



Neutral Citation Number: [2016] EWHC 2454 (Ch)

Case No: M15C155

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
MANCHESTER APPEAL CENTRE
ON APPEAL from the County Court at PRESTON

Liverpool Civil and Family Justice Centre
Vernon Street, Liverpool

Date: 07/10/2016

Before :

MR JUSTICE NORRIS

Between :

(1) STODDAY LAND LIMITED
(2) RIPWAY PROPERTIES LIMITED

Appellants

- and -

WILLIAM MARSLAND PYE

Respondent
and Claimant

Mr W E Hanbury (instructed by **Atkinson & Firth**) for the Appellants
Mr Jamie Sutherland (instructed by **Loxley**) for the Respondents

Hearing dates: 29 April 2016

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....
MR JUSTICE NORRIS

Mr Justice Norris :

1. Since 1950 Mr Pye has had an oral agricultural tenancy of about 18 acres of land at Ashton-on-Stodday (“the Holding”). The identity of the Holding can be discerned from an arbitration award that was made on 3 November 2008. Two of the fields included in the Holding were OS5971 and OS6405.
2. On 3 November 2006 Stodday Land Ltd (“Stodday”) became the registered proprietor of the Holding under Title Number LAN41385. Sometime later Stodday sold off just under an acre (in respect of which Mr Pye’s tenancy came to an end), reducing the Holding to about 17.46 acres. Then by a contract which completed on 19 June 2013 Stodday sold another small part of the Holding, being about 0.114 acres in the south-west corner of field OS6405 (“the Plot”). This sale was to Ripway Properties Ltd (“Ripway”). Ripway became the registered proprietor of the Plot on 16 July 2013. Stodday was left with 17.34 acres.
3. This case concerns what happened between 19 June 2013 and 16 July 2013 in what is called “the registration gap”, that is the period between when the legal process of transferring the title to the Plot is completed as between vendor and purchaser, and when the transaction is entered on the register of title at HM Land Registry, thereby effecting the transfer under s.27(1) of the Land Registration Act 2002
4. On 26 June 2013 Ripway sent a letter to Mr Pye which said:-

“ I write on behalf of the above Company to inform you that all future payments of rent payable under the unwritten Tenancy Agreement by virtue of which you hold the above land should be sent to the above company as the new landlord at the above address”.

The letter went on to say that the apportioned rent for the Plot would be £4.96 per annum, and to make demand for payment of 16p on 1 July 2013. There was no letter from Stodday confirming the instruction from Ripway or agreeing the rent apportionment.

5. On 1 July 2013 Mr Pye was then served with two sets of notices.
6. The first was a notice to quit served by Ripway under Case B in Schedule 3 to the Agricultural Holdings Act 1986 (“AHA1986”) seeking possession of the Plot on the basis that the land was required for other uses. This notice said that it terminated Mr Pye’s tenancy on 1 July 2014.
7. The second was a set of notices to quit served by Stodday under Case D in Schedule 3 to AHA1986 seeking possession of the remainder (or maybe most of the remainder) of the Holding other than the Plot on the grounds of rent arrears. There is an issue about what plans accompanied these notices, and an issue about how the plan or plans (which do not appear to show the whole of OS5971) relate to the description of the remainder of the Holding elsewhere in the documents.
8. The grounds upon which those notices to quit were served are not now open to challenge. But Mr Pye did contest the validity of the notices to quit themselves, and

on 9 July 2014 commenced the present proceedings alleging that the notices were not good in law.

9. Although the notices to quit were served under AHA1986 it is common ground that each had to be valid at common law. To be valid at common law the notice to quit must be given by the person entitled to the landlord's reversionary estate: and it must relate to the whole of the land comprised in the tenancy. Mr Pye argued (a) that the notice to quit relating to the Plot had not been given by the legal owner of the reversionary estate (Stodday) but by Ripway (before it had become the registered proprietor): (b) since no valid notice had been given in relation to the Plot, notice to quit had not been given in relation to all of the land comprised in the Holding; (c) even if notice to quit had been given in relation to the Plot (albeit not by the legal owner) the Stodday notice to quit was invalid because at least two copies of the plan purportedly showing the Holding were served, neither showed the whole Holding, and they differed as to the parts of OS5791 which were omitted (one omitting 114 m² and the other 454 m²) – and because the Stodday notice to quit was invalid on *that* ground, the Ripway notice to quit was of no effect because notice to quit had not been given in relation to the entirety of the Holding.
10. At trial Her Honour Judge Beech held (a) that Ripway's notice to quit under Case B was invalid, having been served by Ripway before it had become the registered proprietor; (b) that in consequence Stodday's notice was invalid because notice to quit had not been given in relation to the entirety of the Holding; (c) that because Stodday denied serving two different plans with its notices to quit some additional evidence was required (to be adjudged at a further hearing).
11. In reaching the first of those conclusions Her Honour Judge Beech was able to draw on a vein of well-known material, and some (though not all) of the following was put before her.
12. In Smith v Express Dairy Limited [1954] JPL 45 Express Dairy (as registered owner) let a shop to Smith, but then transferred its interest to a subsidiary company. The subsidiary did not become registered as owner but nonetheless served notice to quit on Smith. Harman J held that unless the subsidiary could be treated as having given notice to quit as agent of Express Dairy the notice to quit was bad, because the reversion remained vested in Express Dairy. This decision has stood for 60 years. It was followed by HHJ Collins CBE in the Central London County Court in Renshaw v Magnet Properties South East LLP [2008] 1 EGLR 42.
13. In Brown & Root Technology Ltd v Sun Alliance [2001] Ch 733 the claimant ("Technology") had a personal right to exercise a break clause in a lease of which it was the registered proprietor, that right coming to an end when it assigned the lease. The lease was assigned to another group company ("B&R") which took over payment of the rent: but B&R was never registered as proprietor. Technology exercised the break clause. The question was whether it had lost the right to do so because it had "assigned" the lease. The Court of Appeal held that the lease not been assigned for the purpose of the break clause because the assignment had not been completed by the registration of B & R. Mummery LJ said at 742 C:-

"This case is not a matter of beneficial ownership between parties to the transfer of the lease: the issue of assignment or no

assignment affects the legal position of a third party, the lessors, who have given their licence to assign but are not a party to the transfer... Transfer of the beneficial title is not, in this context, relevant to the legal relationship between the lessees and the lessors. The issue is not what rights Technology and B & R have against each other, but what rights Technology and [the lessors] have against each other. That is a question of legal, not equitable, rights.”

14. In Divall v Harrison [1992] 2 EGLR 64 notice to quit the agricultural land was given in the name of the residuary beneficiary, not in the name of the executors in whom the reversion was still vested. The notice was held invalid by the Court of Appeal. I do not consider that the decision illuminates the problem raised by this appeal: the residuary beneficiary was not the equitable owner, having only the right to see that the estate was duly administered.
15. Leading textbooks treat these cases (and others) as clearly laying down the law. Counsel referred to the textbooks themselves: but I should also refer briefly to the cases mentioned in the footnotes.
16. In Woodfall’s “*Law of Landlord and Tenant*” (2015) it is stated at paragraph 17.227 that for the purpose of giving notice to quit the landlord is the person who is legally entitled to the reversion, and that a person entitled in equity may not serve a notice to quit. In addition to the cases to which I have already referred reliance is placed upon Freeman v Hambrook [1947] LR 70 Schalit v Nadler [1933] 2 KB 79 and Stait v Fenner [1912] 2 Ch 504. I will refer to the latter two.
17. In Schalit, Nadler had underlet the property to Schalit, and then declared a trust of the headlease in favour of his company. The company distrained for unpaid rent. It was held not entitled to do so. The reasoning of Goddard and Acton JJ rested upon the company being a beneficiary under an express trust with an equitable right to call upon Nadler to account for the rent due, but no legal right as against the sub-tenant. It is not direct authority for (but is consistent with) the proposition for which it is cited in Woodfall.
18. In Stait the lease to Fenner contained a break clause. The lease was legally assigned to X and then to Y. Y then agreed to assign back to Fenner (but no formal assignment was entered). Fenner then “assigned” to Z (the contract saying that he was not obliged to get in the bare legal estate outstanding in Y). Z then exercised the break clause. Neville J held:-

“In my opinion, the legal estate in the term being outstanding, it was not competent for the lessee or any assignee of the lessee who had not the legal estate vested in him to give a notice.”

The case is not exact authority for the proposition in Woodfall but is consistent with it.

19. In Scammell, Densham and Williams “*Law of Agricultural Holdings*” (10th ed.) it is stated at paragraph 53.17 that a notice to quit will be invalid if served by a person with an equitable interest e.g the disponee of a registered estate pending registration.

Reliance is placed on Thompson v McCullough [1947] KB 447 and Lower v Sorrell [1963] 1 QB 959.

20. Thompson was a case in which Thompson had agreed to buy a tenanted property, had paid part of the purchase price, and had received a conveyance in escrow pending payment of the balance. He at that point gave McCullough notice to quit. Two months later Thompson paid the balance of the purchase money. The Court of Appeal (Morton, Bucknill and Asquith LJ) proceeded on the footing that the notice to quit was invalid because the fee simple was not effectively vested in the giver of the notice: it then held that satisfaction of the condition of the escrow could not retrospectively validate that notice. This is strong authority (at Court of Appeal level) in the field of unregistered conveyancing consistent with the view expressed by Harman J in the context of registered conveyancing. It is supportive of the proposition for which it is cited in the textbook.
21. The decision in Lower does not in my view add anything to the argument and I shall not address the case further.
22. In "*Emmet & Farrand on Title*" paragraph 9.017 it is noted that under section 27(1) and 74 of the Land Registration Act 2002 the legal estate does not pass to the purchaser until the transfer is registered and that prior to that date the purchaser is unable to serve a valid notice to quit. Amongst the cases relied on is Lever Finance Ltd v Needleman's Trustee [1956] Ch 375 and Lankester v Rennie [2014] EWCA Civ 1515. To the same effect is a passage in "*Property Notices: Validity and Service*" (2nd edition) by Tom Weekes at paragraphs 3.53 to 3.56.
23. The Lever Finance case concerned a mortgage (not a tenancy): in it the transferee of a registered charge appointed a receiver during the "registration gap". Harman J held that until registration the transferee could not exercise the statutory power to appoint a receiver. So the case is in some measure supportive of the proposition for which it is cited, but clearly not directly in point.
24. Lankester v Rennie concerned an unregistered transfer of a lease. The Court of Appeal (relying at paragraph [25] on the passage from the judgment of Mummery LJ cited above in Brown & Root Technology) acknowledged the importance of not confusing the equitable rights as between transferor and transferee with the legal rights as between landlord and tenant.
25. This is a well-established and coherent body of law in support of the proposition that where a legal right to bring a tenancy to an end by notice to the tenant is being exercised, then it is the person in whom the reversionary estate is vested who must give the notice. On this appeal Counsel for Stodday and Ripway submits that this analysis does not apply to agricultural holdings: or alternatively has been overtaken by developments in the law, and does not in any event recognise the serious problem posed by the "registration gap".
26. There is first an argument under section 96 of AHA1986. This defines for the purposes of that Act the term "landlord" to mean "any person for the time being entitled to receive the rents and profits of any land" unless the context otherwise requires. It is argued that since Ripway was, following completion of the transfer of the Plot, entitled to receive the 16p rent from it, and had made its position clear to Mr

Pye by the letter of 23 June 2013, Ripway was also the “landlord” which was entitled to serve a notice to quit. But this argument is inconsistent with the agreed position that a notice to quit under the AHA1986 must comply with the common law (which is, as Counsel for Mr Pye pointed out, for this purpose part of the “context” within which s.96 falls to be construed).

27. This is the view taken by a leading textbook. In Hill and Redman’s “*Law of Landlord and Tenant*” (Division F, Chapter 2, part C para [153]) it is observed that “notice to quit may only be given by the landlord to his immediate tenant notwithstanding the wide definitions of “landlord” and “tenant” contained in the [AHA1986]”. I agree, and therefore do not accept this first argument.
28. There is second an argument based on section 141(2) of the Law of Property Act 1925. As is well known, section 141(1) provides that the benefit of every covenant or provision in a lease and “every condition of re-entry and other condition” therein contained “shall be annexed and incident to and shall go with the reversionary estate in the land”. Section 141(2) then provides:-

“any such... provision shall be capable of being... enforced and taken advantage of, by the person from time to time entitled, subject to the term, to the income of the whole or any part, as the case may require, of the land leased.”

So although the benefit of the covenant or condition remains annexed to the reversionary estate, the person entitled to the income is given the procedural right to enforce that benefit directly without joining the person entitled at law or suing in that person’s name: Schalit (supra). The argument is that since Ripway was entitled to the income from the Plot it was entitled to the benefit of every covenant, provision, and condition contained in the tenancy agreement, and this enabled it to serve a notice to quit.

29. Counsel for Stodday and Ripway submitted that the decision in Scribes West Ltd v Relsa Anstalt [2005] 1 WLR 1847 illustrated how this section operated in the “registration gap”, albeit in relation to forfeiture and not to the service of a notice to quit.
30. This is a sufficient (though not entirely accurate) summary of that case. Scribes was the tenant. Relsa was the registered proprietor. On 28 February 2001 Relsa transferred its reversionary interest to X, and the transfer contained a provision that Relsa also assigned to X “the benefit of any rights claims title or covenants to which it is entitled in respect of the property”. X immediately gave notice of the assignment to the tenant and required the tenant to pay rent to X. X did not register the transfer until 3 January 2002 (so that until then Relsa remained the registered proprietor). Between the date of the transfer and the date of registration of the transfer X peaceably re-entered upon the property, forfeiting the lease. The question was whether the forfeiture was valid.
31. X argued (and the Court of Appeal accepted) that it had taken a valid equitable assignment of the rent and so had brought itself within the terms of section 141(2) LPA 1925 as being the person entitled to the income of the land, and therefore had the right concurrently with Relsa to enforce the condition for re-entry contained in the lease. (Although cited to the Court, Brown & Root Technology (supra) was not

addressed in the judgment). Counsel for the Appellant argues that by parity of reasoning Ripway is the equitable assignee (by operation of law rather than by way of express assignment) of the rent due, is entitled to the income of the land, and so may enforce and take advantage of every provision in the tenancy agreement.

32. I would distinguish Scribes West on the narrow ground advanced by Counsel for Mr Pye. The case under appeal does not concern the contractual arrangements made between Mr Pye and his landlord. The notice to quit in this case was not served in the right of any contractual provision in the tenancy agreement. Mr Pye had an annual periodic tenancy. “The right to determine a tenancy from year to year by a notice to quit is a necessary incident to such tenancy”: Woodfall (cited above) at para 17.198. The right to serve the notice to quit arose from the nature of the estate granted and held: and the relevant relationship is “privity of estate” not “privity of contract”. The notice to quit could only be served by the legal owner of the reversion, not the equitable owner. The legal owner of the reversion was Stodday: not Ripway. So I reject the second argument.
33. The third (and, I thought, most attractive) argument turned on the Land Registration Act 2002. Section 24 says:-

“A person is entitled to exercise owner’s powers in relation to a registered estate...if he is... entitled to be registered as the proprietor”.

The concept of “owners powers” is dealt with in section 23 of the 2002 Act. Shortly put, subject to the limitations provided in section 23 and any other specific limitations, the registered proprietor of the estate has power to make an effective disposition of any kind permitted by the general law, and he has all the general powers of dealing of a natural person who holds an interest of that kind in unregistered land. Giving a notice to quit is such a dealing: since Ripway was entitled to be registered as proprietor it could “deal” in way.

34. Counsel for Stodday and Ripway submitted that the operation of this provision was exemplified by Bank of Scotland v King [2007] EWHC 2747 (Ch).
35. BoS made an advance to King in connection with his purchase of registered land from X. The contract of sale and its completion were intended to be simultaneous. At the meeting King signed a charge in favour of BoS and used the advance to pay part of the purchase price: but he did not pay all of the purchase price. Nonetheless a signed Transfer was handed over. It was not registered because there was a dispute between King and X about whether it had been unconditionally delivered. This dispute appears eventually to have been resolved by an undoing of the deal: but for the purposes of sorting out the legal position the judge held that the Transfer had been unconditionally delivered. Meanwhile BoS sought to register its charge. The judge held that BoS was entitled to register it, even though the charge granted by King would be registered against X who remained the proprietor. At the time that King granted the charge he was entitled to be registered as proprietor (because the Transfer had been unconditionally delivered) and under s.24(b) of the 2002 Act King was able to grant an effective charge in favour of BoS (even though now, because of the unscrambling of the deal, he never would be the registered proprietor).

36. Counsel for Stodday and Ripway submits that this case shows that King was enabled by s.24 to effect a transaction at law even though at the time he had only an equitable title (and indeed never did become proprietor). Likewise Ripway should be entitled to undertake a transaction at law (as the person entitled to be registered as proprietor) even though it had only an equitable title.
37. I do not consider that BoS v King is authority for the proposition that someone entitled to be registered as proprietor is enabled by section 24 to undertake transactions that will be effective at law even before he is registered. To read the section in that way would deprive section 27 of the 2002 Act of any real effect. Rather, as is pointed out in Ruoff & Roper "*Registered conveyancing*" (in paragraph 13.003.04)

“.. A person’s right to exercise owner’s powers, by virtue of being entitled to be registered as proprietor, does not mean that he has unlimited powers of disposition. The fact that he has acquired such a right under a registrable disposition which has not yet been completed by registration, and which therefore takes effect in equity only until registered, of itself means that his powers of disposition under the general law are limited.”

The giving of a notice to quit is one of the instances in which, under the general law, the ownership of the equitable title does not suffice for the service of an effective notice, and where subsequent acquisition of the legal estate cannot validate the notice retrospectively.

38. This analysis is consistent with that adopted by Newey J in Skelwith Leisure v Armstrong [2015] EWHC 2830. The registered proprietor of a charge assigned it, but the assignee did not register the transfer of the charge. The assignee (in exercise of his powers under the LPA 1925 and under the charge) sold the mortgaged property. The owner of the mortgaged property challenged the sale. The question on the application for summary disposal of this case was whether the assignee was able to exercise the powers of sale that the legal owner undoubtedly enjoyed. Reliance was placed on s.24 of the 2002 Act. Newey J held that the “owner’s powers” extended not simply to dealing with the registrable interest itself but extended to dealing with the mortgaged property. But at paragraph [57] he held:-

“...a person who is entitled to be registered as a proprietor, but who has not been, will not necessarily enjoy all the powers that he would have had if registration had been effected...[S]ection 24 cannot mean that the powers of a person entitled to be registered as a proprietor are automatically to be equated with those of a registered proprietor.....It has, as it seems to me, to be asked whether an equitable owner would be “permitted under the general law” to make dispositions of the relevant kinds...[58] In other words, it is not enough for a person entitled to be registered as a charge’s proprietor and with equitable ownership of it to demonstrate that he could have exercised a power had he been registered as a proprietor. He must also show that the power is exercisable under “the general law”...”.

39. I therefore hold that HHJ Beech was right in the legal conclusion that she reached. Ripway could not (as equitable owner of the reversion and as the person entitled to be registered as proprietor of it) terminate Mr Pye's tenancy of the Plot by notice to quit.
40. It is agreed between Counsel that if this is the conclusion at which I arrive then notice to quit has not been given in relation to the entire Holding, so Mr Pye's tenancy continues. The issue of the correctness of the form of the notice to quit does not arise.
41. As a concluding remark I do not accept the submission of Counsel for Stodday and Ripway that this is an overly formalistic approach which magnifies the risk arising from the "registration gap". The same problem exists in unregistered conveyancing. It is not difficult to address it. The time will come when every completion pack for the sale of a reversion includes a document in appropriate form constituting the transferee the agent of the transferor in respect of all matters concerning the estate transferred pending registration, a copy of which will be provided by the landlord to the tenant along with notice of the assignment.