

Kingsley v Kingsley [2020] 7 WLUK 59 (Ch D – Richard Smith)

On 6 July 2020 the High Court granted a 10 day extension of time under CPR r.3.1(2)(a) for the defendant to complete the purchase of jointly owned farmland, the defendant having been given the opportunity to acquire the land in a judgment given on 1 May 2019 in *Kingsley v. Kingsley* [2019] EWHC 1073(Ch). <https://www.falcon-chambers.com/news/kingsley-v-kingsley-2019-ewhc-1073-ch> Catherine Taskis acted for the successful defendant.

^[1] The defendant had farmed land in partnership with her brother until his death in 2015. The land was jointly owned by the two siblings, and on the brother's death his interest passed to his widow, who as executor of her husband's estate claimed an order for the sale of the farm on the open market under the Trusts of Land and Appointment of Trustees Act 1996. The defendant accepted the land should be sold; but contended that the land should be exposed to the open market only after she had had an exclusive opportunity to purchase the land at a price determined by the Court. On 1 May 2019 judgment was given in the defendant's favour, and by an order dated 8 July 2019 she was granted an opportunity to purchase the land based on a value of £3.245 million (assessed on the basis of expert evidence), such purchase to be completed within a two month window expiring at 4pm on 31 August 2019.

The claimants appealed, and the parties agreed a stay of the Judge's order, extending the window for purchase for two months after the determination of the appeal. The Court of Appeal gave judgment dismissing the claimants' appeal on 3 March 2020; and in a further judgment dated 4 May 2020, held that the two month period for the purchase (the start date of which had been in dispute between the parties) expired on 6 May 2020. By an application dated 5 May 2020, the defendant applied for an extension of time under CPR r.3.1(2)(a) to complete the purchase. The application was heard on 1 July 2020 (Fancourt J having, on 6 May 2020, stayed any sale of the land on the open market pending determination of the application), and judgment was given on 6 July 2020.

Giving judgment, the Court accepted that it had power under CPR r.3.1(2)(a) to extend time in a final order, and that the power was not limited to interim or procedural orders: applying *Omega Engineering Inc. v. Omega SA* [2003] EWHC 1482 (Ch), and considering *Ropac Ltd v. Inntrepreneur Pub Co (CPC) Ltd* [2000] 6 WLUK 80 and *Safin (Fursecroft) Ltd v. Badrig's Estate* [2015] EWCA Civ 739. That power was available in this case notwithstanding that the original order had been made under TOLATA, and not the CPR. The Court rejected the claimants' contention that its discretion under CPR 3.1(2)(a) should be viewed through the prism of the power to vary or revoke orders under CPR r.3.1(7). The application was for an extension of time and not to vary or revoke the Judge's order, and the principles applicable to CPR r.3.1(7) could not be applied directly. CPR r.3.1(2)(a) was more flexible and had a broader ambit, although some of the same factors may be relevant under both powers: *Roult v. North West SHA* [2009] EWCA Civ 444 and *Dinglis v. Dinglis* [2020] EWHC 1363 (Ch) considered. In either case the matter had to be considered in context and in accordance with the particular circumstances in which the application was made.

The Court did not accept the claimants' submission that the two month period specified by the Judge had been a critical part of the balancing act in the exercise of his discretion under the 1996 Act. Rather, it appeared more likely that the period had been set to afford the defendant sufficient time to finance the purchase and to complete the conveyancing formalities. The Court did not take the view that considerations of risk allocation should preclude the grant of an extension of time. Moreover, the fact that the time limit for purchase had been postponed by consent pending determination of the claimants' appeal was of little if any significance to the Court's discretion.

The Court accepted that there had been no deliberate delay by the defendant; the suggestion that this had been part of a determined strategy was improbable, and unsupported by the evidence. The defendant had been well placed to meet the deadline of 31 August 2019, when the purchase was interrupted by the claimants' appeal. Although the Court had limited evidence as to the steps taken by the defendant following the judgment of the Court of Appeal in March 2020, it was satisfied that the impact of the Coronavirus pandemic meant that for reasons out of the defendant's control, it was always unlikely that she would be able

to get the funds to complete before 6 May 2020. This amounted to a material change of circumstances affecting the purpose for which the defendant was granted the original two month period, and subject to the question of prejudice was sufficient basis for the extension of the time limit in the order.

As to prejudice, there was no evidence of any prejudice to the claimants from an increase in the value of the land from the court-determined purchase price, let alone in the period since 6 May 2020. The defendant was now in funds to complete the purchase, and any prejudice from the uncertainty of an extended deadline would be eliminated if a short extension was granted. In the event that the defendant still failed to complete, the claimants would then be free to sell the land on the open market and still within the optimum marketing period which their evidence had identified. Any prejudice by virtue of additional costs to the claimants could be mitigated by an appropriate order. Conversely, if an extension was refused, the defendant would plainly suffer prejudice: the appeal and the pandemic would have operated cumulatively to render meaningless the right won by the defendant at trial. The evidence showed that it was likely that the land would be sold on the open market in lots, and without an extension the defendant would lose the principal benefit of the ability to purchase the land in a single parcel, and so maintain her livelihood.

The Court was satisfied that it could ensure that the parties were treated justly, on an equal footing and in a proportionate way by the grant of a short extension of the purchase window for a period of 10 days to 15 July 2020.

Comment Although the exercise of the court's discretion to extend time depended here, as it will in every case, on the particular factual context, the general interest of this case arises from the consideration by the court of the relationship between CPR r.3.1(2)(a) and CPR r.3.1(7): and the finding that an application under the former provision to extend time does not require any conflation of the two powers, or the transposition of the requirements of the latter, even where the extension sought would result in the variation of a final, substantive order of the court.