

[2019] UKFTT 0111 (PC)

REF/2018/0090

**PROPERTY CHAMBER, LAND REGISTRATION DIVISION
FIRST-TIER TRIBUNAL**

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

BETWEEN

BLACKRAVEN DEVELOPMENTS LIMITED

Applicant

-and-

**(1) JONATHAN CHARLES CLARKE
(2) SHEENAGH BERNADETTE JOAN PARSONS
(3) DAVID ANDREW MARTIN FLANAGAN
(4) MANJOT KAUR HENCHIE**

Respondents

Property Address: Rothwell House, 2-4 West Square, Harlow, CM20 1LQ

Title Number: EX408764

ORDER

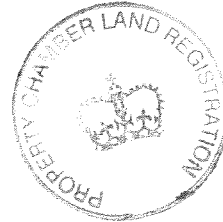
The Tribunal orders as follows

- (1) that the Chief Land Registrar do cancel the Unilateral Notice entered pursuant to the application of Blackraven Developments Ltd dated 9 August 2017 and registered in the Proprietorship Register for Rothwell House, 2-4 West Square, Harlow, title no.EX408764;
- (2) any application for costs should be supported by a schedule of costs and made by 5pm on 21 February 2019, to be served on the Tribunal and the other parties;
- (3) any submissions in response to any application for costs to be served on the Tribunal and the other parties by 5pm on 7 March 2019;

- (4) any submission by a party applying for an order for costs in response to the submissions of the other party to be served on the Tribunal and the other parties by 21 March 2019.

Dated this 22nd day of January 2019

Andrew Bruce



BY ORDER OF THE TRIBUNAL

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Property Address: Rothwell House, 2-4 West Square, Harlow, CM20 1LQ

Title Number: EX408764

Before: Judge Bruce
Sitting: Alfred Place, London
On: 15 & 16 January 2019

Applicant Representation: Mr Timothy Becker of Counsel
Respondent Representation: Ms Katie Gray of Counsel

DECISION

Cancellation of Unilateral Notice – Sale Agreements – Notice to Complete – Rescission – Delay - Estoppel

Introduction

1. The Applicant, Blackraven Developments Limited ["BDL"], is a company registered in England & Wales under company number 05274096, which is apparently engaged in property development. Its guiding force is, and has been since he was appointed a director on 30 October 2006, Mr Mohammed Reza Ghadami ["Mr Ghadami"]. The filed company accounts for BDL show that, at all times since its incorporation on 29 October 2004, it has been a dormant company with net assets of £1.

2. The Respondents are the registered freehold proprietors of Rothwell House, 2-4 West Square, Harlow, CM20 1LQ ["Rothwell House"], which is registered at HM Land Registry under title no.EX408764. They are partners in the solicitors' firm of Attwaters Jameson Hill, which was formed by the merger of the firms of Attwater & Liell and Jameson & Hill in 2012. As at 2005, the Respondents were partners in the firm of Attwater & Liell, which firm had its head office at Rothwell House.

3. On 9 August 2017 BDL registered a unilateral notice against the title to Rothwell House on the basis that it had an interest in the property *"because on 20 December 2005 an irrevocable agreement to sell Rothwell House to [BDL] was reached and signed by both parties concerned. The completion date for the sale is agreed to be at a time to suit both parties. This was discussed to be at the end of the mortgage fixed term, i.e. June 16."* (per BDL's UN1 dated 9 August 2017). On 13 October 2017 the Respondents applied to cancel the unilateral notice (albeit that the UN4 refers to the cancellation of a unilateral notice registered on 5 May 2017). The dispute was then referred to the Land Registration division of the Property Chamber, First Tier Tribunal under rule 5 of the Land Registration (Referral to the Adjudicator to HM Land Registry) Rules 2003 and s.73(7) of the Land Registration Act 2002 on 24 January 2018.

The Hearing and the Witnesses

4. Initially BDL joined Attwaters Jameson Hill as a party to these proceedings (in addition to the Respondents). However, by Order dated 17 April 2018, the Tribunal directed that Attwaters Jameson Hill was not a proper party to the reference. By this time, the solicitors who had initially represented BDL, Messrs Wilson Davies & Co., had notified the Tribunal (by letter dated 5 April 2018) that they had ceased to act and at all times thereafter and prior to 15 January 2019 Mr Ghadami represented BDL. By its Order dated 18 April 2018 the Tribunal directed the parties to provide disclosure by 9 May 2018 and exchange witness statements by 6 June 2018. On 19 July 2018 Mr Ghadami notified the Tribunal that he would be unavailable to attend a final hearing during November-December 2018 due to medical and family related matters, but that he would be available during January-February 2019. On 24 July 2018, the Tribunal, having had regard to both parties' availability fixed the final hearing for 15 & 16 January 2019 in London.

5. On 22 August 2018 Mr Ghadami wrote to the Tribunal requesting that the hearing be re-listed for the first open date after June 2019 as he had received a cancer diagnosis. On 28 August 2018 the Tribunal responded by letter indicating that it was not minded to adjourn the final hearing and would require medical evidence from Mr Ghadami. Some medical evidence was provided and further representations were received from both parties as to the date for the final hearing. On 9 November 2018 the Tribunal notified the parties that it was not persuaded that the final hearing should be adjourned. Mr Ghadami was unhappy with this decision, but on 5 December 2018 the Tribunal refused to re-consider its decision because Mr Ghadami had not provided any further medical evidence as might be material. Mr Ghadami then made another application to adjourn the hearing which included a letter from Dr Pelin Sahin, but on 20 December 2018 the Tribunal refused the application, noting that BDL could be represented by counsel at the hearing.

6. On the first morning of the hearing (15 January 2019) BDL was represented by counsel, Mr Becker. Mr Becker informed the Tribunal that he had only been instructed on 14 January 2019 (on a direct-access basis) and had held a conference with Mr Ghadami and his son on 14 January 2019. Mr Becker had not prepared BDL's skeleton argument (which had been prepared by Mr Ghadami on 8 January 2019) and had not been involved in an application issued by BDL on 4 January 2019 which sought to strike out the Respondents' case. The application dated 4 January 2019 was based upon an assertion that the Respondents could not object to the unilateral notice because they (with the exception of Mr Clarke) were not parties to the agreement dated 20 December 2005 upon which BDL relied. Mr Becker correctly did not press this application on behalf of BDL as it was plain that, for the reasons set out in Ms Gray's Supplemental Skeleton Argument dated 13 January 2019, the Respondents were the proper parties to this reference as they were the registered freehold proprietors of Rothwell House, they had served a Notice to Complete and Notice of Rescission in respect of the agreement dated 20 December 2005 and they had issued the UN4 seeking cancellation of the unilateral notice.

7. At the hearing, the Tribunal heard evidence from five witnesses: Mr Ghadami; Mr Ghadami's son, Mr Joseph Ghadami; Mr David Andrew Bramidge; Mr Jonathan Charles Clarke and Mr David George Kerry. Mr Ghadami and his son are both

directors of BDL. Mr Bramidge had been Chief Executive of Harlow Renaissance Ltd from December 2006 to March 2011. Mr Clarke and Mr Kerry had both been partners in Attwater & Liell. Perhaps unsurprisingly all the witnesses (excepting Joseph Ghadami who was not involved in any of the negotiations or discussions during the period 2005-2007 as he was a minor at this time) struggled to recall the specifics of what was said or done at various meetings which occurred as long as 14 years ago. Nonetheless Mr Clarke and Mr Kerry came across as truthful and impressive witnesses. They both acknowledged when they could not remember specific documents or events, but gave clear evidence of matters they did recall explaining why such matters stuck in their mind, for example Mr Kerry was clear and consistent that at the meeting on 6 December 2005 it was made clear that the endowment policies which supported the Norwich Union mortgage were not part of the sale agreement and indeed there is no reference to these policies in the agreement dated 20 December 2005. Also, Mr Clarke explained that meetings with Mr Ghadami tended to be memorable (and long) and for that reason he tended to avoid them – this candid explanation had the ring of truth about it. Further Mr Clarke correctly (in my judgment) analysed a letter dated 23 December 2005 from Norwich Union (which letter set out a repayment amount) as referring to a fixed interest rate rather than a fixed term date. This was despite Mr Ghadami contending otherwise in his cross-examination.

8. Mr Bramidge was an honest and independent witness, albeit that his evidence did not really assist on the matters at issue in the dispute. His evidence was that he had met with Mr Clarke and Mr Ghadami at the offices of Harlow Renaissance Ltd to discuss the redevelopment of Harlow Town Centre. This meeting probably took place on 2 July 2007 (albeit it may have taken place subsequent to 10 July 2007 as an e-mail from Mr Clarke dated 10 July 2007 asks Mr Ghadami to *“Let me have a note of issues you would like me to bring up with Andrew Bramidge”*). A meeting on 2 July 2007 would be consistent with an exchange of e-mails between Mr Clarke and Mr Ghadami on 21 & 29 June 2007 about the arrangements for such a meeting. It seems to be common ground that there was only ever one meeting and that no documents were discussed or produced at this meeting. Thus the letter dated 2 July 2007 addressed *“To whom it may concern”* seems not to have been considered at this meeting.

9. Mr Joseph Ghadami gave evidence but was not substantively cross-examined. This was because his evidence only went to meetings that took place in 2015, which he attended with his father. The fact of these meetings was not in dispute. Mr Joseph Ghadami was not involved in the negotiations and agreement made between his father and Mr Clarke and Mr Kerry in 2005.
10. Unfortunately, Mr Mohammed Ghadami did not impress as a witness. His evidence was rambling and he had a tendency not to answer the question put. This suggested he was trying to be evasive. Also, three matters in particular caused the Tribunal concern about Mr Ghadami's evidence:
- (a) Mr Ghadami told the Tribunal that the accounts of BDL showed: (i) the value of the contract in respect of Rothwell House to be £250,000; and (ii) the value of the Odeon Cinema in West Square to be its open market value of £500,000. The accounts of BDL do not show this. In fact, the accounts of BDL do not record the company as having any assets notwithstanding that it is the registered leasehold proprietor of the Odeon Cinema, having acquired the residue of the 99-year term granted in 1959 on 22 September 2005 for £499,375. Mr Ghadami did not tell the Tribunal he did not know what the accounts said, rather he positively asserted something that was not correct.
 - (b) Mr Ghadami told the Tribunal that the reason for the letter dated 2 July 2007 being written was because Mr Clarke was worried that BDL might require the firm to leave Rothwell House "*immediately*" after completion (see also para.13 of BDL's Statement of Case). But, on any view, the agreement dated 20 July 2005 provided for the firm to have a minimum security of tenure of 9 months after completion. Hence being required to leave "*immediately*" could not have been a concern. Whilst this might be considered a minor point of semantics (or "*being fussy about words*" as Mr Ghadami protested) had it occurred once, Mr Ghadami's exaggeration of the true position was repeated in respect of his assertion that at some time subsequent to 2010 Mr Clarke had agreed that completion should take place at the end of the mortgage term (see also para.17 of BDL's Statement of Case). In fact, the highest Mr Ghadami could put the position in 2014 (in his e-mail dated 20 August 2014) was that "*it was tentatively agreed with JCC that the completion...will be the end of their loan*"

termination with Norwich Union". A tentative agreement falls short of a clear, binding agreement despite Mr Ghadami's protestations to the contrary in cross-examination.

- (c) Mr Ghadami's 4th witness statement dated 2 January 2019 sought to assert that the redevelopment of the Odeon Cinema as a mixed use residential and commercial site with 100 residential units was delayed because of an agreed delayed completion for the purchase of Rothwell House. This cannot be correct as, on any view, no agreement as to delayed completion was made in 2005, yet this is when Mr Ghadami says BDL decided to delay its plans for the Odeon Cinema. Furthermore, in any case, there is no evidence of any planning (or funding) applications in respect of the Odeon Cinema and the lease of the Odeon Cinema provides that the premises are to be used only as a cinema (cl.2(11)(a)) or otherwise as agreed with the lessor and there is nothing to suggest any application for change of use, still less demolition, has been made.

Overall, where Mr Ghadami's evidence was not supported by documentary evidence (and there was little relevant contemporaneous documentary evidence produced by BDL as Mr Ghadami told the Tribunal that he did not take notes of any of the meetings he attended) or where it conflicted with that of Mr Clarke or Mr Kerry, the Tribunal did not feel able to accept it.

11. An oddity of the hearing was that, on the morning of the 2nd day (16 January 2019), Mr Ghadami requested that he (rather than Counsel) be permitted to cross-examine Mr Clarke and Mr Kerry. Mr Ghadami explained that he was not sacking Mr Becker and that BDL wished to retain Mr Becker to make its closing submissions. Mr Ghadami, however, felt that he had the best grasp of the contemporaneous documents in the Hearing Bundles (which ran to 675 pages) and that BDL therefore regarded him as best placed to cross-examine Mr Clarke and Mr Kerry. The Tribunal acceded to this unusual request (Mr Becker having indicated that he was content to proceed on this basis and that he did not regard himself as being in any way professionally embarrassed). Mr Ghadami conducted his cross-examination politely and competently and was able to direct the witnesses to several documents which were relevant to their evidence.

Facts

12. In or about 1991 the equity partners in Attwater & Liell purchased Rothwell House for £725,000. This purchase was funded by an interest-only mortgage from Norwich Union at a fixed 10% interest rate for a 25 year term. Endowment policies secured on the lives of some of the partners were obtained to support this mortgage. In or about 2002 the mortgage was varied so as to allow Attwater & Liell to begin to repay capital as well as interest.
13. Mr Ghadami was, in the early 2000s, a local businessman in Harlow whose principal business was Mo's Leisure, a leisure centre on West Gate, Harlow. Mr Ghadami appears to have instructed Mr Clarke in connection with a dispute with Harlow District Council in late 2001 but they do not appear to have had substantial business or professional dealings prior to 2005 despite being known to one another.
14. In late 2005 BDL acquired an interest in the Odeon Cinema, Harlow. This property is adjacent to Rothwell House. Also, at this time, Harlow District Council and Harlow Renaissance Ltd were promoting plans to redevelop the north end of the Harlow Town Centre in three phases. The third phase of the proposed redevelopment would include Rothwell House and the Odeon Cinema.
15. On 6 December 2005 Mr Clarke met with Mr Ghadami. Mr Kerry was also present at the meeting. As is evident from Mr Clarke's manuscript notes of the meeting, the meeting involved a discussion of possible terms for the sale of Rothwell House. At this time Mr Ghadami was not a director of BDL and his evidence was that he had authority from the directors of BDL, namely a Mr McGovern and a Mr Bloomfield, to negotiate a purchase of Rothwell House. Neither Mr McGovern nor Mr Bloomfield gave evidence as to what the parameters were for any deal to acquire Rothwell House. By e-mail dated 7 December 2005 Mr Ghadami chased Mr Clarke for details of the amount outstanding on the Norwich Union mortgage, as part of the discussions had involved BDL "taking over" the outstanding balance. Mr Clarke provided the details requested on 7 December 2005 and Mr Ghadami seems to have learned that the balance outstanding as at 24 October 2005 was £1,091,045 (as Mr Ghadami has written this in manuscript on his copy of Mr Clarke's e-mail of 7 December 2005).

16. On 8 December 2005 Mr Clarke prepared letters of authority addressed to Norwich Union which gave Mr Ghadami and BDL authority to correspond with Norwich Union about the outstanding mortgage over Rothwell House. Mr Ghadami collected these letters of authority. Mr Clarke's covering letter confirmed that Mr Ghadami's offer in respect of the purchase of Rothwell House was acceptable.
17. On 20 December 2005 a further meeting took place between Mr Clarke, Mr Kerry and Mr Ghadami. At this meeting Mr Clarke tabled a written agreement for the sale of Rothwell House. The agreement was a typed up version of a draft which Mr Clarke had prepared in manuscript save that (in an apparent error by the typist) the words "to terminate" had been omitted from the end of cl.7. The agreement was typed up on Attwater & Liell notepaper and signed by Mr Clarke (for Attwater & Liell) and Mr Ghadami (for BDL). The signatures were witnessed by Mr Kerry and Ms Parsons. The agreement provided as follows:
- "Attwater & Liell (A & L) and Blackraven Developments Limited (BDL)*
Agreement to sell Rothwell House, Harlow, Essex
1. *BDL to pay off or take over Norwich Union Mortgage including the early redemption penalty, so as to secure a release of A & L on or before completion.*
 2. *BDL to pay £250,000 (less deposit paid) on completion.*
 3. *BDL to pay 10% deposit today which is non refundable.*
 4. *Completion 28 days from exchange of contracts.*
 5. *BDL to lease Rothwell House to A & L for a term of up to 3 years.*
 6. *Lease outside Landlord & Tenant Act 1954.*
 7. *Landlord and Tenant can after 6 months or at any time thereafter give 3 months notice.*
 8. *Rent:*
Year 1: £75,000
Year 2: £100,000
Year 3: £125,000
 9. *Tenant to maintain in current state of repair and insure, insurers to note Landlord's interest.*
 10. *This agreement is irrevocable by either side."*
18. Subsequent to the execution of the agreement on 20 December 2005, the due completion date of 17 January 2006 passed without any apparent action by BDL, beyond paying the deposit monies. It seems that, in February 2006, Mr Ghadami requested sight of the relevant endowment policies from Norwich Union and on 6 February 2006 these documents were sent to Mr Clarke. There is no evidence that Mr Clarke forwarded these documents on to Mr Ghadami.

19. On 1 June 2006 Mr Clarke sent an e-mail to Mr Ghadami to tell him that Attwater & Liell had found alternative premises and therefore the firm wanted to proceed with the transfer to BDL. On 7 June 2006 Mr Clarke e-mailed Mr Ghadami in the following terms:

“Mo

*Having found somewhere to move to we are now being pressed to get on with it!!
When do you think you will be able to make some progress ?”*

Mr Ghadami does not appear to have responded to this e-mail. Subsequently (in or about 2008) Mr Clarke reported to the partners of Attwater & Liell (as evidenced by a Briefing Note prepared in connection with merger discussions) that: “[BDL] has not proceeded and in our opinion does not currently have the resources to do so.”. Given what appears from BDL’s filed accounts, this probably accurately represented the position in 2006/2007.

20. During 2007 Mr Clarke and Mr Ghadami appear to have had some limited professional dealings in respect of property transactions involving a Tony & Ann-Marie White and a Glyn Davies. They did not, though, correspond about Rothwell House save that on 2 July 2007 Mr Clarke prepared a letter on Attwater & Liell notepaper addressed to “*To whom it may concern*” which stated as follows:

“Dear Sirs

Re: Rothwell House

I can confirm on behalf of and with the authority of the partners in Attwater and Liell that we have agreed the sale of our freehold property Rothwell House, West Square, Harlow to the property company of Mr Mo Ghadami, Blackraven Developments Ltd.

A price has been agreed but the completion date for the sale is agreed to be at a time to suit us both. As yet no definite decision has been made on timing.

If appropriate we have agreed to take a short term lease of the property following completion of the sale if that is more suitable for our business.

I give Mr Ghadami permission to produce this letter to whomever he wishes in connection with his own plans for Harlow Town Centre and his property adjoining Rothwell House.

Yours faithfully”

21. Mr Clarke could not recall why the letter was written, albeit plainly it was and was not a forgery. Mr Clarke's evidence was that Mr Ghadami must have requested that the letter be written and, given the terms of the letter, this is likely correct. Insofar as the letter suggests that no date had been agreed for completion, the proper analysis is that a date for completion had been fixed in the agreement dated 20 December 2005 (*viz.* 28 days from 20 December 2005), but that neither party had yet made time of the essence of the contract such that the parties were still free to complete notwithstanding that 17 January 2006 had passed. This accords with Mr Kerry's evidence.
22. Again, subsequent to this letter, nothing seems to have happened save that on 23 August 2007 Mr Ghadami made an application to register a unilateral notice against the title to Rothwell House. The Applicant on the Form UN1 was Mr Ghadami and not BDL. The Tribunal accepts (as the Respondents assert at para.31 of their Statement of Case) that the Respondents did not receive a copy of Mr Ghadami's UN1 or otherwise know of his assertions therein.
23. There was no further correspondence about the agreement dated 20 December 2005 until 2010. On 29 July 2010 Mr Clarke e-mailed Mr Ghadami:
- "Dear Mo
How are you ?
Have you any plans for the cinema ? Have you any plans for Rothwell House ?
We need to take a view about our future whereabouts given the faltering plans for Town Centre North. Do you want to proceed to a purchase or is that not on the cards anymore ?"*
- Mr Ghadami responded by e-mail on 30 July 2010:
- "...My plan for Harlow has not changed but delayed due to circumstances with the local authority.
The plans for Town Centre North does not concern me greatly, for your information I am active in acquiring properties in Harlow in order to fulfil my commitment to the Town, needless to say, our agreement with respect to Rothwell House is as strong as ever and I hope you are presently enjoying your refurbished offices at Rothwell House. I have no doubt we will, as previously agreed, finalize the sale/purchase of Rothwell House at an appropriate time convenient to both of us in the future..."*
- No further correspondence seems to have followed.
24. On 19 November 2012, Attwater & Liell having now merged with Jameson & Hill, Mr Tetlow of the merged firm sought to introduce some certainty into the arrangements

with BDL. Mr Tetlow sent to BDL a draft TR1, a draft lease and a recent redemption statement from Norwich Union and proposed that completion should take place within 28 days. BDL did not respond to this letter and so, on 12 February 2013, the Respondents purported to serve on BDL a Notice to Complete. However, the address on the Notice to Complete was incorrect and it was never received by (or validly served upon) BDL.

25. On 6 August 2014 the Respondents applied, in Form UN4, to cancel the unilateral notice registered on 24 August 2007 (and referred to in para.22 above). This application seems to have been withdrawn (although the position is not entirely clear from the documents in the Hearing Bundle).
26. By letter dated 2 October 2015, Messrs Mills & Reeve (who were now instructed on behalf of the Respondents), wrote to BDL enclosing a draft TR1, a draft lease and a recent redemption statement from Norwich Union and proposed that completion should take place 30 days from the date of the letter, i.e. on 1 November 2015. BDL did not take any steps to complete the purchase and, on 10 November 2015, Mills & Reeve sent a formal Notice to Complete which made time of the essence and required the contract to be completed within 10 working days (excluding 10 November 2015). By an e-mail from Joseph Ghadami (for and on behalf of his father) dated 25 November 2015, BDL indicated that it would not be completing pursuant to the Notice to Complete. This was notwithstanding that completing at this time in 2015 would likely have been far cheaper for BDL than completing in 2005 as the amount outstanding on the Norwich Union loan had reduced significantly from the balance of £1,091,045 due as at 24 October 2005. By letter dated 1 December 2015 Mills & Reeve (for and on behalf of the Respondents) gave Notice of the Rescission of the agreement dated 20 December 2005 on the basis that BDL had failed to complete in accordance with the Notice to Complete.
27. On 5 January 2016 the Respondents applied, in Form UN4, to cancel the unilateral notice registered on 24 August 2007 on the basis that the agreement dated 20 December 2005 had been validly rescinded. This application was completed on 3 February 2016. Thereafter on 4 May 2016 Mr Ghadami (as Applicant) made a further application for a unilateral notice, which the Respondents applied to cancel on 8 June

2016. The matter was considered by this Tribunal in REF/2017/0043 and by an Order dated 14 July 2017 Judge Michell ordered that Mr Ghadami's unilateral notice be cancelled because Mr Ghadami (as opposed to BDL) had no interest capable of being protected by notice.

28. On 9 August 2017 BDL made an application for a unilateral notice in Form UN1 and the matter then proceeded as set out in paragraph 3 above.

Law and Discussion

29. Unfortunately, it was not entirely clear from BDL's Statement of Case or from Mr Ghadami's witness statements and skeleton argument, the precise way in which BDL put its case. Mr Becker clarified this in his opening remarks and confirmed that:
- (a) BDL was not seeking to rectify the written agreement dated 20 December 2005, nor seeking to advance any case based upon mistake;
 - (b) BDL contended that the completion date set out in the written agreement dated 20 December 2005 had been varied by the letter dated 2 July 2007; and
 - (c) BDL contended that there had been an oral agreement between Mr Clarke and Mr Ghadami made subsequent to 2010 whereby it had been agreed that the completion date set out in the written agreement dated 20 December 2005 had been varied to 24 June 2016 (being the term date of the Norwich Union mortgage). This agreement was said to give rise to some sort of equitable estoppel.
30. Notwithstanding this confirmation, there remained significant difficulties with BDL's case. The written agreement dated 20 December 2005 provided for: "*Completion 28 days from exchange of contracts*". That plainly means completion 28 days from 20 December 2005 as 20 December 2005 was the date upon which the parties both signed the "*Agreement to sell Rothwell House*". It might (possibly) have been clearer to state "*Completion on 17 January 2006*" but the parties all knew and understood what cl.4 of the agreement meant. Mr Ghadami's attempt to explain in his oral evidence that "*Completion 28 days from exchange of contracts*" meant "*Completion when BDL said so*" was not credible and flew in the face of the express term which Mr Ghadami had agreed when he signed the agreement dated 20 December 2005. It is immaterial that BDL had not sought legal advice before executing the agreement dated 20 December

2005 or that it had been drafted by Mr Clarke. Mr Ghadami chose to sign the agreement on 20 December 2005 because as Mr Kerry told the Tribunal: *“Mr Ghadami was very keen to pursue the matter as soon as possible and wanted a deal concluded...before he left the office.”*

31. For the avoidance of doubt (and although Mr Becker conceded in closing that he did not maintain this argument), the argument suggested at para.11 of BDL’s Statement of Case that it was an implied term of the agreement dated 20 December 2005 that completion should be at a time to suit BDL is misconceived. The date for completion is expressly set out at cl.4 and the Tribunal cannot imply a term into a contract where such implied term would contradict an express term – see e.g. the Privy Council decision in the Australian case of *BP Refinery (Westernport) Pty Ltd v. President, Councillors and Ratepayers of the Shire of Hastings* (1977) 52 ALJR 20.

32. So far as the alleged variation of the completion date said to have occurred in 2007 is concerned, the Tribunal accepts Mr Clarke’s evidence that *“The letter [dated 2 July 2007] would not have been prepared on the basis that it was intended to be some variation of any contractual arrangement that had previously been made.”*. The letter did not, on its face, purport to vary any provision in the agreement dated 20 December 2005, rather it sought to provide information to 3rd parties as to what that agreement provided. Insofar as it stated that completion was at a future date upon which no definite decision had been made this was merely an explanation of the fact that neither party had yet made time of the essence of the contract such that the parties were still free to complete in the future. The letter does not evidence any prior agreement that cl.4 (of the written agreement dated 20 December 2005) should be varied and the Tribunal accepts Mr Clarke’s evidence that (as a matter of fact) there were no meetings during the period 2005-2007 at which any representations were made (by or on behalf of the Respondents) that completion would be at a time to suit BDL.

33. In any case, the agreement dated 20 December 2005 is a contract for the sale of land. By s.2(1) of the Law of Property (Miscellaneous Provisions) Act 1989 any such agreement must be (1) in writing; (2) incorporating all the terms upon which the parties have expressly agreed in one document (or where contracts are exchanged in each); (3) signed by or behalf of each party to the contract. It is well established that

any variation to a material term of a contract for the sale of land must also comply with s.2(1) (see e.g. *McCausland v. Duncan Lawrie* [1997] 1 WLR 38). There is no signed document evidencing any variation of cl.4 of the agreement dated 20 December 2005 and any oral variations could not be operative by reason of s.2(1).

34. Moreover the variation which BDL contends for (as per para.13 of its Statement of Case), *viz.* that completion would take place at some “mutually convenient time”, is, as Mr Becker conceded, too uncertain as to be contractually binding. Such a variation would be likely to serve to render the 20 December 2005 agreement unenforceable for want of certainty as to the agreed completion date and this is wholly contrary to BDL’s case. Furthermore it is not possible (as Mr Ghadami sought to do in his evidence) to equate “mutually convenient time” to “24 June 2016”. The Tribunal is quite satisfied that at no time did Mr Clarke suggest to Mr Ghadami that completion should occur on 24 June 2016 (as Mr Clarke confirms at para.17 of his 1st witness statement) and, indeed, the highest Mr Ghadami could put the position in 2014 (in his e-mail dated 20 August 2014) was that “*it was tentatively agreed with JCC that the completion...will be the end of their loan termination with Norwich Union*”. The Tribunal finds (as a fact) that there was not even a tentative agreement in such terms as Mr Clarke never at any material time proposed such a course.
35. In the circumstances, the Tribunal is satisfied that there was no contractual impediment to the Respondents serving the Notice to Complete dated 10 November 2015. Although the agreement dated 20 December 2005 states at cl.10 that it is “*irrevocable*” this does not mean that the Respondents could not serve a Notice to Complete. Rather the agreement was specifically enforceable by either party at any time whilst it remained on foot and either party could elect to make time of the essence by the service of a Notice to Complete once the party giving notice was ready, willing and able to complete.
36. In closing, Mr Becker sought to argue that the Notice to Complete gave BDL an unreasonably short time to complete. But, given that the agreement dated 20 December 2005 gave a period of 28 days for completion, and, on 2 October 2015, the Respondents gave BDL a period of 30 days to complete (having provided to BDL, under cover of that letter, a draft TR1, a draft lease and a recent redemption statement

from Norwich Union) allowing thereafter a period of 10 working days for completion (excluding the date of service of the Notice to Complete) is not unreasonably short. And Mr Becker was unable to refer the Tribunal to any authorities which might suggest that the period specified in the Notice to Complete was unreasonable. Whilst it may be, as Mr Ghadami suggested at para.13 of his skeleton argument, that BDL could not have raised the purchase finance in the time stipulated by the Notice to Complete, in the absence of any contractual obligation to assist with finance, BDL's difficulties in raising the purchase money are not, as a matter of law, relevant in considering the reasonableness of the time allowed by a notice to complete (per Browne-Wilkinson V.C. in British and Commonwealth Holdings Plc v Quadrex Holdings Inc [1989] QB 842 at 859-860).

37. The Tribunal is thus satisfied that the Respondents were entitled to serve a Notice of Rescission on 1 December 2015 and that the agreement dated 20 December 2005 was validly rescinded on 1 December 2015. The argument that BDL can rely upon some sort of equitable estoppel to maintain the existence now of the agreement dated 20 December 2005 is erroneous. In Dudley Muslim Association v. Dudley MBC [2015] EWCA Civ 1123 the Court of Appeal expressed its doubts as to whether the strict requirements of s.2 of the Law of Property (Miscellaneous Provisions) Act 1989 could be "outflanked" by relying upon a promissory estoppel. Given that s.2 contains specific exemptions for interests arising under constructive or resulting trusts, but no exemption for estoppel-based interests, these doubts seem well-founded. But, in any case, here BDL has failed to establish that any sort of estoppel has arisen:
- (a) The Tribunal finds (as a fact) that no representations were made to BDL that completion would occur on 24 June 2016 (or any other date, other than 28 days after 20 December 2005). Furthermore, the Respondents' inactivity in relation to the completion of the sale of Rothwell House between 20 December 2005 and 2 October 2015 is insufficient to found a promissory estoppel (as is said in Snell's 'Equity' at 12-024: "...the general position is that mere silence and inaction by A cannot found a promissory estoppel.").
 - (b) It is plain from Mr Ghadami's 4th witness statement that BDL did not in any way rely upon any alleged representations from the Respondents. Any alleged representation would (necessarily) have post-dated 20 December 2005 and Mr Ghadami's oral evidence was that the decision to put plans for the

Cinema site on hold was made in 2005. Hence the decision to put the re-development plans on hold was not taken in reliance upon any alleged representation. In any event, the suggestion that BDL did not develop the Odeon Cinema site because of anything said by or on behalf of the Respondents is not credible given that the site has no planning permission, the site cannot be re-developed under the terms of the existing lease and BDL's accounts give no indication that it (BDL) could raise the £9m of funding said by Mr Ghadami to be necessary for the re-development.

- (c) BDL has suffered no detriment by reason of any alleged representations from the Respondents. BDL is a dormant company which has never traded such that it is difficult to see how it could claim to have suffered any detriment. Insofar as BDL failed to complete its purchase of Rothwell House subsequent to December 2005 and prior to 1 December 2015 that was down to the choice/inactivity of BDL and not something that can be laid at the door of the Respondents.

38. Given, then, that the Respondents have validly rescinded the agreement dated 20 December 2005, BDL now has no proprietary (or other) interest in Rothwell House which is capable of being protected by notice. It follows that BDL's unilateral notice should be cancelled.

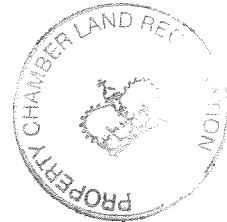
Disposition

39. For the reasons stated above, I am not satisfied that BDL has made out its objections to the cancellation of its unilateral notice. Rather, the Respondents have established that the unilateral notice ought to be cancelled and I will accordingly direct that it now be cancelled.
40. Subject to the necessary applications and any submissions being made I would be minded to order BDL, as the unsuccessful party, to pay the Respondents' costs. If any party wishes to apply for an order for costs they should make an application in writing, accompanied by a schedule of costs, by 21 February 2019. Such an application should be served on the other parties who will then have 14 days to respond to the application by way of written submission sent to the First Tier Tribunal's offices, copying any submissions to the applying party or parties. Any

response to such submissions should be provided to the office and the other party within 14 days of receipt of the submissions.

Dated this 22nd day of January 2019

Andrew Bruce



BY ORDER OF THE TRIBUNAL

REF/2018/0090

PROPERTY CHAMBER, LAND REGISTRATION DIVISION
FIRST-TIER TRIBUNAL

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

BETWEEN

BLACKRAVEN DEVELOPMENTS LIMITED

Applicant

-and-

(1) JONATHAN CHARLES CLARKE
(2) SHEENAGH BERNADETTE JOAN PARSONS
(3) DAVID ANDREW MARTIN FLANAGAN
(4) MANJOT KAUR HENCHIE

Respondents

Property Address: Rothwell House, 2-4 West Square, Harlow, CM20 1LQ

Title Number: EX408764

Before: Judge Bruce
Sitting: Alfred Place, London
On: 15 & 16 January 2019

Applicant Representation: Mr Timothy Becker of Counsel
Respondent Representation: Ms Katie Gray of Counsel

DECISION

Cancellation of Unilateral Notice – Sale Agreements – Notice to Complete – Rescission – Delay - Estoppel

Introduction

1. The Applicant, Blackraven Developments Limited ["BDL"], is a company registered in England & Wales under company number 05274096, which is apparently engaged in property development. Its guiding force is, and has been since he was appointed a director on 30 October 2006, Mr Mohammed Reza Ghadami ["Mr Ghadami"]. The filed company accounts for BDL show that, at all times since its incorporation on 29 October 2004, it has been a dormant company with net assets of £1.

2. The Respondents are the registered freehold proprietors of Rothwell House, 2-4 West Square, Harlow, CM20 1LQ [“Rothwell House”], which is registered at HM Land Registry under title no.EX408764. They are partners in the solicitors’ firm of Attwaters Jameson Hill, which was formed by the merger of the firms of Attwater & Liell and Jameson & Hill in 2012. As at 2005, the Respondents were partners in the firm of Attwater & Liell, which firm had its head office at Rothwell House.

3. On 9 August 2017 BDL registered a unilateral notice against the title to Rothwell House on the basis that it had an interest in the property *“because on 20 December 2005 an irrevocable agreement to sell Rothwell House to [BDL] was reached and signed by both parties concerned. The completion date for the sale is agreed to be at a time to suit both parties. This was discussed to be at the end of the mortgage fixed term, i.e. June 16.”* (per BDL’s UN1 dated 9 August 2017). On 13 October 2017 the Respondents applied to cancel the unilateral notice (albeit that the UN4 refers to the cancellation of a unilateral notice registered on 5 May 2017). The dispute was then referred to the Land Registration division of the Property Chamber, First Tier Tribunal under rule 5 of the Land Registration (Referral to the Adjudicator to HM Land Registry) Rules 2003 and s.73(7) of the Land Registration Act 2002 on 24 January 2018.

The Hearing and the Witnesses

4. Initially BDL joined Attwaters Jameson Hill as a party to these proceedings (in addition to the Respondents). However, by Order dated 17 April 2018, the Tribunal directed that Attwaters Jameson Hill was not a proper party to the reference. By this time, the solicitors who had initially represented BDL, Messrs Wilson Davies & Co., had notified the Tribunal (by letter dated 5 April 2018) that they had ceased to act and at all times thereafter and prior to 15 January 2019 Mr Ghadami represented BDL. By its Order dated 18 April 2018 the Tribunal directed the parties to provide disclosure by 9 May 2018 and exchange witness statements by 6 June 2018. On 19 July 2018 Mr Ghadami notified the Tribunal that he would be unavailable to attend a final hearing during November-December 2018 due to medical and family related matters, but that he would be available during January-February 2019. On 24 July 2018, the Tribunal, having had regard to both parties’ availability fixed the final hearing for 15 & 16 January 2019 in London.

5. On 22 August 2018 Mr Ghadami wrote to the Tribunal requesting that the hearing be re-listed for the first open date after June 2019 as he had received a cancer diagnosis. On 28 August 2018 the Tribunal responded by letter indicating that it was not minded to adjourn the final hearing and would require medical evidence from Mr Ghadami. Some medical evidence was provided and further representations were received from both parties as to the date for the final hearing. On 9 November 2018 the Tribunal notified the parties that it was not persuaded that the final hearing should be adjourned. Mr Ghadami was unhappy with this decision, but on 5 December 2018 the Tribunal refused to re-consider its decision because Mr Ghadami had not provided any further medical evidence as might be material. Mr Ghadami then made another application to adjourn the hearing which included a letter from Dr Pelin Sahin, but on 20 December 2018 the Tribunal refused the application, noting that BDL could be represented by counsel at the hearing.

6. On the first morning of the hearing (15 January 2019) BDL was represented by counsel, Mr Becker. Mr Becker informed the Tribunal that he had only been instructed on 14 January 2019 (on a direct-access basis) and had held a conference with Mr Ghadami and his son on 14 January 2019. Mr Becker had not prepared BDL's skeleton argument (which had been prepared by Mr Ghadami on 8 January 2019) and had not been involved in an application issued by BDL on 4 January 2019 which sought to strike out the Respondents' case. The application dated 4 January 2019 was based upon an assertion that the Respondents could not object to the unilateral notice because they (with the exception of Mr Clarke) were not parties to the agreement dated 20 December 2005 upon which BDL relied. Mr Becker correctly did not press this application on behalf of BDL as it was plain that, for the reasons set out in Ms Gray's Supplemental Skeleton Argument dated 13 January 2019, the Respondents were the proper parties to this reference as they were the registered freehold proprietors of Rothwell House, they had served a Notice to Complete and Notice of Rescission in respect of the agreement dated 20 December 2005 and they had issued the UN4 seeking cancellation of the unilateral notice.

7. At the hearing, the Tribunal heard evidence from five witnesses: Mr Ghadami; Mr Ghadami's son, Mr Joseph Ghadami; Mr David Andrew Bramidge; Mr Jonathan Charles Clarke and Mr David George Kerry. Mr Ghadami and his son are both

directors of BDL. Mr Bramidge had been Chief Executive of Harlow Renaissance Ltd from December 2006 to March 2011. Mr Clarke and Mr Kerry had both been partners in Attwater & Liell. Perhaps unsurprisingly all the witnesses (excepting Joseph Ghadami who was not involved in any of the negotiations or discussions during the period 2005-2007 as he was a minor at this time) struggled to recall the specifics of what was said or done at various meetings which occurred as long as 14 years ago. Nonetheless Mr Clarke and Mr Kerry came across as truthful and impressive witnesses. They both acknowledged when they could not remember specific documents or events, but gave clear evidence of matters they did recall explaining why such matters stuck in their mind, for example Mr Kerry was clear and consistent that at the meeting on 6 December 2005 it was made clear that the endowment policies which supported the Norwich Union mortgage were not part of the sale agreement and indeed there is no reference to these policies in the agreement dated 20 December 2005. Also, Mr Clarke explained that meetings with Mr Ghadami tended to be memorable (and long) and for that reason he tended to avoid them – this candid explanation had the ring of truth about it. Further Mr Clarke correctly (in my judgment) analysed a letter dated 23 December 2005 from Norwich Union (which letter set out a repayment amount) as referring to a fixed interest rate rather than a fixed term date. This was despite Mr Ghadami contending otherwise in his cross-examination.

8. Mr Bramidge was an honest and independent witness, albeit that his evidence did not really assist on the matters at issue in the dispute. His evidence was that he had met with Mr Clarke and Mr Ghadami at the offices of Harlow Renaissance Ltd to discuss the redevelopment of Harlow Town Centre. This meeting probably took place on 2 July 2007 (albeit it may have taken place subsequent to 10 July 2007 as an e-mail from Mr Clarke dated 10 July 2007 asks Mr Ghadami to *“Let me have a note of issues you would like me to bring up with Andrew Bramidge”*). A meeting on 2 July 2007 would be consistent with an exchange of e-mails between Mr Clarke and Mr Ghadami on 21 & 29 June 2007 about the arrangements for such a meeting. It seems to be common ground that there was only ever one meeting and that no documents were discussed or produced at this meeting. Thus the letter dated 2 July 2007 addressed *“To whom it may concern”* seems not to have been considered at this meeting.

9. Mr Joseph Ghadami gave evidence but was not substantively cross-examined. This was because his evidence only went to meetings that took place in 2015, which he attended with his father. The fact of these meetings was not in dispute. Mr Joseph Ghadami was not involved in the negotiations and agreement made between his father and Mr Clarke and Mr Kerry in 2005.
10. Unfortunately, Mr Mohammed Ghadami did not impress as a witness. His evidence was rambling and he had a tendency not to answer the question put. This suggested he was trying to be evasive. Also, three matters in particular caused the Tribunal concern about Mr Ghadami's evidence:
- (a) Mr Ghadami told the Tribunal that the accounts of BDL showed: (i) the value of the contract in respect of Rothwell House to be £250,000; and (ii) the value of the Odeon Cinema in West Square to be its open market value of £500,000. The accounts of BDL do not show this. In fact, the accounts of BDL do not record the company as having any assets notwithstanding that it is the registered leasehold proprietor of the Odeon Cinema, having acquired the residue of the 99-year term granted in 1959 on 22 September 2005 for £499,375. Mr Ghadami did not tell the Tribunal he did not know what the accounts said, rather he positively asserted something that was not correct.
 - (b) Mr Ghadami told the Tribunal that the reason for the letter dated 2 July 2007 being written was because Mr Clarke was worried that BDL might require the firm to leave Rothwell House "*immediately*" after completion (see also para.13 of BDL's Statement of Case). But, on any view, the agreement dated 20 July 2005 provided for the firm to have a minimum security of tenure of 9 months after completion. Hence being required to leave "*immediately*" could not have been a concern. Whilst this might be considered a minor point of semantics (or "*being fussy about words*" as Mr Ghadami protested) had it occurred once, Mr Ghadami's exaggeration of the true position was repeated in respect of his assertion that at some time subsequent to 2010 Mr Clarke had agreed that completion should take place at the end of the mortgage term (see also para.17 of BDL's Statement of Case). In fact, the highest Mr Ghadami could put the position in 2014 (in his e-mail dated 20 August 2014) was that "*it was tentatively agreed with JCC that the completion...will be the end of their loan*

termination with Norwich Union". A tentative agreement falls short of a clear, binding agreement despite Mr Ghadami's protestations to the contrary in cross-examination.

- (c) Mr Ghadami's 4th witness statement dated 2 January 2019 sought to assert that the redevelopment of the Odeon Cinema as a mixed use residential and commercial site with 100 residential units was delayed because of an agreed delayed completion for the purchase of Rothwell House. This cannot be correct as, on any view, no agreement as to delayed completion was made in 2005, yet this is when Mr Ghadami says BDL decided to delay its plans for the Odeon Cinema. Furthermore, in any case, there is no evidence of any planning (or funding) applications in respect of the Odeon Cinema and the lease of the Odeon Cinema provides that the premises are to be used only as a cinema (cl.2(11)(a)) or otherwise as agreed with the lessor and there is nothing to suggest any application for change of use, still less demolition, has been made.

Overall, where Mr Ghadami's evidence was not supported by documentary evidence (and there was little relevant contemporaneous documentary evidence produced by BDL as Mr Ghadami told the Tribunal that he did not take notes of any of the meetings he attended) or where it conflicted with that of Mr Clarke or Mr Kerry, the Tribunal did not feel able to accept it.

11. An oddity of the hearing was that, on the morning of the 2nd day (16 January 2019), Mr Ghadami requested that he (rather than Counsel) be permitted to cross-examine Mr Clarke and Mr Kerry. Mr Ghadami explained that he was not sacking Mr Becker and that BDL wished to retain Mr Becker to make its closing submissions. Mr Ghadami, however, felt that he had the best grasp of the contemporaneous documents in the Hearing Bundles (which ran to 675 pages) and that BDL therefore regarded him as best placed to cross-examine Mr Clarke and Mr Kerry. The Tribunal acceded to this unusual request (Mr Becker having indicated that he was content to proceed on this basis and that he did not regard himself as being in any way professionally embarrassed). Mr Ghadami conducted his cross-examination politely and competently and was able to direct the witnesses to several documents which were relevant to their evidence.

Facts

12. In or about 1991 the equity partners in Attwater & Liell purchased Rothwell House for £725,000. This purchase was funded by an interest-only mortgage from Norwich Union at a fixed 10% interest rate for a 25 year term. Endowment policies secured on the lives of some of the partners were obtained to support this mortgage. In or about 2002 the mortgage was varied so as to allow Attwater & Liell to begin to repay capital as well as interest.

13. Mr Ghadami was, in the early 2000s, a local businessman in Harlow whose principal business was Mo's Leisure, a leisure centre on West Gate, Harlow. Mr Ghadami appears to have instructed Mr Clarke in connection with a dispute with Harlow District Council in late 2001 but they do not appear to have had substantial business or professional dealings prior to 2005 despite being known to one another.

14. In late 2005 BDL acquired an interest in the Odeon Cinema, Harlow. This property is adjacent to Rothwell House. Also, at this time, Harlow District Council and Harlow Renaissance Ltd were promoting plans to redevelop the north end of the Harlow Town Centre in three phases. The third phase of the proposed redevelopment would include Rothwell House and the Odeon Cinema.

15. On 6 December 2005 Mr Clarke met with Mr Ghadami. Mr Kerry was also present at the meeting. As is evident from Mr Clarke's manuscript notes of the meeting, the meeting involved a discussion of possible terms for the sale of Rothwell House. At this time Mr Ghadami was not a director of BDL and his evidence was that he had authority from the directors of BDL, namely a Mr McGovern and a Mr Bloomfield, to negotiate a purchase of Rothwell House. Neither Mr McGovern nor Mr Bloomfield gave evidence as to what the parameters were for any deal to acquire Rothwell House. By e-mail dated 7 December 2005 Mr Ghadami chased Mr Clarke for details of the amount outstanding on the Norwich Union mortgage, as part of the discussions had involved BDL "taking over" the outstanding balance. Mr Clarke provided the details requested on 7 December 2005 and Mr Ghadami seems to have learned that the balance outstanding as at 24 October 2005 was £1,091,045 (as Mr Ghadami has written this in manuscript on his copy of Mr Clarke's e-mail of 7 December 2005).

16. On 8 December 2005 Mr Clarke prepared letters of authority addressed to Norwich Union which gave Mr Ghadami and BDL authority to correspond with Norwich Union about the outstanding mortgage over Rothwell House. Mr Ghadami collected these letters of authority. Mr Clarke's covering letter confirmed that Mr Ghadami's offer in respect of the purchase of Rothwell House was acceptable.
17. On 20 December 2005 a further meeting took place between Mr Clarke, Mr Kerry and Mr Ghadami. At this meeting Mr Clarke tabled a written agreement for the sale of Rothwell House. The agreement was a typed up version of a draft which Mr Clarke had prepared in manuscript save that (in an apparent error by the typist) the words "to terminate" had been omitted from the end of cl.7. The agreement was typed up on Attwater & Liell notepaper and signed by Mr Clarke (for Attwater & Liell) and Mr Ghadami (for BDL). The signatures were witnessed by Mr Kerry and Ms Parsons. The agreement provided as follows:
- "Attwater & Liell (A & L) and Blackraven Developments Limited (BDL)*
Agreement to sell Rothwell House, Harlow, Essex
1. *BDL to pay off or take over Norwich Union Mortgage including the early redemption penalty, so as to secure a release of A & L on or before completion.*
 2. *BDL to pay £250,000 (less deposit paid) on completion.*
 3. *BDL to pay 10% deposit today which is non refundable.*
 4. *Completion 28 days from exchange of contracts.*
 5. *BDL to lease Rothwell House to A & L for a term of up to 3 years.*
 6. *Lease outside Landlord & Tenant Act 1954.*
 7. *Landlord and Tenant can after 6 months or at any time thereafter give 3 months notice.*
 8. *Rent:*
Year 1: £75,000
Year 2: £100,000
Year 3: £125,000
 9. *Tenant to maintain in current state of repair and insure, insurers to note Landlord's interest.*
 10. *This agreement is irrevocable by either side."*
18. Subsequent to the execution of the agreement on 20 December 2005, the due completion date of 17 January 2006 passed without any apparent action by BDL, beyond paying the deposit monies. It seems that, in February 2006, Mr Ghadami requested sight of the relevant endowment policies from Norwich Union and on 6 February 2006 these documents were sent to Mr Clarke. There is no evidence that Mr Clarke forwarded these documents on to Mr Ghadami.

19. On 1 June 2006 Mr Clarke sent an e-mail to Mr Ghadami to tell him that Attwater & Liell had found alternative premises and therefore the firm wanted to proceed with the transfer to BDL. On 7 June 2006 Mr Clarke e-mailed Mr Ghadami in the following terms:

"Mo

*Having found somewhere to move to we are now being pressed to get on with it!!
When do you think you will be able to make some progress?"*

Mr Ghadami does not appear to have responded to this e-mail. Subsequently (in or about 2008) Mr Clarke reported to the partners of Attwater & Liell (as evidenced by a Briefing Note prepared in connection with merger discussions) that: "[BDL] has not proceeded and in our opinion does not currently have the resources to do so.". Given what appears from BDL's filed accounts, this probably accurately represented the position in 2006/2007.

20. During 2007 Mr Clarke and Mr Ghadami appear to have had some limited professional dealings in respect of property transactions involving a Tony & Ann-Marie White and a Glyn Davies. They did not, though, correspond about Rothwell House save that on 2 July 2007 Mr Clarke prepared a letter on Attwater & Liell notepaper addressed to "To whom it may concern" which stated as follows:

"Dear Sirs

Re: Rothwell House

I can confirm on behalf of and with the authority of the partners in Attwater and Liell that we have agreed the sale of our freehold property Rothwell House, West Square, Harlow to the property company of Mr Mo Ghadami, Blackraven Developments Ltd.

A price has been agreed but the completion date for the sale is agreed to be at a time to suit us both. As yet no definite decision has been made on timing.

If appropriate we have agreed to take a short term lease of the property following completion of the sale if that is more suitable for our business.

I give Mr Ghadami permission to produce this letter to whomever he wishes in connection with his own plans for Harlow Town Centre and his property adjoining Rothwell House.

Yours faithfully"

21. Mr Clarke could not recall why the letter was written, albeit plainly it was and was not a forgery. Mr Clarke's evidence was that Mr Ghadami must have requested that the letter be written and, given the terms of the letter, this is likely correct. Insofar as the letter suggests that no date had been agreed for completion, the proper analysis is that a date for completion had been fixed in the agreement dated 20 December 2005 (*viz.* 28 days from 20 December 2005), but that neither party had yet made time of the essence of the contract such that the parties were still free to complete notwithstanding that 17 January 2006 had passed. This accords with Mr Kerry's evidence.
22. Again, subsequent to this letter, nothing seems to have happened save that on 23 August 2007 Mr Ghadami made an application to register a unilateral notice against the title to Rothwell House. The Applicant on the Form UN1 was Mr Ghadami and not BDL. The Tribunal accepts (as the Respondents assert at para.31 of their Statement of Case) that the Respondents did not receive a copy of Mr Ghadami's UN1 or otherwise know of his assertions therein.
23. There was no further correspondence about the agreement dated 20 December 2005 until 2010. On 29 July 2010 Mr Clarke e-mailed Mr Ghadami:
*"Dear Mo
How are you ?
Have you any plans for the cinema ? Have you any plans for Rothwell House ?
We need to take a view about our future whereabouts given the faltering plans for Town Centre North. Do you want to proceed to a purchase or is that not on the cards anymore ?"*
- Mr Ghadami responded by e-mail on 30 July 2010:
*"...My plan for Harlow has not changed but delayed due to circumstances with the local authority.
The plans for Town Centre North does not concern me greatly, for your information I am active in acquiring properties in Harlow in order to fulfil my commitment to the Town, needless to say, our agreement with respect to Rothwell House is as strong as ever and I hope you are presently enjoying your refurbished offices at Rothwell House. I have no doubt we will, as previously agreed, finalize the sale/purchase of Rothwell House at an appropriate time convenient to both of us in the future..."*
- No further correspondence seems to have followed.
24. On 19 November 2012, Attwater & Liell having now merged with Jameson & Hill, Mr Tetlow of the merged firm sought to introduce some certainty into the arrangements

with BDL. Mr Tetlow sent to BDL a draft TR1, a draft lease and a recent redemption statement from Norwich Union and proposed that completion should take place within 28 days. BDL did not respond to this letter and so, on 12 February 2013, the Respondents purported to serve on BDL a Notice to Complete. However, the address on the Notice to Complete was incorrect and it was never received by (or validly served upon) BDL.

25. On 6 August 2014 the Respondents applied, in Form UN4, to cancel the unilateral notice registered on 24 August 2007 (and referred to in para.22 above). This application seems to have been withdrawn (although the position is not entirely clear from the documents in the Hearing Bundle).
26. By letter dated 2 October 2015, Messrs Mills & Reeve (who were now instructed on behalf of the Respondents), wrote to BDL enclosing a draft TR1, a draft lease and a recent redemption statement from Norwich Union and proposed that completion should take place 30 days from the date of the letter, i.e. on 1 November 2015. BDL did not take any steps to complete the purchase and, on 10 November 2015, Mills & Reeve sent a formal Notice to Complete which made time of the essence and required the contract to be completed within 10 working days (excluding 10 November 2015). By an e-mail from Joseph Ghadami (for and on behalf of his father) dated 25 November 2015, BDL indicated that it would not be completing pursuant to the Notice to Complete. This was notwithstanding that completing at this time in 2015 would likely have been far cheaper for BDL than completing in 2005 as the amount outstanding on the Norwich Union loan had reduced significantly from the balance of £1,091,045 due as at 24 October 2005. By letter dated 1 December 2015 Mills & Reeve (for and on behalf of the Respondents) gave Notice of the Rescission of the agreement dated 20 December 2005 on the basis that BDL had failed to complete in accordance with the Notice to Complete.
27. On 5 January 2016 the Respondents applied, in Form UN4, to cancel the unilateral notice registered on 24 August 2007 on the basis that the agreement dated 20 December 2005 had been validly rescinded. This application was completed on 3 February 2016. Thereafter on 4 May 2016 Mr Ghadami (as Applicant) made a further application for a unilateral notice, which the Respondents applied to cancel on 8 June

2016. The matter was considered by this Tribunal in REF/2017/0043 and by an Order dated 14 July 2017 Judge Michell ordered that Mr Ghadami's unilateral notice be cancelled because Mr Ghadami (as opposed to BDL) had no interest capable of being protected by notice.

28. On 9 August 2017 BDL made an application for a unilateral notice in Form UN1 and the matter then proceeded as set out in paragraph 3 above.

Law and Discussion

29. Unfortunately, it was not entirely clear from BDL's Statement of Case or from Mr Ghadami's witness statements and skeleton argument, the precise way in which BDL put its case. Mr Becker clarified this in his opening remarks and confirmed that:
- (a) BDL was not seeking to rectify the written agreement dated 20 December 2005, nor seeking to advance any case based upon mistake;
 - (b) BDL contended that the completion date set out in the written agreement dated 20 December 2005 had been varied by the letter dated 2 July 2007; and
 - (c) BDL contended that there had been an oral agreement between Mr Clarke and Mr Ghadami made subsequent to 2010 whereby it had been agreed that the completion date set out in the written agreement dated 20 December 2005 had been varied to 24 June 2016 (being the term date of the Norwich Union mortgage). This agreement was said to give rise to some sort of equitable estoppel.
30. Notwithstanding this confirmation, there remained significant difficulties with BDL's case. The written agreement dated 20 December 2005 provided for: "*Completion 28 days from exchange of contracts*". That plainly means completion 28 days from 20 December 2005 as 20 December 2005 was the date upon which the parties both signed the "Agreement to sell Rothwell House". It might (possibly) have been clearer to state "*Completion on 17 January 2006*" but the parties all knew and understood what cl.4 of the agreement meant. Mr Ghadami's attempt to explain in his oral evidence that "*Completion 28 days from exchange of contracts*" meant "*Completion when BDL said so*" was not credible and flew in the face of the express term which Mr Ghadami had agreed when he signed the agreement dated 20 December 2005. It is immaterial that BDL had not sought legal advice before executing the agreement dated 20 December

2005 or that it had been drafted by Mr Clarke. Mr Ghadami chose to sign the agreement on 20 December 2005 because as Mr Kerry told the Tribunal: “Mr Ghadami was very keen to pursue the matter as soon as possible and wanted a deal concluded...before he left the office.”.

31. For the avoidance of doubt (and although Mr Becker conceded in closing that he did not maintain this argument), the argument suggested at para.11 of BDL’s Statement of Case that it was an implied term of the agreement dated 20 December 2005 that completion should be at a time to suit BDL is misconceived. The date for completion is expressly set out at cl.4 and the Tribunal cannot imply a term into a contract where such implied term would contradict an express term – see e.g. the Privy Council decision in the Australian case of BP Refinery (Westernport) Pty Ltd v. President, Councillors and Ratepayers of the Shire of Hastings (1977) 52 ALJR 20.
32. So far as the alleged variation of the completion date said to have occurred in 2007 is concerned, the Tribunal accepts Mr Clarke’s evidence that “The letter [dated 2 July 2007] would not have been prepared on the basis that it was intended to be some variation of any contractual arrangement that had previously been made.”. The letter did not, on its face, purport to vary any provision in the agreement dated 20 December 2005, rather it sought to provide information to 3rd parties as to what that agreement provided. Insofar as it stated that completion was at a future date upon which no definite decision had been made this was merely an explanation of the fact that neither party had yet made time of the essence of the contract such that the parties were still free to complete in the future. The letter does not evidence any prior agreement that cl.4 (of the written agreement dated 20 December 2005) should be varied and the Tribunal accepts Mr Clarke’s evidence that (as a matter of fact) there were no meetings during the period 2005-2007 at which any representations were made (by or on behalf of the Respondents) that completion would be at a time to suit BDL.
33. In any case, the agreement dated 20 December 2005 is a contract for the sale of land. By s.2(1) of the Law of Property (Miscellaneous Provisions) Act 1989 any such agreement must be (1) in writing; (2) incorporating all the terms upon which the parties have expressly agreed in one document (or where contracts are exchanged in each); (3) signed by or behalf of each party to the contract. It is well established that

any variation to a material term of a contract for the sale of land must also comply with s.2(1) (see e.g. *McCausland v. Duncan Lawrie* [1997] 1 WLR 38). There is no signed document evidencing any variation of cl.4 of the agreement dated 20 December 2005 and any oral variations could not be operative by reason of s.2(1).

34. Moreover the variation which BDL contends for (as per para.13 of its Statement of Case), viz. that completion would take place at some “mutually convenient time”, is, as Mr Becker conceded, too uncertain as to be contractually binding. Such a variation would be likely to serve to render the 20 December 2005 agreement unenforceable for want of certainty as to the agreed completion date and this is wholly contrary to BDL’s case. Furthermore it is not possible (as Mr Ghadami sought to do in his evidence) to equate “mutually convenient time” to “24 June 2016”. The Tribunal is quite satisfied that at no time did Mr Clarke suggest to Mr Ghadami that completion should occur on 24 June 2016 (as Mr Clarke confirms at para.17 of his 1st witness statement) and, indeed, the highest Mr Ghadami could put the position in 2014 (in his e-mail dated 20 August 2014) was that “*it was tentatively agreed with JCC that the completion...will be the end of their loan termination with Norwich Union*”. The Tribunal finds (as a fact) that there was not even a tentative agreement in such terms as Mr Clarke never at any material time proposed such a course.
35. In the circumstances, the Tribunal is satisfied that there was no contractual impediment to the Respondents serving the Notice to Complete dated 10 November 2015. Although the agreement dated 20 December 2005 states at cl.10 that it is “*irrevocable*” this does not mean that the Respondents could not serve a Notice to Complete. Rather the agreement was specifically enforceable by either party at any time whilst it remained on foot and either party could elect to make time of the essence by the service of a Notice to Complete once the party giving notice was ready, willing and able to complete.
36. In closing, Mr Becker sought to argue that the Notice to Complete gave BDL an unreasonably short time to complete. But, given that the agreement dated 20 December 2005 gave a period of 28 days for completion, and, on 2 October 2015, the Respondents gave BDL a period of 30 days to complete (having provided to BDL, under cover of that letter, a draft TR1, a draft lease and a recent redemption statement

from Norwich Union) allowing thereafter a period of 10 working days for completion (excluding the date of service of the Notice to Complete) is not unreasonably short. And Mr Becker was unable to refer the Tribunal to any authorities which might suggest that the period specified in the Notice to Complete was unreasonable. Whilst it may be, as Mr Ghadami suggested at para.13 of his skeleton argument, that BDL could not have raised the purchase finance in the time stipulated by the Notice to Complete, in the absence of any contractual obligation to assist with finance, BDL's difficulties in raising the purchase money are not, as a matter of law, relevant in considering the reasonableness of the time allowed by a notice to complete (per Browne-Wilkinson V.C. in *British and Commonwealth Holdings Plc v Quadrex Holdings Inc* [1989] QB 842 at 859-860).

37. The Tribunal is thus satisfied that the Respondents were entitled to serve a Notice of Rescission on 1 December 2015 and that the agreement dated 20 December 2005 was validly rescinded on 1 December 2015. The argument that BDL can rely upon some sort of equitable estoppel to maintain the existence now of the agreement dated 20 December 2005 is erroneous. In *Dudley Muslim Association v. Dudley MBC* [2015] EWCA Civ 1123 the Court of Appeal expressed its doubts as to whether the strict requirements of s.2 of the Law of Property (Miscellaneous Provisions) Act 1989 could be "outflanked" by relying upon a promissory estoppel. Given that s.2 contains specific exemptions for interests arising under constructive or resulting trusts, but no exemption for estoppel-based interests, these doubts seem well-founded. But, in any case, here BDL has failed to establish that any sort of estoppel has arisen:
- (a) The Tribunal finds (as a fact) that no representations were made to BDL that completion would occur on 24 June 2016 (or any other date, other than 28 days after 20 December 2005). Furthermore, the Respondents' inactivity in relation to the completion of the sale of Rothwell House between 20 December 2005 and 2 October 2015 is insufficient to found a promissory estoppel (as is said in Snell's 'Equity' at 12-024: "...the general position is that mere silence and inaction by A cannot found a promissory estoppel.>").
 - (b) It is plain from Mr Ghadami's 4th witness statement that BDL did not in any way rely upon any alleged representations from the Respondents. Any alleged representation would (necessarily) have post-dated 20 December 2005 and Mr Ghadami's oral evidence was that the decision to put plans for the

Cinema site on hold was made in 2005. Hence the decision to put the re-development plans on hold was not taken in reliance upon any alleged representation. In any event, the suggestion that BDL did not develop the Odeon Cinema site because of anything said by or on behalf of the Respondents is not credible given that the site has no planning permission, the site cannot be re-developed under the terms of the existing lease and BDL's accounts give no indication that it (BDL) could raise the £9m of funding said by Mr Ghadami to be necessary for the re-development.

(c) BDL has suffered no detriment by reason of any alleged representations from the Respondents. BDL is a dormant company which has never traded such that it is difficult to see how it could claim to have suffered any detriment. Insofar as BDL failed to complete its purchase of Rothwell House subsequent to December 2005 and prior to 1 December 2015 that was down to the choice/inactivity of BDL and not something that can be laid at the door of the Respondents.

38. Given, then, that the Respondents have validly rescinded the agreement dated 20 December 2005, BDL now has no proprietary (or other) interest in Rothwell House which is capable of being protected by notice. It follows that BDL's unilateral notice should be cancelled.

Disposition

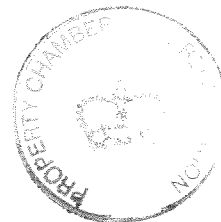
39. For the reasons stated above, I am not satisfied that BDL has made out its objections to the cancellation of its unilateral notice. Rather, the Respondents have established that the unilateral notice ought to be cancelled and I will accordingly direct that it now be cancelled.

40. Subject to the necessary applications and any submissions being made I would be minded to order BDL, as the unsuccessful party, to pay the Respondents' costs. If any party wishes to apply for an order for costs they should make an application in writing, accompanied by a schedule of costs, by 21 February 2019. Such an application should be served on the other parties who will then have 14 days to respond to the application by way of written submission sent to the First Tier Tribunal's offices, copying any submissions to the applying party or parties. Any

response to such submissions should be provided to the office and the other party within 14 days of receipt of the submissions.

Dated this 22nd day of January 2019

Andrew Bruce



BY ORDER OF THE TRIBUNAL

