to which I was referred, although there is some similarity between the language used in the two documents. In my view, this is not a case which gives rise to an important point of principle or practice, for the first reason given by Longmore LJ. I agree with what he said in refusing permission on the papers.

14. I also agree that it would be inappropriate in this case to grant permission to appeal for the second reason given by Longmore LJ, namely that on any view a valid notice of call of option was given on 13 January 2015 so that the Defendants were bound to convey the property.

15. Mr Corbin for the Defendants accepts that the Claimant is still within time to amend its pleadings to rely upon that second notice of call of option. But he contends that it can have no effect because of the making of the second application for the determination of reserved matters on 27 February 2015.

16. However, in my view, that second application for the determination of reserved matters is nothing to the point. As at 13 January 2015, the date of the second notice of call of option, everything was in place to entitle the Claimant to exercise its rights under the option agreement as it purported to do on that date. The Defendants were, therefore, at that date bound to convey the property covered by that second notice of call of option.

17. Accordingly, this is, as Longmore LJ observed, in substance a case in which the ultimate outcome in respect of

the right of the Claimant to acquire this land would be the same even if the Defendants were successful in relation to the first point.

18. For these reasons, I do not consider that this is a case in which it is appropriate to grant permission to appeal and this application is dismissed.