Options, Equity and a Family at War

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Published May 2017

When a co-habiting family falls out the consequences for one or even both parties may be catastrophic. When Mr. & Mrs. Smith bought a share in Mr. & Mrs. Yarnold's farmhouse and smallholding near Sandlin, Malvern (Mrs. Smith being Mr. & Mrs. Yarnold's daughter) the parties sensibly took steps to ensure that this did not happen. First, the house was divided into two separate units. Secondly, the parties' shares, and their rights in the property were contained in a trust agreement drafted by a solicitor. Ownership was split 50/50 with the Smiths agreeing to pay the Yarnolds a lump sum over time, with interest payable. As we shall see, even the interest was to become contentious. Thirdly and importantly the agreement provided for what was to happen in the event that any of the parties wanted to sell. The party wanting a sale was to serve notice on the other of his intention. The other then had six weeks to agree a price; or in default to have a price determined by a valuer; and within twelve weeks to serve notice of his intention to buy the property.

By 2013 family relations were deteriorating and Mr. & Mrs. Yarnold served their notice to sell on 4 December 2014. Mr. & Mrs. Smith wanted to buy, but the parties could not agree a price and so needed one determined by a valuer. On 19 January 2015 the parties agreed to an inspection on 26 January 2015 which duly took place. A valuation was provided on 27 January 2015, and on 17 April 2015 Mr. & Mrs. Smith triggered their right to buy. At this point Mr. & Mrs. Yarnold refused to proceed with the sale.

The subsequent litigation threw up a large number of practical and technical points relating to specific performance claims made in respect of an option to buy land.

First, was the option agreement effective at all? The signed document failed to identify all of the property that was subject to the trust and hence, said Mr. & Mrs. Yarnold, the option was void for infringing section 2 Law of Property (Miscellaneous Provisions) Act 1989 which required all of the terms of a contract to be in signed writing. The judge (HHJ Ambrose) held that the issue here was not one of formality, but certainty of objects. Looking at the trust deed as a whole it was clear what property it was meant to affect. Alternatively he would have rectified the agreement if necessary.

Second, was the option properly complied with? The problem here lay in the valuation. It had taken place outside of the six week period set out in the document. Mr. & Mrs.

Yarnold argued that this was a strict time limit and the option could not be enforced if the valuation took place outside it. Mr. & Mrs. Smith argued that it was not a time limit at all (that requirement applied to the parties agreeing a valuation, not to a valuation by a third party) or that it was not a condition precedent to the exercise of the option. The Judge with some hesitation agreed with Mr. & Mrs. Yarnold's argument here. However that was not the end of the matter. Because Mr. & Mrs. Yarnold had agreed to the joint appointment of a valuer who was to inspect and value the property outside the time limit, they had waived the time requirement and could not now rely on it.

Thirdly, had the valuer been 'jointly instructed', as the option required? The complaint here was that when the valuer went round the Smiths' part of the property (with Mr. & Mrs. Smith, but not Mr. & Mrs. Yarnold) Mr. & Mrs. Smith had allegedly given him information about the property that reduced its value. The judge found that the Smiths had done nothing inappropriate.

Fourthly, did the Smiths have 'clean hands', or should they be denied specific performance because of their behaviour, which the Yarnolds said had been appalling? The way the Yarnolds put this part of the case, was that either the Smiths had behaved badly so as to force the Yarnolds to serve the put option notice; or the Smiths had behaved so badly that it would be wrong to give them equitable relief such as specific performance. The judge's approach was expressly not to deal with all of the many and varied disputes between the parties but to consider enough to form a clear view about the case. He concluded that the Smiths' behaviour was not to be criticised. The point to remember here is that it is only in unusual cases that the court benefits from hearing the entire story of a family at war. If a party cannot get his case across shortly and clearly then he is unlikely to succeed, even if the Judge consider the dispute to be 'six of one'. That is often the default position for family disputes, and it is something of a high-risk strategy for a party to insist on running every grievance before the Court. If the evidence is not overwhelming it can easily rebound and give the impression of a lack of objectivity, and at best a sad collection of disputes.

The judgment is a clear and instructive analysis of the enforcement of property and contractual rights in the context of a family dispute.

On a separate point, the parties had also fallen out over the terms of the repayment of the rate of interest on the loan with Mr. & Mrs. Yarnold asserting that the repayment terms were in error and should be rectified. Besides setting out the requirements for rectification the judgment contains an instructive analysis of the conflicting evidence leading the judge to conclude that the right to rectification was not established.

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