

Rees v 82 Portland Place Investments LLP and another [2020] EWHC 1177 (Ch)

The sanctity of the title register prevails – the court refuses to allow the register to be rectified despite the serious financial consequences that result.

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Facts

The tenant (R) bought a flat in 2011 with the benefit of a notice claiming a lease extension under section 42 of the Leasehold Reform, Housing and Urban Development Act 1993 (the 1993 Act). As there was an ongoing collective enfranchisement claim for the building, R's claim was suspended (as provided for by section 54 of the 1993 Act).

A right to a lease extension arising from a notice served under the 1993 Act cannot be an overriding interest and must be registered as a notice on the freehold title to bind buyers of the freehold. However, the Land Registry incorrectly refused R's application to register a unilateral notice against the freehold title.

Following completion of the collective enfranchisement process in 2017, a nominee buyer (PPF) became registered as proprietor of the freehold. PPF then granted an overriding lease of R's flat to a new head lessee (PPI). PPF and PPI argued that they were not bound by R's claim for a new lease on the basis of section 29 of the Land Registration Act 2002 (the 2002 Act) (which, broadly speaking, provides that a buyer for valuable consideration takes a property subject to all interests on the register and all overriding interests, but free of everything else).

R served a second notice of claim for a new lease on PPF and PPI, without prejudice to her contention that the first notice was valid and enforceable. The difference in the premium payable under the two claims was substantial (about £1.8m). R therefore sought an order rectifying the title registers of PPF and PPI to correct the Land Registry's failure to register her original unilateral notice.

Issue

Was it unjust for an order for rectification of the register not to be made?

[Under Schedule 4 of the 2002 Act, where the registered proprietor is in possession of land (and, for these purposes, a landlord is treated as being in possession), no order for rectification may be made without the consent of the registered proprietor unless the registered proprietor has, by fraud or lack of proper care, caused or substantially contributed to the mistake or it would for any other reason be unjust for the alteration not to be made.]

Decision

Neither the seriousness of the Land Registry's error, PPF's knowledge that no unilateral notice had been registered against the freehold title, the substantial detriment to R because of the likely increase in the premium payable for a new lease nor the corresponding windfall benefit that would accrue to PPI made it unjust not to rectify the register.

Points to note/consider

1. As the judge in this case pointed out, if mere knowledge of the existence of an unprotected interest could expose a potential buyer of a registered title to the risk of a rectification claim, the buyer is in a difficult position. It would either have to take the risk or seek to negotiate an indemnity or a price reduction with the seller.

This case is important therefore as it reaffirms the sanctity of the title register as the basic premise of registered conveyancing (with the only exception being the category of overriding interests). A buyer must be able to take the title register as it finds it, even if the buyer knows about (or suspects) the existence of an unprotected third party interest (apart from anything else, how does a buyer know whether a conscious decision has been made not to protect an interest or whether it has happened by mistake). This is the case even if the financial consequences for the other party are very serious (although it should not be overlooked that, in this case, R would potentially still be able to claim an indemnity for her losses from the Land Registry under Schedule 8 of the 2002 Act).

2. This case also shows that the Land Registry is not infallible and that if a conveyancer believes that the Land Registry has misinterpreted the law and incorrectly refused to register an interest, they should be prepared to challenge the Land Registry on the point.

Contact



David Harris

Professional Development Lawyer

david.harris@brownejacobson.com

+44 (0)115 934 2019

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