



LEGAL BRIEFING

An option to purchase?

Peter Anthony Rennie v Westbury Homes (Holdings) Ltd (2007)

Chancery Division (Henderson J) [2007] EWHC 164

The Facts

This case considered the interpretation of an extension clause contained in and option agreement for the sale and purchase of a farm in Coleford. The claimant, Peter Rennie, had granted the defendant property developer Westbury Homes (Holdings) Ltd an option to purchase his land within 10 years of the date of the option agreement. The agreement provided that:

at any time during the last year of the option period the intending purchaser may by notice in writing served upon the intending vendor require such period to be extended by 5 years and upon service of such notice and payment of £20,000 this agreement shall be construed as if the option period was 15 years.

Shortly before the 10-year option period was due to expire, Westbury's solicitors wrote to Mr Rennie's solicitors advising that they would "very shortly be placed in funds for the extension of the option for a further 5 years" and requested Mr Rennie's solicitors' bank account details. On what was thought by Westbury's solicitors to be the last day of the 10-year period, Westbury's solicitors transferred the money to Mr Rennie's solicitors, receipt of which was acknowledged.

In fact, the 10-year option period had expired a day earlier than the date that the money was transferred and Mr Rennie sought to return that money on the basis that the option period had not been extended. He sought a declaration from the court accordingly. Mr Rennie argued that:

1. The notice given by Westbury did not contain the information prescribed by the agreement;
2. The notice did not comply with requirements set out in *Mannai Investment Co Ltd v Eagle Star Life Assurance Co Ltd (1987) AC 749* because, Mr Rennie claimed, it left him " [in] no doubt that the right reserved is being exercised"; and
3. The payment requirement had not been complied with because it had been effected one day late.

The Issue

The main issue that arose at trial was whether the 10-year option period was validly extended by the letter from Westbury's solicitors and the payment of £20,000 to Mr Rennie's solicitors.

The Decision

The Honourable Judge held that the option period had been validly extended. The clause providing for the extension did not specify what the notice needed to contain nor did it prescribe any form of words or detail that must have been

included. It contained two conditions: that the notice must be in writing and served during the last year of the option period. In reaching his decision, the Judge followed the decision in *Mannai*, where it was held that an objective test was to be applied to the interpretation of such notices: the question was simply how it would have been understood by a reasonable recipient. Despite the fact that the letter from Westbury's solicitors was focused on payment arrangements, the Judge found that a reasonable recipient would have understood from it that Westbury intended to extend the option period.

In addition, the Judge held that the clause providing for extension of the option only obliged Westbury to make a further payment of £20,000 and did not specify the time to make that payment. The Judge emphasised that the only step that the extension clause expressly required Westbury to take before the expiry of the last year of the option period was the service of the notice of its intention to extend the period; not the further payment. The Judge found no basis on which to imply a term that payment had to be made within the first option period and, because payment had been made within a reasonable time, the fact that it was made one day late was not fatal.

Comment

Option agreements are relatively popular in the area of property development; particularly in situations where developers need to obtain planning permission and permits before commencing with a development. This case illustrates the importance of carefully prescribing not only time limits on any obligations the option-holder must comply with, but also the form in which any notice to extend that option needs to take. In situations where there are no such prescriptions, the court will adopt an objective test as to what a "reasonable recipient" might construe as a notice to extend that option. If the time for payment under a similar option agreement cannot be fixed by a process of implication, the court will imply an obligation to make the payment within a reasonable time.

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