PROPERTY CHAMBER **ALD/SW/SR/2019/001**
FIRST-TIER TRIBUNAL
AGRICULTURAL LAND AND DRAINAGE DIVISION

Judge Nigel Thomas

Dated 16th August 2021

BETWEEN:

Jolyon Thomas Roy Limbrick

Applicant

and

The National Trust for Places of Historic Interest or Natural Beauty

Respondents

Ms Caroline Shea QC instructed by Michelmores for the Applicant

Mr J. Ollech instructed by Loxleys for the Respondent

Mr. S. Jourdon QC instructed by Roythornes for Roy Limbrick

JUDGMENT ON PRELIMINARY ISSUES 1 AND 2 ORDERED TO BE HEARD BY THE CONSENT DIRECTION DATED 18TH MAY 2021

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1. The Applicant Jolyon Limbrick ("Jolyon") by a Notice of Application for a Direction for a Succession Tenancy on Retirement dated 12 April 2019 applied for succession to the tenancy of his father Thomas Stephen Roy Limbrick ("Roy") to the holding known as Home Farm, Sherborne, Gloucestershire ("Home Farm") consequent upon the service of a notice of retirement dated 19 March 2019 addressed to the Respondent landlord, the National Trust. The Application was in the standard form which at Box

21 contained provisions for signature both by Joylon, being the Applicant, and also by Roy as retiring tenant.

2. At the time of the Application Jolyon was represented by Thrings Ll.P., Solicitors. The Respondent has throughout been represented by Loxleys, Solicitors. At the hearing of the Preliminary Issues the Respondent maintained a neutral position although its solicitors by letter to the Tribunal dated 23 March 2021 stated that the Respondent considered that a consent order signed by me and dated 17 March 2021 was invalid. I shall return later in this judgment to the Respondent's position.

3. The Respondent served a Response to the Application dated 24 May 2019, and attached to the Response was a letter from Loxleys to Jolyon's solicitors also dated 24 May 2019 seeking documents and information.

4. Thereafter nothing further was heard by the Tribunal from the parties until it received a signed document headed Notice of Consent Decision. By this stage Michelmores LLP had replaced Thrings LLP as solicitors instructed by Jolyon. By the Consent Decision the parties had agreed that Jolyon was entitled to a tenancy of Home Farm and that the relevant time "for the purposes of s. 55 AHA 1986" should be 25 December 2020 and the tenancy should commence on that date accordingly. The Notice was signed by Michelmores on 18 December 2020 and Loxleys on 21 December 2020.

5. There was no practical chance therefore of the Notice being dealt with before Christmas 2020 especially as by that time warnings of a further lockdown were current. After Christmas stringent restrictions were introduced and the country thereby went back into lockdown.

6. By a letter dated 28 January 2021 Roythornes, solicitors acting for Roy, wrote to the Tribunal applying for Roy to be joined in the Application and to stay proceedings together with orders that Roy "is able to withdraw the Succession Application" and that the Succession Application be withdrawn. The letter then in outline set out a precis of what evidentially was a bitter and substantial dispute between the parties including a narrative of events and allegations made by Roy which seemed to indicate that he was at least considering an estoppel claim.

7. The letter also stated that there were serious disputes concerning the partnership between Roy and Jolyon which were likely to be the subject of arbitration proceedings.

8. At the hearing of the preliminary issues I was told that an arbitration had now been commenced. I was also told that the tenancy was partnership property.

9. Unfortunately due to the problems caused by the lockdown and the effects of remote working I did not see Roythornes letter prior to signing the Consent Order on 17 March 2021.

10. Having seen the letter from Loxleys dated 23 March 2021 and Roythornes letter of 28 January 2021 I ordered a telephone Case Management Conference which was held on 27 April 2021 and as a result of which the hearing of the Preliminary Issue was directed and the Issues themselves drafted by the parties and submitted to the Tribunal for its approval.

11. It is I think common ground that the order I signed on 17 March 2021 should have specified the relevant time as being a date after the signing of the order. The dispute between the parties is as to the effect of this failure to specify such a date. However in

addition to this issue the applications made by Roythornes' letter of 28 January 2021 also fell to be considered and determined and the Preliminary Issues therefore encompass these matters as well.

12. The hearing took place on 3 August 2021 by CVP commencing at 10.00am and concluding at 3.45pm. The time was taken up with submissions on Preliminary Issues numbers 1 and 2. I indicated at the hearing that I would order that Roy be joined as a party but that I would take time to consider whether the order dated 18 March 2021 was valid or not.

The Preliminary Issues: issue number 1 namely whether the Retiring Tenant should be joined as a party to these proceedings

13. As indicated above I decided that Roy should be joined as a party to the proceedings and that Mr Jourdan QC should be entitled therefore to make submissions on Preliminary Issue No. 2

14. Mr Jourdan in his Skeleton Argument commenced by submitting (which I accept) that I have a wide power to join parties under Rule 10 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. That power is on its face wider and subject to less constraints than its equivalent under the Civil Procedure Rules namely Rule 19.2(2). He submitted that assuming Rule 19.2(2) is of slightly narrower ambit than Rule 10 of the Tribunal Rules there are nevertheless ample grounds to join Roy as a party under the CPR and a fortiori under Rule 10.

15. Under this heading Mr Jourdan's first argument was that Roy as retiring tenant should have been treated as a party from the outset and ought now to be made a party to remedy that omission.

16. I mean no disrespect to this submission when I say that it is a startling one in the sense that if correct then the practice in this regard of the Agricultural Land and Drainage Tribunals and before that the Agricultural Land Tribunals was in error in that no provision was ever made for the retiring tenant to be treated as a party from the outset so that naming the retiring tenant would be a mere formality.

17. Ms Shea QC told me that she could find no support for this proposition in the texts or caselaw and certainly I am unaware of any such.

18. In support of his submission Mr Jourdan draws my attention to s.53(3)(b) which states that any application for a s.53(7) direction must be signed by both the nominated successor and retiring tenant. However in my judgment that rather suggests that the retiring tenant would not be regarded as an automatic party to the Application as if he were then s.53(3)(b) would be of no practical significance. It is my view that had the legislation intended the retiring tenant to be a party it would have said so.

19. I appreciate the example Mr Jourdan gave in his Skeleton Argument that if the retiring tenant was not a party then where a direction is made after the retirement date (which is almost invariably the case) his existing tenancy would be terminated by an order specifying "a relevant time" upon which the retiring tenant has had no opportunity to be heard and where there is no requirement that the retiring tenant be served with the order.

20. That as may be but there is little doubt in my judgment that the 1986 Act (as amended) was framed on the basis that a tenant who is contemplating retiring will support the application. Where however there is as here a dramatic fracture in family relations after the Application is made and the retiring tenant in consequence has second

thoughts then the remedy is for the retiring tenant to apply to be joined to the application and to make submissions thereafter.

21. I do not accept therefore that Roy should be treated as a party from the outset.

22. I should mention at this point that the instant case is the only one in which I have encountered a retiring tenant seeking to withdraw the retirement notice and his support for the Application. What Roy seeks to do is to argue that given what has happened since the date of the Application Jolyon is not a suitable person to succeed to the tenancy and Roy's signature to the Statement of Truth should be disregarded to that extent.

23. I now move onto Mr Jourdan's second argument that Roy should be joined as a party because his rights will be directly affected by the Tribunal's orders. I regard this argument as the other side of the coin to the point which I put to Ms Shea namely that it would be difficult for me without assistance to make an order affecting Roy's interests if he does not have any locus in the Application and thus no opportunity to put his case.

24. As a background to this point I bear in mind that the tenancy is partnership property and there is an ongoing partnership dispute following dissolution and that a potential proprietary estoppel claim (flagged up in some detail in Mr Jourdan's Skeleton Argument) might result in an order by which Roy retains an interest in the tenancy under a constructive trust, or similar remedy. I must stress that I, of course, accept that the Tribunal has no jurisdiction to deal with such matters but that does not mean that it would be right to ignore them as having no relevance to this issue.

25. Mr Jourdan submits that Roy's rights will be directly affected by the question of whether the Consent Direction was valid or not. If for instance the March Consent Direction were valid then Roy's rights to continue living on Home Farm will depend upon the outcome of the arbitration proceedings. If the arbitrator finds that he was expelled from the partnership then Roy might be liable for trespass from 25 December 2020. If on the other hand the Consent Direction is invalid then the position will be very different.

26. Ms Shea QC argues that Roy cannot withdraw his retirement notice as there is no provision to that effect but she accepts that likewise there is no provision which says he cannot.

27. In her Skeleton Argument amplified in oral submissions Ms Shea set out in a detailed argument why Roy should not be joined as a party and in essence her point is that "He is not as a matter of law entitled to withdraw the Succession Application. He is not as a matter of law entitled to withdraw the Retirement Notice. Any claim based [on] the allegations will have to be articulated if it is to be pursued, but on present information it is difficult to see what relief might be granted if it is to be pursued…."

28. Ms Shea in support of this conclusion drew my attention to what she saw as the insurmountable obstacles in Roy's chances of success in this regard. She may or may not be right, but these seem to me to be matters to be addressed at a later stage, all I am presently asked to do is to consider whether Roy should be joined with a view to making him a party so that he should be entitled to make submissions on these issues.

29. I am grateful to both Counsel for their full and lucid arguments. My attention was drawn to the relevant case law on the proper approach to the consideration of CPR 19.2(2). The two most significant cases are Re Blenheim Leisure (Restaurants) Ltd.

[2000] BCC554 and Re Pablo Star Ltd, Welsh Ministers v. Price [2017] EWCA Civ 1768. From these cases the following propositions of relevance in this case can, in my view, be deduced (1) that the rules are drawn in wide general terms (2) a person whose rights may be affected by a particular decision has a right to be heard as a party see Blenheim Leisure (3) in appropriate cases a person may be joined as a party to assist the court per Pablo Star .

30. In my judgment it is clear that Roy should be joined as a party. Under Rule 10 of the Property Chamber Rules I have a wide power to make such an order. I fully accept that the Tribunal's jurisdiction is discretionary, which discretion, however, must be exercised in an appropriate and judicial manner but the discretion given me is nevertheless very broad. The Property Chamber Procedure Rules are relatively new having been drafted in 2013 and had it been intended that the constraints evident in the CPR should apply then the Rules would in my view have been framed accordingly. As it seems to me there are novel points of law to be determined and it would be artificial to put the matter no higher not to have a relevant party before the Tribunal to make his arguments.

31. I should make it clear that had I been required to I would have unhesitatingly joined Roy pursuant to CPR 19.2(2). In my judgment for the reasons which I have already given his rights may be affected by a decision of the Tribunal not least a potential issue as to his rights of occupation on the Farm. He has rights under the partnership now subject to arbitration and he has also raised a proprietary estoppel claim: what the end result of these disputes may be is not something anyone can know at this juncture but I have been made sufficiently aware of these matters to have them in mind as relevant background facts in coming to my determination.

32. Preliminary Issue No 2: was the Consent Direction valid?

33. It is common ground that the Consent Direction should have specified a date after the date on which the direction was made that is after 18th March 2021 pursuant to section 53(8) of the AHAct 1986. The issue is whether it is nevertheless valid.

34. Ms Shea says that it is first of all on a true or proper construction of its terms a valid direction, this she says is something which is apparent by a process of construction or implication. The Consent Direction should be construed by adding to paragraphs (2) and (3) of the Sealed Consent Direction the following words "or if later on the day immediately following such date as the Tribunal shall make the direction at sub-paragraph (1) above."

35. In her Skeleton Argument Ms Shea places weight upon the wording of section 55(8)(b) of the AHA 1986 in that the parties being aware of the provisions of this subsection, should be taken to have intended to produce a result which complied with its requirements. Alternatively that the words should be implied.

36. I am quite unable to accept this argument. First there was no common view shared by the parties as to when the "relevant time" should be, other than 25 December 2020. Secondly, the Tribunal should have specified a relevant time after the date of the order when in such circumstances the Tribunal could have consulted the parties.

37. The Respondent crucially does not agree that there was in the circumstances a common intention to specify the date of the relevant time as suggested by Ms Shea or any date after 18 March 2021. Its position stated in Loxley's letter of 23 March 2021 is that the order is invalid and that it is for the Tribunal to specify a relevant time. The letter made clear that the Respondent was aware that there were significant differences

between Roy and Jolyon which might require the Tribunal to have regard thereto, before making any determination as to the relevant time.

38. I therefore hold that the Consent Order was invalid.

39. Can the Tribunal exercise its powers under the slip rule, Rule 50 of the Tribunal Rules, or Rule 51(1) thereof? Ms Shea referred me to the well-known authorities on the point cited in her Skeleton Argument. She particularly urged me to follow the reasoning in Re the Earl of Inchcape [1942] Ch 394 as referred to in Riva Bella SA v Tamsen Yachts GmbH [2011] EWHC 2338. These authorities confirm that the slip rule applies if the Judge feels sure that he would have made the order if he had been asked to do so.

40. What Ms Shea's argument overlooks is that it is impossible to know how the Tribunal can correct the Consent Direction by inserting a date for the relevant time as the Applicant and Respondent had not even considered what the "relevant time" should be, namely a date falling after 18 March, or how the Tribunal was able by itself to determine such date or what it should be. By the letter of 23 March 2021 the Respondent's solicitors had put to the Tribunal the possible need to consider "the very significant differences" between Roy and Jolyon before it could determine the relevant time it considered to be fit under s. 55(8)(b) AHA 1986. I respectfully agree with this view.

41. The Tribunal does not of itself make an order determining the "relevant time " unless it has some basis upon which it can consider the matter. In this case the date 25 December 2020 as it appears in paragraphs (2) and (3) of the Decision should have been struck out and the parties asked for an agreed date. If for some reason, (which would be difficult to envisage) there was no agreement then the Tribunal would

proceed to specify a relevant time on the basis of the respective parties' representations. However by the time the Consent Direction was signed matters had moved on and Roy and Jolyon were in dispute which required that Roy be joined to the proceedings and heard on the various applications raised by him.

42. In my judgment neither the slip rule nor Rule 51 is engaged in the absence of any evidence as to what wording was appropriate for inclusion in the Consent Direction.

43. In conclusion I hold that Roy should be joined as a party and on the second issue I hold that the Consent Direction was invalid and that in the circumstances the Tribunal had no power to amend/set aside/remake it so as to render it valid. I will ask Counsel s to draft and submit an order accordingly.