IN THE COUNTY COURT AT CENTRAL LONDON

BUSINESS & PROPERTY WORK

Case No. JI0CL371

Courtroom No. 52

Thomas More Building
Strand
London
WC2A 2LL

Friday, 4th November 2022

Before:
HIS HONOUR JUDGE JOHNS KC

B E T W E E N:

PRICE & CESARINI

v

CADOGAN ESTATES LIMITED

THE CLAIMANTS appeared in person
MR A RADEVSKY (instructed by Cripps LLP) appeared on behalf of the Defendant

APPROVED JUDGMENT

HHJ JOHNS KC:

1. This is the hearing of a claim by tenants under section 48(3) of the Leasehold Reform Housing and Urban Development Act 1993 (**the Act**).
2. The background is this.
3. The claimants, Mr Price and Lady Cesarini, are lessees of a flat (**the Flat**) (formerly comprising two flats, numbers two and four) at 75-79 Cadogan Gardens, London SW3 under leases which will expire relatively soon, namely on 15 March 2023. They gave notice to the defendant landlord, Cadogan Estates Limited, under section 42 of the Act claiming, as they were entitled to do, a new lease of the Flat for an additional 90-year term. That gave rise to a contract. The terms of acquisition were later agreed in the run up to a tribunal hearing. The agreement was for a premium of £4.185 million, that agreement being reached on 23 July 2021. That meant that under the Act there was a period, known as the appropriate period, to 23 September 2021 to complete the lease. But there was no completion. Before the expiry of a further two-month period provided for by s.48(5) of the Act, this claim was issued in the name of the tenants by the Bank of Scotland PLC (**the Bank**), their then mortgagee.
4. The basis of the claim as appearing from the details of claim included that the claimants were apparently unable to pay the agreed premium and the Bank intended to sell the Flat with the benefit of the section 42 notice. The details of claim further indicated that the order sought under section 48(3) of the Act was a postponement of the date for completion of the new lease to 27 May 2022 in order to allow the Bank to sell as mortgagee in possession; such a sale enabling payment of the agreed total premium.
5. The claim is no longer pursued by the Bank. Following directions given in the proceedings on 17 May 2022, there was evidence filed by the claimants in the form of a witness statement dated 5 August 2022 which is to the effect that the Bank now has no interest in the Flat so that the proceedings are pursued in their own names as tenants. The expectation was still to fund the premium by way of arranging a sale, but there has been no such sale. The claimants have so far remained unable to complete.
6. The claimants have appeared before me in person today, though they continue to have solicitors on the record. They have explained to me that they have had difficult personal and financial circumstances. They are not hopeful of selling, at least not quickly in the current market. But they do want to buy the new lease through raising finance. I was told by them that the way to that may have been cleared by an agreed annulment of an earlier bankruptcy of Mr Price, although there has not yet been any order for an annulment. There was an offer of finance, I was told, which if renewed will be likely to attract interest at around 5%.
7. These are the circumstances in which the tenants now ask for a further 28 days to complete the new lease. The landlord, appearing by Mr Radevsky, opposes any such extension of time and asks instead for an order that the section 42 notice is deemed withdrawn.
8. Section 48(3) of the Act enables either the landlord or the tenant to apply to the court for performance or discharge of the obligations arising out of a section 42 notice. It therefore provides a mechanism whereby a tenant can apply for an order for performance of the obligations where the landlord is failing to complete, and the landlord may apply for discharge where the tenant is failing to complete.
9. It may be possible to order performance at the suit of a tenant where part, or even perhaps the whole, of the problem is the landlord's failure, but I have decided that this is not a case where that should be done. The right order, in my judgment, in this case is for deemed withdrawal of the notice as at 23 September 2021. My reasons for my conclusion are these.

10. First, the failure to complete, in this case, is solely down to the tenants. That is not intended as a criticism. It is a simple fact. The circumstances have meant that while the landlord has been in a position to complete, the tenants have not.
11. Second, there is in this case a very considerable passage of time. We are now in November 2022. It is very significantly over a year since the terms of acquisition were agreed back in July 2021. It is more than a year since the end of the appropriate period; that ended in September 2021. It is a year since this claim was made, these proceedings being issued in November 2021. And it is nearly six months beyond the extended date for completion sought by the claim. I cannot see why a tenant should be entitled to keep alive a contract which it has not been able to perform in the time provided for by the Act, for more than a year after that, and almost six months beyond the extended period sought to complete.
12. Third, the claimants can still, and indeed immediately (subject perhaps to the bankruptcy), give a fresh section 42 notice. That is because the end of the appropriate period was 23 September 2021, being more than 12 months ago, so that the bar to the giving of a new notice in section 42(7) of the Act is spent. This is important. The claimants told me that they do not want, understandably, to lose their family home. The ability to give a fresh notice means that an order for deemed withdrawal will not result in the loss of their home, at least if they can complete pursuant to a new notice.
13. I do not ignore the alternative course, which might be open to me, of extending time for completion yet further as asked and directing a payment of interest, perhaps at the rate of 5% reflecting the apparent offer of finance. However, the circumstances allow for a new section 42 notice and the sheer passage of time means that the most appropriate course is to require such a notice if there is to be a new lease. Under a new section 42 notice, a price can be agreed which reflects the current circumstances as to both the market and the length of the unexpired term, whoever that ends up benefitting. The claimants think it may favour them, given the state of the market.
14. For all those reasons, I will order deemed withdrawal.
15. Finally, the position may be complicated by the suggested bankruptcy of Mr Price. It seems to me, without having heard any real argument about it (the suggestion of bankruptcy only being made in submissions), that (a) Mr Price's share in the Flat would have vested in the trustee in bankruptcy, and (b) it would revert, however, to him after three years of the bankruptcy under section 283A of the Insolvency Act 1986 or in the event of an annulment under section 282(1)(b) of the Act. Given the potential involvement of a trustee, I will give permission for any trustee in bankruptcy to apply to set aside my order on the claim. I will also direct that the claimants serve this order on any trustee, so that the trustee in bankruptcy is aware of it.
16. I wish Mr Price and Lady Cesarini well with making fresh arrangements to keep their family home if that is their intention.

End of Judgment.

Transcript of a recording by Ubiqus
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This transcript has been approved by the judge.