Case No: B5/2007/0095

Neutral Citation Number: [2007] EWCA Civ 1165
IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM CROYDON COUNTY COURT
(DISTRICT JUDGE FINK)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Thursday, 4th October 2007

Before:

LORD JUSTICE WARD
LADY JUSTICE ARDEN
and
LADY JUSTICE SMITH

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Between:

	CHAMBERS	**Appellant**
	- and -	
	CHAMBERS	**Respondent**

- -

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Mr N Anderson (instructed by Messrs Sebastians) appeared on behalf of the **Appellant**.

Mr R Alamo (instructed by Messrs Haider Kennedy) appeared on behalf of the **Respondent**.

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Judgment

Lord Justice Ward:

1. This case may become known, perhaps, as the case of the good things that come to those who wait. The respondent, for example, has been waiting since July 1987, a mere twenty years, to enforce an order for sale of a property held in equal shares with the appellant. The appellant's trustee in bankruptcy has been waiting a few days short of twenty years to get his hands on the respondent's money. The

London Borough of Croydon have been waiting for only about fifteen years to recover the cost of repairs they had to carry out to the property.

2. The respondent has been waiting for about twelve years to pass since the borough registered a local land charge against the property, in the hope that the period of limitation will have expired, so as to deny the poor burghers of Croydon of their entitlement to the amount now outstanding of about £115,000; and counsel no doubt wait for the next brief in the saga that will undoubtedly continue for a long time yet. Fortunately, on 29 December 2006, District Judge Fink, sitting in the Croydon County Court, said "Tarry no longer," and ordered that the property be sold forthwith upon the respondents vacating the same. She ordered him to vacate it by noon on 18 January. She gave the applicant's (that is to say, the respondent in this court) solicitors' conduct of the sale, and ordered again that the proceeds be divided equally. The respondent to that application is now the appellant before us, and he appeals the permission granted by Lloyd LJ.

3. In her judgment, the district judge set out the background. The appellant and the respondent are divorced. By an order made in the divorce proceedings on 8 March 1985 by consent the property with which we are concerned (namely 9 Sandfield Road, Thornton Heath, Croydon) was to be held in equal shares between the parties. On 21 July 1987, Chancery Master Munroe ordered that the statutory trusts affecting the property can be carried into execution, and accordingly therefore that the property be sold.

4. That was followed in November 1987 by the husband making himself bankrupt. There were sundry other skirmishes in the Chancery Division in 1993, regarding the taking of accounts for rent. In 1994, in the County Court, the respondent (the appellant in here) gave undertakings not to allow any person other than himself to occupy the ground floor, and forthwith on the sale of the property to vacate it; but nothing much happened. The property itself deteriorated and fell into terrible disrepair, so that in about 1992 the council had to exercise their statutory powers under the Housing Act of 1985, to effect the necessary repairs at a cost (it seems extraordinary) of £45,922.50, with interest accruing thereon. They had, as I have said, to take enforcement proceedings, and on 9 September 1994 registered their local land charge to secure payment of the outstanding monies.

5. Short of patience, the respondent, Mrs Chambers, applied on 15 August 2006 for the property to be sold to a developer who had offered to buy it. It was that application which eventually came before the district judge. As she said in her judgment:

> "This application is therefore the latest in many made by the Applicant to enforce the 1987 Order of the Chancery Division."

6. The appellant resisted the sale, saying that he could make her an offer she could not refuse of £50,000, with an indemnity to protect her against any enforcement proceedings that may properly and lawfully be taken by the local authority. She refused that offer because, as the district judge accepted, she was not looking to sell the property to spite the appellant, but just to have "closure". The district judge, having formed a favourable view of the honesty of Mrs Chambers, came to the conclusion that Mr Chambers was evasive. She found, on the balance of probabilities, that he was not living at the property

as his home, but that he could live with his girlfriend and their children in a flat that she had.

7. Two issues complicated the application before the district judge. The first was the respondent's bankruptcy. Of that, she said:

> "I heard no evidence to contradict the probability that he would have obtained his discharge in the normal period of time, at that time, of three years. That is in November 1990."

8. She referred, however, to the Enterprise Act 2002, and gave some consideration (but by no means conclusive consideration) to the trustee's position in the light of that change to the law. But her conclusion was that:

> "The Respondent's interest in this property remains vested in his trustee in the absence of any indication to the contrary."

9. We, fortunately, are spared having to deal in this appeal with any question relating to the trustee's interest in this property. It is, however, pertinent to note that, with his highly developed olfactory sense, the trustee has in his nostrils the delicious scent of money suddenly becoming available, not least, I suppose, to cover his fees; and so he has crept out of the rotting woodwork, and we are told that he has launched his own application in the Croydon County Court to seek to enforce the sale; but the least said about that the better.

10. This appeal is confined, on the direction of Lloyd LJ, to the second of the complications with which the district judge had to deal, namely, the land charge of the local authority to secure the unpaid costs of repairs. She said that the council's charge was relevant. She had heard argument on Mr Chambers' behalf that the charge is unenforceable, because by virtue of Section 15 of the Limitation Act 1980, it would become statute barred twelve years from the date on which the right to possession first accrued (which would have been when the charge was registered). The charge, of course, takes effect as if it were by way of a legal mortgage under what, I think, is paragraph 7 of Schedule 10 of the Housing Act 1985. Assuming, for the moment, that it has not been repealed, the local authority would have, for the purposes of enforcing that charge, the same powers and remedies as if mortgagees by deed having powers of sale.

11. So, the question is whether by 9 September 2006 the charge had become statute barred. The district judge knew little about the true position. She had sight of some correspondence, or at least knew that Mr Chambers had been in correspondence with the local government ombudsman, and she concluded that it was more likely than not that an acknowledgement had been made in the course of that correspondence, because of, she said, letters exhibited to Mrs Chambers' affidavit. Lloyd LJ was troubled by this, and no doubt gave permission to appeal because of it. He directed that Mr Chambers disclose his correspondence with the ombudsman, and he has done so. So we are now a little better informed, but not much better informed. We know that Mr Chambers did complain to the ombudsman. The ombudsman informed him he could not deal with the matter until the complaint had been made to the local authority. The ombudsman told Mr Chambers he would pass the complaint to the local authority unless he heard otherwise. He did not. The deliberate decision was taken to allow the ombudsman to do just that, and so he did. The complaint was sent to the local authority. The complaint is

that the council served notice for work to be done on 9 Sandfield Road. They only got one estimate of £48,000, when they should have got three from different contractors of the work. Some of the work done has affected the structure of the building. This has caused the property to be unmortgageable. Asked how that affected him, Mr Chambers said that the price of the property has been devalued by the bad workmen the council employed, and he was seeking compensation from them. I make no comment about whether that could possibly be an acknowledgment, but the correspondence did continue, and there are other letters which are now slightly more material, namely, a letter written by Mr Chambers himself on 31 January 2006, in which he wrote to the ombudsman with a copy to the local housing authority, saying, among other things:

> "What is important now is to agree on the contentious cost of the council, and resolve the matter by paying off agreed supportable costs of the work."

12. He attached a synopsis and history of his case with the London Borough of Croydon, which may or may not have been sent to the local authority. In it he said, among other things, that his surveyors found it difficult to reconcile their figure of £22,000 for the cost with the council's figure of nearly £46,000, and he stated that his main objective was:

> "Now, to reconcile the two divergent costs of the works, i.e. £22,000 and £45,922.50; thereafter, raise the money through the property and pay off the council."

13. Again, I make no comment about whether that can be an effective acknowledgement of the debt, for that is an issue which needs to be fought on another day. The district judge may have had sight of a letter from the council addressed to Mrs Chambers' solicitors, in which they wrote (I think more in hope than with accuracy) acknowledging thanks of a request to repay the charge. When one looks at the letter to which they are responding, it simply sought information from the Croydon Council about the charges and the amount outstanding thereon. In the course of that correspondence, there are other letters which may touch upon this question. One is dated 10 November 2006, in which Mrs Chambers' solicitors write asking the council whether they would consider an offer of settlement of the charges. Another, on 21 November, asks whether they could hear from the legal department as to [checked to audio] "…whether the council will accept any lesser sum, as it is our client who is privately funding her application for the sale of the property, and the costs are rising". Again, I make no comment about whether they could constitute an acknowledgment; but I do observe that those two letters, at least, are written after the period of limitation may have expired, and so are of no effect, by virtue of Section 29(7) of the Limitation Act 1980.

14. In the end, the district judge was of the view that, as she said:

> "I share [counsel for Mrs Chambers]'s concern that we just do not know the true position".

That seems to me to be accurate. Nor do we know the true position, and nothing I have said should be construed as throwing any light on whether or not those charges are now statute barred.

15. The nub of the judgment of the district judge is contained, it seems to me, in this small paragraph:

> "I have considered the Respondent's proposals and I reject them. The order for sale was made nearly twenty years ago and has never been appealed and offers have been made in the meantime, which have been accepted and come to nothing. After all this time and litigation the applicant is entitled to what she describes as 'closure' and the offer by the Respondent of an indemnity against the charges will not give her that."

16. And so she made the order, observing that the order for sale already exists, and ordering the respondent in that application, namely, Mr Chambers, to vacate the property, as I have said, by 18 January 2007.

17. As Mr Anderson (who has engagingly submitted all he possibly could on behalf of Mr Chambers) has to concede, the nature of the district judge's task was to exercise her discretion whether or not to give further directions to carry out the sale that had been ordered twenty years ago. For this court to interfere with an exercise of discretion, it is necessary to establish that she has been plainly wrong, in the sense that she has exceeded the generous ambit within which there is room for reasonable disagreement. In my view, she plainly has not exceeded that generous ambit. On the contrary, in my view, she came to the only order that could properly have been made in this lamentable case, filled as it is with delay by everybody. This property was ordered to be sold twenty years ago, and it is high time that that order be carried out. I, for my part, simply do not understand Mr Anderson's submission, ordering the husband to vacate the premises (allowing the sale to proceed) will in some way deny him an entitlement to contend as against the local authority that that charge has become statute barred. It will do no such thing. He is perfectly entitled to apply, under Section 50 of the Law of Property Act, for matters relating to this encumbrance of this charge to be dealt with by the court. Mr Alamo, for Mrs Chambers, draws our attention to the powers of the court under practice direction 40 of the Civil Procedure Rules, for the payment of disputed monies into court, to abide the event, and that remedy is therefore open to Mr Chambers and to Mrs Chambers; and no doubt they will avail themselves of the opportunity to challenge the local authority; but it does not, in my judgment, in any way at all impinge upon the correctness of a decision to order this husband to vacate a property which he has occupied for long enough, and for the sale to move ahead.

18. I see nothing wrong in the district judge's judgment. Everything about it is correct. I would dismiss this appeal.

Lady Justice Arden:

19. I agree. I put it to Mr Anderson, for Mr Chambers, the appellant, that if there had been no acknowledgment, Croydon's debt was statute barred and there could be no objection to sale; but if there had been an acknowledgement, then twelve years would have to run from either 2004 or 2006, which would take the court to 2016 or 2018, and in those circumstances it would be open to the court to take the view that it would not be right to hold up the sale that long. I put it to Mr Anderson that the time bar point led to a catch-22 situation for him, and he, with admirable candour, replied that there was no

answer to that point.

20. At root, it appears to me that there is a misunderstanding about the ability of Mr and Mrs Chambers to challenge the amount, if any, secured by the charges held by the London Borough of Croydon. As my Lord has explained, this could be done after sale with the proceeds of sale or the amount thereof necessary to meet any claim by Croydon being held either in court or in some other appropriate account. The London Borough of Croydon has not been represented before this court, but provisionally it would seem to me that the Council would have difficulty in insisting on being paid the amount which they claim is secured, or in opposing directions for payment into an appropriate account, so long as there is a real prospect of arguing that the charges are no longer valid, or that there is a dispute as to the amount secured. In all the circumstances, I agree with my Lord that the order which the district judge made was within her discretion.

Lady Justice Smith:

21. I agree with both judgments and have nothing to add.

Order: Application refused