



Neutral Citation Number: [2024] EWHC 2182 (Ch)

Case No: PT-2024-000669

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
PROPERTY, TRUSTS AND PROBATE LIST

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 21/08/2024

Before :

MR JUSTICE MELLOR

Between :

ROGER GEORGE MATTHEWS

Claimant

- and -

FRANK KEMPTHORNE MATTHEWS

Defendant

(A Protected Party, by his Deputy Anne Minihane)

CHRIS BRYDEN (instructed by **Slee Blackwell LLP**) for the **Claimant**
CAROLINE SHEA KC (instructed by **Clarke Willmott LLP**) for **Ms Minihane**

Hearing date: 15 August 2024
Draft to the parties 19 August 2024

Approved Judgment

This judgment was handed down remotely at 10.30am on 21 August 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE MELLOR

Mr Justice Mellor :

1. This is a sad case. The Claimant, Mr Roger Matthews, is a somewhat distant relative (a second cousin) of the Defendant, Mr Frank Matthews, although they have had a relationship going back many years in connection with their farming interests near Truro. For convenience and meaning no disrespect to either of them, I will refer to the parties as ‘Roger’ and ‘Frank’ respectively.
2. Frank is elderly and now lacks capacity. He is very ably represented by his Deputy, Ms Minihane, a solicitor and partner in Clarke Willmott LLP. She was appointed as interim deputy for Property and Financial Affairs by order dated 15 June 2023 and as permanent deputy by order dated 12 March 2024. By an Order of the Court of Protection dated 12 July 2024, she was authorised to act as litigation friend for Frank in these injunction proceedings.
3. Whilst Frank had capacity, he made it very clear he wished to be cared for in his own home and not in a care home. This point is not in dispute.
4. As to the financial position of Frank, Ms Minihane accurately described it as property rich and cash poor. She gives evidence that Frank has substantial debts of over £1.2m (including substantial amounts (over-)due to HMRC in both income tax and VAT) plus a monthly deficit of income against expenditure of £26k odd. His monthly care costs at home are around £25k and he has a life expectancy of between 2-5 years.
5. Thus, in addition to requiring funds to meet future care costs, there is a very urgent need to clear the outstanding debts. Ms Minihane says she needs funds of £2.8m to provide for ongoing care and to clear his debts. None of this is disputed. Indeed, Roger was Frank’s former Health and Welfare attorney and continues fully to support his wish to remain at his home.
6. In November 2023, Ms Minihane instructed Strutt & Parker to value the land owned by Frank and to advise her on which areas of land should be sold to generate the necessary funds to meet Frank’s liabilities.
7. She accepted their advice, which was to sell three lots of farmland owned by Frank, being Truthan Barton Farm, Killigrew Yard and Cottages and the Land East of Killigrew, Lots 1, 2 and 3 respectively (also referred to as ‘the Properties’). The three lots form an almost contiguous block of land. She determined it was in the best interests of Frank to sell the Properties, a process which included consulting with Roger, amongst others.
8. On her (sole) instructions, Strutt & Parker have marketed the Properties and offers have been received. She has been advised by Strutt & Parker to accept a cash offer of £5.8m for the Properties with simultaneous exchange and completion in 6 weeks following acceptance of the offer.
9. Against this backdrop, Roger brings an application to restrain the sale of the Properties. He does so on the basis summarised at the very start of his first Affidavit sworn in support of his application:

‘Frank is and has been for most of my life a dear friend of mine (as well as my second cousin once removed I believe), and we have worked together for many years. Sadly, Frank no longer has capacity and as a result [Ms Minihane] has been appointed by the Court of Protection as his Deputy. This application arises because Frank and I have a longstanding agreement that I should have an option to purchase the agricultural land that is owned by Frank, but [Ms Minihane] is seeking to sell three plots of land to a third party, notwithstanding my offer to purchase the same at market value.’

10. There is a written Option Agreement dated 29th November 2018 between Frank and Roger, but that document gives Roger the option, on Frank’s death, to purchase the freehold of property if Roger is then leasing it at 80% of the ‘Open Market Value’, with that value being ascertained by agreement or by an independent valuer, acting as an expert.
11. Roger, however, relies on an oral option from Frank to purchase the Properties at full market value. For present purposes, it is accepted that Roger has an arguable case in that regard, although it appears that the existence of this oral option will be in dispute at trial. On this application, the real dispute is over how the ‘full market value’ should be ascertained.
12. Roger relies on a valuation made by Strutt & Parker back in January 2024 which was made in the course of the instruction from Ms Minihane. He offers to purchase the Properties at the following sums:
 - Lot 1 - £2.6m
 - Lot 2 - £800k
 - Lot 3 - £50kThe total sum offered being £3.45m (subject to mortgage). Needless to say, this is very much less than the offer at £5.8m, an offer which Roger has not sought to match.
13. It is relevant to note that due to the parlous state of Frank’s financial affairs, if the injunction sought is granted, the practical effect is likely to be an inability to sell the Properties pending the trial of Roger’s claim, and/or the making an application to the Court of Protection, each of which would take many months if not years, leaving Frank without sufficient funds in meantime, outcomes which are likely to necessitate Frank going into a care home, against his wishes. In Mr Bryden’s Skeleton Argument, an intermediate way forward is suggested which I discuss below.
14. I should add that in the course of the hearing I was handed a second witness statement of Esther Woolford (who is also a partner of Clarke Willmott) which exhibited a very recent revised valuation of the Properties from Strutt & Parker at £5.8m, albeit I record that Mr Bryden was critical of this valuation suggesting it was not ‘independent’.

Legal analysis

15. Counsel helpfully agreed the basis on which this application should be determined.
 - i) Although in the Particulars of Claim, Roger claims his option to be enforceable, due to section 2 of the Law of Property (Miscellaneous Provisions) Act 1989, the oral option relied upon by Roger is not enforceable.
 - ii) However, the parties agreed that the oral option claimed can support a claim by way of proprietary estoppel to prevent Frank from resiling from his oral agreement, the necessary elements being (1) a representation by Frank in the terms of the oral option, (2) Roger's detrimental reliance on that representation and (3) it would be unconscionable for Frank to resile from his representation.
16. Beyond that, both Counsel naturally contended that this application falls to be determined on standard *American Cyanamid* principles, although there was perhaps slight disagreement over whether the underlying merits could or should be taken into account. I will address this as necessary below.

Serious issue to be tried?

17. From Ms Shea KC's oral submissions, I understood that she felt constrained to accept that there is a serious issue to be tried because of Roger's sworn evidence as to the terms of the oral option, albeit (a) she said it was very, very thin (b) that it lacked coherence and (c) her acceptance appeared to me to be qualified somewhat by certain submissions she made as to the merits.
18. There was no dispute that Roger has an arguable case on the other elements of the proprietary estoppel he relies upon – detrimental reliance and unconscionability – assuming the existence of the option. I should mention one particular element of the detrimental reliance on which Roger relies: the purchase (through his son) in 2019 from a third party of the farmhouse at Killigrew which sits in the middle of Killigrew Farm. This, Roger says, was at the insistence of Frank with a view to putting the farm back together. The farmhouse was in a dilapidated state and I infer that Roger and his son have had to spend money on restoring it.
19. Ms Shea KC's submissions require me to focus on the case which Roger's sworn evidence supports but also, critically, whether that case supports Roger's position that the Properties must, in effect, be sold to him for £3.45m. As I understood Ms Shea KC's submissions, it was on that latter point that she was submitting Roger's position was unsustainable.
20. It is apparent from Roger's Affidavit that his case has two parts. The first is the oral option to purchase land owned by Frank at full market value, although it seems to be more accurately characterised as a right of first refusal (see, in his Affidavit, [1], [12], [15] & [18]). As Roger says in [21], the option is also evidenced by Frank's instructions to his solicitor, Richard Merrick, regarding the giving to him of a formal option 'to purchase Frank's agricultural land and the buildings and houses running therewith i.e. Truthan and Enis' as mentioned in a letter from Richard Merrick to Frank's brother, Mr John Matthews dated 29 April 2022. It is clear this is not the 2018 written option which was already in place.

21. The second part appears to be a course of dealing argument: that whenever a transaction between Frank and Roger involving land was proposed, they would instruct one valuer to come up with a fair rent or valuation and both would stick to that (see, in Roger's Affidavit, [5], and, regarding valuations from Andrew Body, [18] & [22], which discusses the letter dated 22 June 2022). This type of arrangement is evidenced by the letter from Roger to Mr Andrew Body dated 22 June 2022, in which Roger is addressing the need to generate funds to meet Frank's care costs and points out his willingness '*to proceed on the valuation price you obtained for Killigrew Yard but I understand John Matthews is hesitating at present*'. This letter was written at a time when Andrew Body and John Matthews were Frank's financial attorneys and Roger was Frank's Health and Welfare Attorney. Shortly after this, family relations broke down and there have been Court of Protection proceedings ever since. Roger and his son have made various proposals to generate funds to assist with Frank's care costs, including paying rent of £70,000 in advance on the farms Roger rents from Frank, and his son's offer to purchase 1&2 Killigrew Barns for £500,000.
22. Following the breakdown in family relations, Roger relinquished his position as Frank's Health and Welfare Attorney in Spring 2024 due to disputes with John Matthews, which led to Ms Minihane being appointed as Frank's Deputy. However, I wish to point out from the evidence I have seen that Roger appears to have fulfilled his obligations as Attorney admirably, always seeking to act in Frank's best interests, and he continued to provide assistance to Ms Minihane following her appointment.
23. It is unnecessary to relate in full the developments from December 2023 down to the present. Suffice to say that Roger asserted his option in an email of 2 January 2024 to Charles Huntington-Whiteley of Strutt & Parker: '*Frank and his Solicitors agreed I had first refusal at full market value on any of Frank's solely owned properties*'.
24. Roger unfortunately suffered a heart attack on 28 April 2024 and was hospitalised for 2 weeks or so. Despite that, he made an offer to purchase the Properties on 20 May 2024, '*as we were happy with the valuations and happy to proceed*'.
25. The response came in a letter dated 30 May 2024 from Clarke Willmott for Ms Minihane, that the Properties were instead being put to best and final offers on the open market for sale with a deadline of 20 June 2024, whereupon Roger instructed solicitors, Slee Blackwell LLP. They wrote on 18 June 2024 to Ms Minihane (and also putting Strutt & Parker on notice) setting out Roger's case (which at that point combined the written and oral options):

'...it is our client's case that at all times since 2017 it has been agreed between our client and Frank Kempthorne Matthews ("Frank") / his attorney that our client would have the option of first refusal to purchase the Promised Land, to include the Properties, during Frank's lifetime alternatively following his death (the latter being expected to be more likely) and in that event our client would be entitled to an option for first refusal to purchase the Promised Land, to include the Properties, at a discounted rate of 80% of its open market value.'
26. Clarke Willmott responded on behalf of Ms Minihane, pointing out that the Written Option did not include Killigrew Yard or 2 small fields (then being marketed as Lots

2 &3), but perhaps more relevantly for present purposes that Ms Minihane could not accept any offer made by Roger to purchase land on a private basis because Roger was a ‘*connected person*’ and any such sale would have to be authorised by the Court of Protection, on being satisfied that it would be in the best interests of the Patient. Without that authorisation, it was said, the Properties could only be sold on the open market.

27. The correspondence continued, but the urgency soon led to this application being launched. Ms Minihane gave an assurance that she would not proceed with exchange or completion of the sale of the Properties provided that this injunction hearing was heard in the week commencing 12 August 2024 (as it was). Submissions took up the full afternoon of Thursday 15 August. I did not give my decision at the conclusion of those submissions, partly because I wished to reflect on some of the detailed arguments I had heard, but partly because I was informed another urgent application was waiting to be heard. However, my decision to refuse the injunction sought was conveyed by my clerk to both Counsel early the next morning. This judgment contains my reasons for reaching that decision.
28. In conclusion on part of the *American Cyanamid* test, I was satisfied that there is a serious issue to be tried as to the oral option on which Roger relies. It is unnecessary to reach any conclusion on the second element of his case – which is to the effect that the parties would proceed on the basis of a jointly instructed single valuation – because Roger does not seek to rely on such a valuation. Even if I am wrong about that, it remains unnecessary to reach any conclusion due to my overall conclusion at [50] below.

Would damages be an adequate remedy for Roger?

29. Ms Shea KC attempted to argue that damages would be an adequate remedy for Roger on the basis that he has the funds (or finance) to purchase Lots 1, 2 & 3 and, on his own pleaded case, he seeks to acquire those Lots at full market value. If Roger is prevented from purchasing them, Ms Shea KC submits he will retain the funds and would not be prejudiced.
30. Ms Shea KC also submitted that successful proprietary estoppel claims frequently result in an award of money to compensate the claimant for the loss of the promised interest in land, particularly when the alleged promisor remains alive and in residence/occupation of the land at the centre of the dispute.
31. Ms Shea KC acknowledges that Roger would suffer some *commercial* inconvenience by not being able to acquire Lots 1, 2 & 3, the implicit suggestion being that he will be able to purchase essentially equivalent land nearby.
32. In my judgement, these arguments are too simplistic and ignore the existing connection which Roger says he has with the land in question. If no injunction is granted, Roger will not purchase the Properties and, in any practical scenario, that will mean that he can never acquire the Properties. There is no guarantee that Roger will be able to purchase alternative land which is either equivalent or nearby. If Roger has to travel to farm alternative land, there would be a continuing ongoing cost.

33. As for Roger's connection to the Properties, he says in his evidence that the whole purpose of the option, his purchases of various parcels of land to date and his renting of farms from Frank has been to keep the land together. If the Properties are sold to a third party, what Roger has worked towards (and what Frank wanted) will be for nothing. He also says that, as well as acquiring the farmhouse at Killigrew, he worked for Frank since 2017 effectively for free, restoring and improving his farms and then agreeing to rent Ennis Farm from him, all done in reliance on the option. The full details of his work are set out in the Particulars of Claim which it is unnecessary to repeat here, but which I accept (if established at trial) would amount to a substantial investment on his part of money, time and effort. Roger also details other financial losses which have resulted from his reliance on the option, including Roger and his family giving up a number of opportunities to purchase farmland that adjoined land they already owned, all of which has significantly appreciated in value since. He gives details of three significant opportunities in this regard. He says in terms: *'I did not purchase any of this land because I knew I needed to keep my money for purchasing Frank's land and keeping his farms together. I have therefore suffered a very significant financial loss because I, like Frank, was committed to taking over and keeping his farms together.'*
34. Based on this evidence, I am satisfied that if the underlying facts are found to be true, Roger would have established a genuine emotional attachment to the land comprising the Properties which cannot be quantified in money terms. Likewise, the value of his work in working on and improving the land. So too, the opportunity to buy land surrounding the Killigrew farm house. So, if I refuse the injunction sought, Roger will suffer some irreparable damage.

Would damages be an adequate remedy for Frank?

35. Ms Shea KC submitted that damages would not be an adequate remedy for Frank. Her argument was simple. If the Properties were not sold now, the ongoing costs of Frank's care could not be met and he would have to be moved, against his will, to a care home. She submitted that the mental distress which the move would cause him could not be compensated in damages and furthermore that any deterioration in his condition as a result of such a distressing move would also not be capable of being compensated in damages.
36. Mr Bryden's submissions for Roger appeared to acknowledge the force of these arguments. However, he argued that damages would be an adequate remedy for Frank because of a particular arrangement put forward in correspondence as to how to alleviate Frank's funding difficulties. As I understood Roger's position, it was that he was a cash buyer for Lots 2 & 3 (and so was in a position to proceed to a purchase of those lots immediately) but he required a mortgage to purchase Lot 1.
37. The offer was supplemented in Counsel's skeleton argument, so the arrangement offered comprised the following elements.
- i) First, Roger would undertake to fund Frank's care costs until resolution of this action.
 - ii) Second, Roger would proceed with the purchase of Lots 2 & 3 at the higher price, although he points out that no breakdown of the £5.8m offer had been

provided (at least until the very recent revised Strutt & Parker valuation was produced).

- iii) Third, the care cost funding would be subject to recoupment from the eventual purchase price, and the price paid for Lots 2 & 3 would need to be adjusted and recouped from the purchase price of Lot 1, dependent on the ultimate findings of the Court.
 - iv) What was left unsaid (at least until my question about it) was that, as part of this arrangement, the sale of Lot 1 should be restrained until trial or further order.
38. Mr Bryden submitted this offer represented a pragmatic solution which would hold the position pending trial, removing the current pressure. Frank's care needs would be met and Roger's position would also be secured pending trial. On this basis, he submitted that the balance of convenience favours the grant of the injunction.
39. In response, Ms Shea KC disputed that this offer represented a solution at all, let alone a temporary one. She pointed out, correctly in my judgment, that the funds resulting from Roger's purchase of Lots 2 & 3 would not be sufficient to discharge Frank's existing indebtedness, let alone fund his ongoing care costs.
40. In any event, since the three Lots comprise an almost contiguous block of land, it seems likely that selling Lot 1 separately and at a later date might well affect the price which could be obtained for it in comparison with the relevant proportion of the present valuation of the combined Lots, but any loss in this regard could be compensated in damages.
41. The further problem with this offer is the point mentioned in [13] and [26] above, regarding the role of the Court of Protection. Ms Minihane is unable to sell Lots 2 & 3 to Roger (who is a 'connected person') without the authorisation of that Court.
42. Overall, however, I am satisfied that if I granted the injunction, Frank would undoubtedly suffer some quite severe irreparable damage.

Where does the balance of the risk of injustice lie?

43. Whilst I have concluded that Roger will suffer some irreparable damage if I refuse the injunction, I have no doubt that the irreparable damage which Frank would suffer were I to grant the injunction is far more serious. So, the balance of the risk of injustice lies in Frank's favour.

Should I take into account the merits?

44. Ms Shea KC sought to argue various points on the merits, suggesting that Roger's case had developed over time and had been inconsistent in its development. It is undoubtedly the case that Roger's case has developed. The Particulars of Claim are clearly focussed on establishing the case as to the option. The only mention of valuation (which is now the main point in dispute) is in connection with the claim to a mandatory injunction requiring Frank (by his deputy) '*to take such necessary steps to convey or to transfer to Roger the Lots on payment of the market value as determined*

by *Strutt & Parker...*'. There is no pleading of what I have called the 'course of dealing' valuation point.

45. Ms Shea KC also made a series of points by which she sought to cast doubt on the existence at all of the oral option now alleged, drawing attention to a number of occasions where one might have expected Roger to explain the oral option to Ms Minihane where he said nothing about it. In this regard, Ms Shea KC relied on a series of attendance notes prepared by Ms Minihane in meticulous detail of various meetings and encounters with Roger in which there is no mention of the alleged oral option.
46. However, it would, in my judgment, be unwise to take account of any of these arguments and I leave them entirely out of account. Furthermore, it is unnecessary to have any regard to them because of what I regard as a fatal flaw in Roger's case, which I discuss next.

The flaw in Roger's case

47. Roger's case is based on the option to purchase the Properties at **full market value**. His case relies on a valuation made by Strutt & Parker in January 2024 which was prepared on the instructions of Ms Minihane for the purposes of deciding what land to sell. Counsel for Frank argues that the January 2024 valuation was for a different purpose to that required for Roger's case. There is some force in this but not a great deal because a valuation for the purposes of deciding what to sell should not be different from any other.
48. What remains is the surprisingly large difference between the January 2024 valuation (£3.45m) and the price now offered for the Properties (£5.8m). It is unlikely that the value of the land has increased by that much over just a few months. It seems far more likely that the January 2024 valuation was a significant underestimate of the value of the Properties, this being evidenced by the recent offers actually received by Ms Minihane. The real problem for Roger is that the 'full market value' of the Properties ought to be assessed at or very near to the date of sale. It is clear that the 'full market value' of the Properties is £5.8m, being the value which has been offered in the market.
49. Roger appears to be unwilling to purchase the Properties at that full market value – he does not rely on an offer in that amount as an alternative basis for the injunction sought. Throughout, Roger has faced the risk of not being able to afford what transpires as the 'full market value' and all of his detrimental reliance was undertaken in full knowledge of that risk.

Overall conclusion

50. Ultimately, although my *American Cyanamid* analysis requires refusal of the injunction sought, there is an additional reason: the option on which Roger relies would entitle him to purchase the Properties for £5.8m but not for £3.45m. In short, Roger has no case of entitlement to purchase at £3.45m because that figure does not represent 'full market value'. For these reasons, Roger's application must be dismissed.

51. I ask Counsel to agree an Order reflecting this judgment. As I directed at the conclusion of the hearing, any submissions on remaining matters (including as to costs) must be made in writing.