



Neutral Citation Number: [2022] EWHC 2375 (Ch)

Case No: PT-2022-000082

IN THE HIGH COURT OF JUSTICE
BUSINESS & PROPERTY COURTS OF ENGLAND & WALES
PROPERTY, TRUSTS AND PROBATE LIST (ChD)

Rolls Building
7 Rolls Buildings
Fetter Lane
London EC4A 1NL

Date: Wednesday, 8th June 2022
Start Time: 15.30 Finish Time: 16.10

Before:

MASTER KAYE

Between:

**ALISON COURT MANAGEMENT COMPANY
LTD**

Claimant

- and -

THE CROWN ESTATE COMMISSIONERS

Defendant

MISS EMILIA CARSLAW (instructed by Machins Solicitors LLP) for the Claimant
The Defendant was neither present nor represented

JUDGMENT

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2nd Floor, Quality House, 6-9 Quality Court, Chancery Lane, London WC2A 1HP.
Telephone No: 020 7067 2900. DX 410 LDE
Email: info@martenwalshcherer.com
Web: www.martenwalshcherer.com

MASTER KAYE:

1. This is the disposal hearing of the Part 8 claim issued on 4th February 2022 by Alison Court Management Company Ltd (“Alison Court”). It is supported by a witness statement from Ms Hurst, a director and shareholder in Alison Court Management Co. Ltd. and also a leaseholder and flat owner of Flat 8 at Alison Court.
2. Alison Court was built in the early 1990s by a group of companies known collectively as Alath and consists of nine flats. Some of the land on which Alison Court was constructed was owned by Alath Construction (Jersey) Limited, a Jersey registered company, and some of the land was owned by Alath Construction Limited, an English registered company. As far as it has been possible to establish what happened in the 1990s it appears that there were three parcels of land. Alath Jersey held the freehold title of two of them and Alath UK the other freehold title. The titles are for the purposes of this application in effect overlapping in that the flats are not neatly built within the boundaries of each of the freehold titles consequently some of the flats straddle more than one title.
3. In substance the application that is seeks an order that the freehold titles that were held by the two Alath companies to be vested in Alison Court. I am being asked to exercise the power to make a vesting order under section 181 of the Law of Property Act 1925.
4. The documents evidencing what happened when the flats were built in the 1990’s are sparse. Doing the best I can what appears to have happened is that following the development of the flats and thus the creation of Alison Court

there was an intention on the part of the developers, Alath, that the freehold titles would be transferred into Alison Court Management Company Ltd, and Alison Court would then become the freehold owner of the buildings in which the flats were. The flats were to be sold on long leases with each flat owner owning a share in the company and a share in the freehold. A fairly common structure of ownership for many types of development of that type.

5. There are limited documents from the 1990s. Ms Hurst did not acquire her flat until after the events to which this application relates took place. The problem that has arisen is that for reasons that are not clear it appears that the freehold titles were never vested in Alison Court. This is despite the fact that the limited evidence available suggests that Alath's solicitors, Parrott & Coales, acting on that transfer believed that they had effected the transfer.

6. In July 1995 Parrott & Coales said to the flat owner at No. 9 Alison Court, "We are now vesting the freehold into the name of Alison Court Management Co. Ltd and we will be in a position to transfer issued shares in the company to each of the lessees of Alison Court as soon as all the arrears are paid by the various lessees to us. The amount due from you [this was to the owner of No.9] is £962.50 as set out in the letter of 7th June." It is clear from limited correspondence available that there was ongoing communication with Parrott & Coales through this period in relation to the transfer and some arrears payments. There is evidence to show that the arrears in relation to No 9 were paid during the course of 1995. The solicitor acting for Alath at the time was also a director of Alison Court.

7. The understanding at Alison Court and Parrot & Coales seems to have been that the transfer completed after that. The next relevant documents are in 1997. By 1997 both the Alath companies appear to have been dissolved. Alath Jersey had been dissolved on 23rd November 1995, and Alath UK entered into a receivership by July 1995, and was dissolved in or around 1996.
8. For completeness when a foreign company such as Alath Jersey is dissolved owning land the land escheats to the Crown. This causes the freehold to determine and engages section 181 Law of Property Act. In relation to Alath UK the dissolution would not itself cause the land to escheat but rather to pass bona vacantia. However, the Crown disclaimed the title in April 2010. Once the title was disclaimed the land that had been held by Alath UK also passed escheat to the Crown. Alath UK has not been restored. Thus, by different routes at the time of this hearing the court only needs to engage with one regime that relating to escheat.
9. In 1997, Mr. Humfrey and Miss Ives, the then owners of Flat 4 Alison Court, who were proposing to sell their flat. Their solicitors were responding to leasehold enquiries and were seeking confirmation that the freehold had been transferred to the management company.
10. On 3 March 1997, Parrott & Coales responded, confirming that “the freehold reversion is vested in Alison Court Management Company Limited”. The assumption on the part of Parrott & Coales was they had completed the transfer and registration of the freehold reversion to Alison Court but as history now relates that was not the case, the titles to the three freeholds still

sit with the dissolved Alath companies and therefore have escheated to the Crown.

11. The letter explains that Alison Court was controlled by a director of Alath and the writer (who was a director of Alison Court in 1995), until 10 July 1996, when management of the company was transferred to two of the nominees, of the lessees, namely, Miss Nicky Martin, Flat 5, and Mr. Howard Morgan of Flat 7. The writer a Mr Taylor explains that at the time of the transfer of the management to Miss Martin and Mr Morgan there was a sum of £217.75 due to Parrott & Coales. He says that the two new directors undertook to pay if he handed over the deeds and documents. He concludes that they reneged on that agreement and this firm is still owed the money.
12. However, the letter appears to clearly evidence that Parrott & Coales, the former directors of Alison Court and a director of Alath considered that by March 1997 the freehold reversion had transferred. Given the distance in time that seems to me to be good evidence that by 1997 everybody believed that all the necessary steps had been completed by about July 1996 to transfer the freehold to Alison Court.
13. Alison Court was incorporated in about 1991 and Ms Hurst's evidence is that it had been managing Alison Court including the common parts since its incorporation. Alison Court continued to manage Alison Court after 1995 and the evidence on this application from about 1995, have continued to manage Alison Court and there are various financial accounts provided in the bundle for various years thereafter. It is clear from the accounts they expended money on the upkeep of the freehold and generally maintained the estate, all

of which is consistent with an understanding that they owned the freehold. The evidence demonstrates that it has collected in monies from the leaseholders to carry out works, it has insured, it has provided accounts, and it has made this application.

14. Surprisingly, at no time until relatively recently was the issue that Alison Court were not in fact the registered freeholder and raised on any sale. I do not know how many times the flats have been transferred or sold since 1995 but it is only more recently that issue arose, and the current state of affairs was identified. Indeed, Ms Hurst's evidence is that when she purchased in 1998, she was advised that Alison Court was the freeholder, and she says that all the documents that she was provided during the course of the purchase confirmed this. She says at paragraph 16 of her statement that she has spoken to the other leaseholders, and they have all advised her that they believed that Alison Court was the owner.

15. In 2017, the current directors contacted Burges Salmon, who represent the Crown having discovered the potential problem. Burges Salmon indicated that Alison Court would have to apply to court for a vesting order but also indicated that it was unlikely that the Crown would oppose such an application. The Claim and supporting evidence has been served on the Crown Estate Commissioners and there is a certificate of service although unusually no Acknowledgment of Service has been filed. There is no explanation today as to why no application was made until 2022. Given the time that had already passed since the events in question it makes no particular difference to this application in the circumstances.

16. The power of the court under section 181 is a discretionary power but there are conditions that need to be satisfied. The first condition is that by reason of dissolution the legal estate has determined. In this case, as I have already indicated, both of the companies are now dissolved, Alath Jersey in 1995 with the effect of the dissolution being that the land escheats to the Crown and Alath UK in 1996 with the Crown then disclaiming in 2010 such that the land escheats to the Crown. Ms Carlaw on behalf of Alison Court was not able to provide any explanation and history does not relate why the disclaimer only took place in 2010 and what may have triggered it. The fact is that all three freehold titles/the land and thus the legal estate for the purposes of section 181 have been determined thus the first condition necessary to make a vesting order under section 181 is satisfied.
17. The second condition requires the claimant to establish their entitlement to the properties had there remained a subsisting estate. I was referred to the decision of Roth J in *UBS Global Asset Management (UK) Ltd v Crown Estate Commissioners* [2011] EWHC 3367 (“*UBS*”) and *Quadracolour Ltd v Crown Estate Commissioners* [2013] EWHC 3368 (Ch) (“*Quadracolour*”). I have already referred to the limited evidence available.
18. There is no obvious other competing claim to these titles other than Alison Court or the dissolved companies, the dissolved companies have not been reinstated over the last 27 years. As Ms Carlaw argued such evidence as there is satisfies me that on the balance of probabilities there was certainly an expectation, but it appears to me, more than that, there was an agreement that following completion of the development the freeholds would be transferred to

Alison Court Management Company Limited which was already managing Alison Court. And as is not unusual the Alath companies would then be wound up and dissolved.

19. Although we do not have a copy of the agreement, we have the correspondence, limited as it is, from the Parrot & Coales. The solicitor was a director of Alison Court together with a director of Alath. Had there been any doubt about the intentions in relation to Alison Court and the transfer the directors of Alison Court were in a particularly good position at the time to have corrected the information provided by Parrot & Coales. There is no evidence that suggests that the directors of Alison Court or Alath sought to counter Parrot & Coales assertion that the transfer had taken place. And indeed, the Alath companies were then dissolved in short order. The correspondence confirms that both Alison Court and Alath appear to consider that the freehold property had already been transferred in about July 1996. The nature of the correspondence, who it was written by and the evidence of the intended purpose for Alison Court and the transfer is compelling evidence that some agreement had been reached to transfer the freehold titles to Alison Court following the completion of the development at Alison Court.
20. Thus, it seems to me, this is a case where the court can be satisfied to the relevant standard that the entitlement to the properties is that of Alison Court.
21. As Ms Carslaw pointed to in both *Quadracolour Mr. Cousins*, QC, and in *UBS Roth J*, said that it was not relevant if some further steps might have been needed in order to render the claimant's rights enforceable. Here, of course, the solicitors thought that they had already completed the transfer albeit the

time at which they appeared to have been doing it, it is possible the companies had already, or at least one of them, may have been dissolved which raises the question of how they thought they had achieved that. Ms Carslaw argues that the only reason the freehold titles had not been transferred and did not vest in Alison Court in 1995/1996 was because of the failure by Alath's solicitors to realise that it had not taken sufficient steps to effect the agreement and carry out the transfer. As I have noted it is certainly the case that by March 1997 Alath's solicitors believed they had done so in 1996. Further she argues that Alath Jersey and Alath UK's intervening dissolutions meant that those steps could not then be completed in any event.

22. In this case, unlike in *Lizzium Estates Limited v Crown Estates Commissioners* [2021] EWHC 941 (Ch) ("*Lizzium*"), it seems clear there was an agreement. This is not a case where there was no agreement at all. It is simply the execution of the agreement which appears to have gone awry. As Ms Carslaw says, unlike in *Lizzium* this is not a situation where Alison Court are forced to rely on a counterfactual entitlement. This is a case in which Alison Court's entitlement is based on an agreement that on the limited evidence available I am satisfied to the relevant standard was actually reached. Further the evidence strongly supports a conclusion that at the time it was thought that the agreement to transfer had been completed albeit given the dissolution of the Alath companies in 1995 may well have added a level of complication if it had been appreciated at the time. Ms Carslaw accepts that it may have interrupted the process.

23. Accordingly, therefore, I agree with Ms Carslaw’s analysis that the claimant, Alison Court, is the person who would have been entitled to the estate had it been existing. Finally, therefore if the conditions that the legal estate has been determined and Alison Court has an entitlement to have the property vested in it pursuant to section 181 it is necessary to consider the exercise of discretion.
24. It seems to me that the exercise of discretion should be exercised in favour of Alison Court. All the matters I have already considered come back into account at this stage. The tests are satisfied and as I have already indicated Alison Court had been undertaking the role of the management company since its inception in the early 1990s. It has maintained the properties, it has collected in monies from the leaseholders to carry outworks, it has insured, it has provided accounts, and it has made this application. Alison Court has acted throughout the last 27 years as if it were the legal and beneficial owner of the property not just the management company. All the shareholders/leaseholder in Alison Court and its directors believed it owned the freehold as well. As Ms Carslaw argued a vesting order in such circumstances would be the fair and practical solution.
25. For all those reasons it seems to me this is an eminently suitable and appropriate case for the court to make the order that the freehold be vested in Alison Court Management Company Ltd. Ms Carslaw has provided me with a draft order. I agree that an order should be made in Alison Court’s favour.

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