UPPER TRIBUNAL (LANDS CHAMBER)

UT Neutral citation number: [2016] UKUT 113
UTLC Case Number: ACQ/56/2015

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

IN THE MATTER OF A NOTICE OF REFERENCE FOR COMPENSATION UNDER THE COMPULSORY PURCHASE (VESTING DECLARATIONS ACT) 1981.

COMPENSATION – LIMITATION – Compulsory Purchase – whether the Reference to the Tribunal is barred by s 10(3) of the Act – whether the Claimant knew or could reasonably be expected to have known that its interest in the acquired land vested in the Acquiring Authority more than 6 years before the Notice of Reference to the Tribunal.

BETWEEN

OVERSEAS PLASTIC IMPORT EXPORT LIMITED **Claimant**

and

GREATER LONDON AUTHORITY **Acquiring Authority**

Re: Site of disused public house known as the Two Brewers,
197 High Street,
Stratford
London

His Honour Judge Behrens

Royal Courts of Justice, Strand, London WC2A 2LL
on
25 February 2016

Simon Pickles (instructed by Greenwood & Co) for the Claimant
*Richard Glover QC (*instructed by Eversheds LLP) for the Acquiring Authority

No case is referred to in this decision:

DECISION

Introduction

1. This is the trial of the preliminary issue of the claim by the Claimant ("OPEIL") for compensation following the compulsory purchase of the former public house called the Two Brewers 197 High Street, Stratford E15 ("Plot 746") by the London Development Agency ("the LDA") in 2007. The Greater London Authority ("the GLA") is the statutory successor in title with effect from 31 March 2012 to the LDA.

2. It is common ground that title to Plot 746 vested in the LDA on 3 May 2007 pursuant to the General Vesting Declaration ("GVD4") made by the LDA on 30 March 2007. On 17 July 2009 an advance payment of £387,000 plus interest was made in respect of OPEIL's interest in Plot 746.

3. On 14 May 2015 a Notice of Reference was filed with the Tribunal. The preliminary issue concerns the question of whether the claim is barred by the provisions of section 10(3) of the 1981 Act which provides:

> "The time within which a question of disputed compensation arising out of an acquisition of an interest in land in respect of which a notice to treat is deemed to have been served by virtue of Part III of this Act may be referred to the Upper Tribunal shall be six years from the date at which the person claiming compensation, or a person under whom he derives title, first knew or could reasonably be expected to have known, of the vesting of the interest by virtue of Part III of this Act".

4. The parties agree that the claim in respect of Plot 746 will be statute barred if OPEIL first knew or could reasonably be expected to have known of the vesting of the interest in Plot 746 before 15 May 2009.

5. The GLA relies on three matters in support of the argument that the claim is statute barred:

1. Letters dated 2 April 2007 and 11 April 2007 which were sent by its solicitors, Eversheds to the registered office of OPEIL. The first of these letters refers to the anticipated vesting date of 3 May 2007. The second confirms the actual vesting date as 3 May 2007.

2. A series of letters sent by its surveyors, Gerald Eve, to Mr Halpern between 2007 and 2009. The most important of these letters is dated 27 April 2007. Although sent to the registered office of OPEIL this letter was also faxed to Mr Halpern on 4 May 2007 following a telephone conversation between Mr Gillington, the partner at Gerald Eve with conduct of the matter, and Mr Halpern. Whilst much of the letter (which is headed without prejudice) confirms a settlement proposal, the first paragraph expressly refers to the legal title vesting on 3 May 2007. The letter of 27 April 2007 was referred to in a number of subsequent letters including letters dated 13 June 2007, 1 August 2007, 29 February 2008, and 8 May 2009.

The first 3 of these letters were sent to OPEIL's registered office. The letter of 8 May 2009 was sent to OPEIL's business address and included a copy of the letter of 27 April 2007. The letter of 13 June 2007 was copied to OPEIL's solicitors – Greenwood & Co Solicitors.

3. Following telephone conversations between Mr Gillington and Mr Halpern on 23 and 28 April 2009, Mr Halpern, on behalf of OPEIL submitted a formal application for an advance payment on 28 April 2009. Under s 52(1) of the Land Compensation Act 1973 an application for an advance payment can only be made after the vesting of the land. Mr Halpern was aware of this and thus must have been aware that Plot 746 had vested in the LDA on 28 April 2009.

6. OPEIL seeks to avoid these arguments in a number of ways:

1. Mr Halpern has no recollection of receiving the letters of 2 and 11 April 2007 and OPEIL invites the Court to accept that he did not see them. A number of factors are said to support that view.

2. For a variety of reasons the Court should not infer knowledge from the letter of 27 April 2007.

3. In March 2013 Mr Halpern gave instructions to his solicitors to make a reference to the Tribunal in respect of 2 properties – Plot 746 and Plot 745 – the adjoining Plot which was owned by Alphachoice Ltd, a company also under the control of Mr Halpern. He was asked by his solicitor to produce the vesting order. As a result of a "frantic search" he came across a letter dated 18 June 2009 addressed to OPEIL in respect of the same CPO which referred to a vesting date of 7 July 2009. Mr Halpern believed that this letter referred to Plot 746 and thus the vesting date for Plot 746 was July 2009. As a result his solicitor deleted Plot 746 from that reference. In fact the letter of 18 June 2009 referred to a different piece of land (Plot 731) which vested in the LDA under a General Vesting Declaration dated 3 June 2009 ("GVD19").

7. The only witness to give oral evidence was Mr Halpern, the Managing Director and controlling mind of OPEIL. Two witness statements were exchanged in support of the LDA's case – one from Ms Naylor, the partner at Eversheds, the firm responsible for the letters of 2 and 11 April 2007, and one from Mr Gillington. Neither of these witnesses was cross-examined and thus their evidence in relation to the preliminary issue was read.

The facts

Mr Halpern

8. Mr Halpern was the controlling mind and Managing Director of a number of companies including OPEIL, Clearun Ltd, Alphachoice Ltd and Dominion Mosaic and Tile Co Ltd. The companies were the owners of 4 pieces of land which were the subject of Compulsory Purchase Orders.

9. All of the Companies used the same registered office, 1075 Finchley Road, London NW11. In 2007 Mr Halpern's companies traded from premises in 44 Marshgate Lane, Stratford. Mr Halpern was aware that correspondence was sent to the registered office from time to time. Mr Halpern said that there was a system for collecting documents sent to the registered office. If there were a lot of documents he would organise a van to collect them. Otherwise they would be forwarded to his trading premises. He said that the LDA often sent large numbers of documents in boxes. In those cases he would organise collection. He stated that the system worked.

10. However at the time he was in the process of moving his offices to new premises in Bull Lane, Edmonton. It was a move that took nearly 2 years to complete mainly because of the large number of tiles that had to be transferred.

11. However Mr Halpern said that there were a large number of documents (more than 15,000) to be transferred many of which related to Clearun Ltd's claim for compensation. He accepted that there was no organised filing system for documents. He also accepted that some documents could have gone astray in the move. He was not in a position to say whether the letters of 2 and 11 April 2011 were or were not contained in the documents at the Bull Lane warehouse.

The Eversheds correspondence

12. It was conceded by Mr Pickles at the hearing that both of the letters sent by Eversheds were received at OPEIL's registered office. It is thus not necessary to refer to the evidence relating to posting or to the authority referred to by Mr Glover QC in relation to the presumptions which would have applied in the absence of the concession.

13. The letter of 2 April 2007 confirmed, in paragraph 3, that title to the land specified in the Notice of Making will vest in the acquiring authority

> "at the end of the period of 28 days from the date on which service of the Notices is completed".

14. Paragraph 1 of the Notice of Making also made clear that title to the land will so vest, and the letter also stated that

> "the Agency will in due course tell you the date on which service of the notices was completed".

15. The letter gave an anticipated date of vesting of 3 May 2007.

16. The letter of 11 April 2007 confirmed that service of the Notices had been completed and in a number of places confirmed the date of vesting as 3 May 2007. It included:

> "For the avoidance of doubt, as of 3 May 2007, the Agency will be the owner of the property which you formerly owned and/or occupied and any interest you had in the property will, as of that date, be converted into a right to compensation".

17. As already noted Mr Halpern has now no recollection of reading those letters. He did not know if they were within the archive of documents at his office premises. He had not carried out a search for them.

The Gerald Eve correspondence

18. Gerald Eve, wrote on a number of occasions to OPEIL during the period before the CPO was confirmed. Some of the letters were copied to OPEIL's solicitors. All of these letters were addressed to OPEIL at 1075 Finchley Road, London. This was the address provided by OPEIL on the signed Land Referencing Form.

19. Gerald Eve made an offer on behalf of the LDA to acquire OPEIL's interest in Plot 746 and had been seeking to engage OPEIL in negotiations. Mr Halpern did not respond to these overtures.

20. On 27 April 2007 Gerald Eve wrote again to OPEIL at its registered office. The first paragraph of the letter stated

> "that you have now been served with a Notice of Intention to vest, which vests the legal title of your interest in the LDA on 3 May 2007".

21. In the remainder of the letter Gerald Eve repeated the offer made by the LDA to acquire Plot 746.

22. As noted above the letter was faxed to Mr Halpern on 4 May 2007. In evidence he accepted that he had received it and read it. He however understood it to relate to the negotiations for the compensation in respect of his interest. In evidence Mr Halpern said that if he had thought it related to the vesting of his interest he would have copied it to his solicitor.

23. On 13 June 2007 Gerald Eve wrote to OPEIL As noted above the letter refers to the letter of 27 April 2007 and was copied to OPEIL's solicitors. It informed OPEIL that the LDA was in a position to make an advance payment.

24. There was no response to this letter or to chasing letters sent by Gerald Eve on 1 August 2007 or 29 February 2008.

25. Eventually following telephone conversations between Mr Gillington and Mr Halpern on 23 and 28 April 2009, Mr Halpern, on behalf of OPEIL, submitted a

formal application for an advance payment on 28 April 2009. When he gave evidence he readily accepted that he was aware that an advance payment could not be made before the vesting of Plot 746 in the LDA.

Factors relied on by OPEIL

26. Mr Pickles relied on a number of matters as tending to support the conclusion that the claim was not statute barred.

27. First, he relied on the fact that the letters of 2 and 11 April 2007 were sent only to OPEIL's registered office and not copied to its solicitors. He pointed out that Mr Halpern was heavily engaged in the move to the new premises in Edmonton.

28. Second, he relied on the removal of Plot 746 from the Alphachoice Ltd reference in March 2013. He described this as an "own goal" making the point that it was a strong indication that Mr Halpern did not know the vesting date for Plot 746.

29. Third, he relied on evidence contained in Mr Halpern's second witness statement which was filed shortly before the hearing. In this statement Mr Halpern explained that rent/licence fees were collected by an associate company of OPEIL until January 2009 in respect of advertisements placed on hoardings on Plot 746.

30. Fourth, he made a number of points about the letters of 2, 11 and 27 April 2007. He pointed out that the letter of 2 April 2007 did not give a specific date for the vesting of Plot 746. It gave an anticipated date but at that time the date was not certain. Whilst he accepted that the letter of 11 April 2007 gave a certain date for the vesting it was a date in the future. As to the letter of 27 April 2007 He pointed out that the vesting date was contained in a letter headed without prejudice, that it was a report of what others had told Gerald Eve and that the majority of the letter was concerned with the offer of compensation.

Discussion and Conclusions

31. Despite the forceful arguments of Mr Pickles I have come to the clear conclusion that this claim is statute barred.

32. I accept that in March 2013 Mr Halpern was unaware of the vesting date of Plot 746. That explains the search for documents in answer to the request from his solicitor. It also explains the mistake he made in relying on the letter of 18 June 2009 which in fact referred to Plot 731. However it is to my mind impossible to draw any inference from this as to Mr Halpern's knowledge in 2007 and 2009.

33. Equally, I do not feel able to draw any inference from the continued collection of advertising rent until January 2009. It was accepted that Mr Halpern's filing system

was inadequate. Furthermore at that time Mr Halpern was heavily involved in the move. The same may apply to his administration generally. The continued collection of rent is consistent with an inadequate administration rather than with a belief that OPEIL still owned Plot 746. Furthermore if Mr Halpern genuinely believed that OPEIL owned Plot 746 in January 2009 it is not clear why he did not renew the advertising contract when it expired.

34. It is accepted that the letters of 2 and 11 April 2007 were received at OPEIL's registered office. It is accepted that there was a system for transferring those letters to OPEIL's offices at Marshgate Lane. It is accepted that that system worked. There has been no thorough search of OPEIL's archive to discover whether the letters are in fact there. In my view it is more probable than not that those 2 letters did arrive at Marshgate Lane and were seen by Mr Halpern. Even if I am wrong about that I agree with Mr Glover QC that when a company receives a letter at its registered office it can reasonably be expected that it knows of the contents of that letter.

35. Despite the ingenious suggestions of Mr Pickles a fair reading of the three crucial letters can only lead to the conclusion that Plot 746 vested in the LDA on 3 May 2007. It is true that the letters were written before 3 May 2007. However once the relevant notices have been served vesting takes place as a matter of law. In my view the terms of the letter of 11 April 2007 could not be clearer. In my view anyone reading those 3 letters could reasonably be expected to know that Plot 746 vested on 3 May 2007.

36. The matter does not end there. The application for an interim payment on 28 April 2009 could only be made after the vesting of the land in the LDA. Mr Halpern was aware of this. Thus he knew by that date that Plot 746 had vested.

37. For all these reasons I am satisfied that the claim is statute barred and falls to be dismissed.

Dated: 3 March 2016

John Behrens

His Honour Judge Behrens