



**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case References : **CHI/23UG/LBC/2014/0017.**

Property : **5 Chapel Court, 78-80 Barton Street,
Tewkesbury, Gloucestershire, GL20
5PY.**

Applicant : **Chapel Court (Tewkesbury)
Management Company Limited.**

Representative : **Mr. Martin Paine, director.**

Respondent : **Mr. Paul Coombs.**

Representative : **None.**

Type of Application : **Determination of breach of covenant,
S168(4) Commonhold and Leasehold
Reform Act 2002.**

Tribunal Members : **Judge J G Orme (Chairman)
Mr. M J Ayres FRICS (Member).**

**Date and Venue of
Hearing** : **5 November 2014.
Rivershill House, 82 St George's
Road, Cheltenham.**

Date of Decision : **17 November 2014.**

Decision

This decision relates to the lease dated 11 December 1986 of the property known as Flat 5, Chapel Court, 78-80 Barton Street, Tewkesbury, Gloucestershire, GL20 5PY. The Applicant, Chapel Court (Tewkesbury) Management Company Limited, is the freehold owner of that property. The Respondent, Mr. Paul Coombs, is the current leaseholder of that property. For the reasons set out below, the Tribunal determines that breaches of covenants or conditions in the lease have occurred in that:

- 1. There has been a breach of paragraph 25 of part II of the sixth schedule to the lease because no notice in writing of the assignment of the lease to Mr. Coombs has been given to the Applicant or to its solicitors within one month of the date of the assignment or at all;**
- 2. There has been a breach of paragraph 33 of part II of the sixth schedule to the lease because, the management company named in the lease, Chapel Court Developments Limited, having been dissolved and having failed to observe and perform its covenants under the lease, Mr. Coombs has failed to join with the other lessees of the flats and shops forming part of the development known as Chapel Court in arranging for the insurance of the development in accordance with the provisions of paragraphs 7, 8 and 9 of the eighth schedule to the lease.**

Reasons

Background

- 1. The Applicant, Chapel Court (Tewkesbury) Management Company Limited, is the freehold owner of the property known as Chapel Court, 78-80 Barton Street, Tewkesbury, Gloucestershire, GL20 5PY (“the Property”). The freehold title of the Property is registered at HM Land Registry under title number GR193644. Mr. Martin Paine is a director of the Applicant company.**
- 2. The Respondent, Mr. Paul Coombs, is the leasehold owner of Flat 5 at the Property (“the Flat”). The leasehold title of the Flat is registered at HM Land Registry under title number GR85702.**
- 3. On 15 August 2014, the Applicant applied to the Tribunal for a determination under *Section 168(4) of the Commonhold and Leasehold Reform Act 2002* (as amended) (“the Act”) that Mr. Coombs had acted in breach of the terms of his lease of the Flat. The application alleged breaches of the following covenants in part II of the 6th schedule to the lease of the Flat:**
 - 1) Paragraph 25 – Failure to give notice of the assignment of the lease to Mr. Coombs;**

- 2) Paragraph 33 – Failure to join with the other lessees of parts of the Property in arranging for insurance of the Property.
4. The Tribunal issued directions on 28 August 2014. The directions provided for both parties to prepare written statements of case and for the application to be listed for hearing. The Applicant has provided a statement of case. Mr. Coombs has not complied with the directions and has taken no part in the application.

The Law

5. Section 168 of the Act provides:
 - 1) *A landlord under a long lease of a dwelling may not serve a notice under Section 146(1) of the Law of Property Act 1925 (c20) (restriction on forfeiture) in respect of a breach by a tenant of a covenant or condition in the lease unless subsection (2) is satisfied.*
 - 2) *This subsection is satisfied if-*
 - a. *it has been finally determined on an application under subsection (4) that the breach has occurred,*
 - b. *the tenant has admitted the breach, or*
 - c. *a court in any proceedings, or an arbitral tribunal in proceedings pursuant to a post-dispute arbitration agreement, has finally determined that the breach has occurred.*
 - 3) *But a notice may not be served by virtue of subsection (2)(a) or (c) until after the end of the period of 14 days beginning with the day after that on which the final determination is made.*
 - 4) *A landlord under a long lease of a dwelling may make an application to the appropriate tribunal for a determination that a breach of a covenant or condition in the lease has occurred.*
 - 5) *But a landlord may not make an application under subsection (4) in respect of a matter which-*
 - a. *has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,*
 - b. *has been the subject of a determination by a court, or*
 - c. *has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.*
 - 6) *For the purposes of subsection (4), “appropriate tribunal” means-*
 - a. *in relation to a dwelling in England, the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal; and*
 - b. *in relation to a dwelling in Wales, a leasehold valuation tribunal.*

The Lease

6. The Tribunal had before it a copy of a lease dated 11 December 1986 made between Rutherford Developments Ltd as lessor, Chapel Court Developments Ltd as the management company (“the Management

Company”) and Thomas Burt Savage and Jacqueline Savage as lessee (“the Lease”).

7. By the Lease, the lessor demised the Flat to the lessee for a term of 99 years from 1 November 1986 at a yearly rent of £25. The Lease has been subsequently registered at HM Land Registry under title number GR85702. The register of title shows that the Lease was assigned to Mr. Coombs on 27 November 2012.
8. By clause 3 of the Lease, the lessee covenants with the lessor and the Management Company to observe and perform the obligations set out in part II of the 6th schedule to the Lease. The Applicant relies on the following paragraphs in part II of the 6th schedule:
 25. *Within one month after the date of the execution or coming into effect of any and every assignment transfer ... or other matter disposing of or affecting the whole of the demised premises or devolution of or transfer of title to the same to give or procure to be given to the Lessor or its Solicitors and separately to the Solicitors of the Management Company notice in writing of such disposition or devolution or transfer of title with full particulars thereof ...* The paragraph goes on to oblige the lessee to provide copies of certain documents and to pay a fee for registration of such notice.
 33. *That if the Management Company goes into liquidation for any reason (whether compulsory or voluntary) or fails to observe and perform its covenants under this Lease then in any such case the Lessee will join with the other lessees of the Flats and shops forming part of the Development in arranging for the carrying out of the matters mentioned in the Part II of the Seventh Schedule hereto*
9. By clause 5 of the Lease, the Management Company covenanted with the lessee to observe and perform the obligations on the part of the Management Company set out in part II of the 7th schedule.
10. Paragraph 1 of part II of the 7th schedule contains a covenant by the Management Company “*To effect and maintain the insurances mentioned in the Eighth Schedule hereto and to make all payments necessary for those purposes within seven days after the same become payable and ...*”
11. Paragraphs 7, 8 and 9 of the 8th schedule set out the insurances which the Management Company is obliged to put in place. They include buildings insurance, loss of rent and employer’s liability insurance.

The Evidence

12. Mr. Paine has made 3 witness statements on behalf of the Applicant.

13. The 1st is dated 1 October 2014. In that statement, Mr. Paine gives evidence that the Applicant is also a leaseholder of Flat 4 at the Property and he confirms that Mr. Coombs has not joined with the other lessees in arranging for the insurance of the Property in default of the Management Company. Mr. Paine is able to give that evidence as a director of the Applicant which is both the freeholder of the Property and a leaseholder of another flat in the Property.
14. The 2nd is dated 28 October 2014. In that statement Mr. Paine gives evidence that a search of Companies House reveals 2 companies with the name Chapel Court Developments Ltd. The first is company number 02070652 which was dissolved on 18 October 1994. The second is company number 03770990 which he says was incorporated by him on 14 May 1999 (which was after the date of the Lease) and was dissolved on 3 November 2009. He submits that the company referred to in the Lease must have been company number 02070652 which was dissolved on 18 October 1994.
15. The 3rd is dated 5 November 2014 and was handed to the Tribunal at the hearing. Mr. Paine gives evidence of sending a copy of the Applicant's bundle to Mr. Coombs by registered post on 11 September 2014. He gives evidence of delivering a letter addressed to Mr. Coombs to the Flat on 4 November. The letter warns of the hearing scheduled to take place on 5 November. He then gives evidence of visiting the Flat on 5 November and speaking to a person identified as Mark Coombs, son of Mr. Coombs, who told him that his father was aware of the proceedings, had received the bundle, was aware of the hearing on 5 November and that he would not be attending as he was in Spain.
16. Mr. Paine had filed with the Tribunal a written submission together with a bundle of documents. In the written submission, which was supported by a statement of truth, Mr. Paine said that no notice of the assignment of the Lease to Mr. Coombs had been received by the Applicant or its solicitors. He also said that the Applicant wrote to Mr. Coombs on 7 July 2014 inviting Mr. Coombs to admit the breaches of covenant, to which Mr. Coombs did not reply.
17. The Tribunal has received no evidence or submissions from Mr. Coombs.

The Hearing

18. The Tribunal did not inspect the Property or the Flat.
19. The Tribunal convened to hear the application on 5 November 2014 at Rivershill House, St George's Road, Cheltenham. Mr. Paine appeared on behalf of the Applicant. Mr. Coombs did not attend and was not represented.
20. The Tribunal satisfied itself that proper notice of the hearing had been given by the Tribunal to Mr. Coombs in accordance with Rule 32 of *the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules*

2013 SI 2013/1169 (“the Tribunal Rules”). The Tribunal also took into account the 3rd witness statement of Mr. Paine. The Tribunal considered that it was in the interests of justice to proceed with the hearing and determined, pursuant to Rule 34 of the Tribunal Rules, to proceed with the hearing in the absence of Mr. Coombs.

Conclusions

21. The Tribunal accepts the evidence of Mr. Paine in relation to both alleged breaches. It was not contradicted by any evidence from Mr. Coombs.
22. **Failure to give notice of assignment.** The Tribunal, relying on the office copy entries of the register of title number GR85702, finds that the Lease was assigned to Mr. Coombs on 27 November 2012. The Tribunal accepts the evidence of Mr. Paine that no notice of that assignment has been given to the Applicant or its solicitors. There is no evidence from Mr. Coombs alleging that he has given notice. The Tribunal finds as a fact that no notice of the assignment has been given as required by the Lease. The Tribunal determines that a breach has occurred in respect of the covenant at paragraph 25 of part II of the 6th schedule to the Lease in that Mr. Coombs has not given or procured to be given notice to the Applicant or its solicitors of the assignment of the Lease to Mr. Coombs within one month of the assignment or at all.
23. **Failure to arrange insurance.** The Tribunal accepts the evidence of Mr. Paine that the company named in the Lease as Chapel Court Developments Limited and defined in the Lease as the Management Company was company number 02070652 and that that company was dissolved on 18 October 1994. It follows that that company has been unable to observe or perform its covenants under the Lease since that date as it has not existed. In those circumstances the provisions of paragraph 33 of part II of the 6th schedule to the Lease have come into effect and Mr. Coombs, as lessee, is obliged to join with the other lessees of the Flats and shops in the development in arranging for the carrying out of the matters mentioned in part II of the 7th schedule. Those matters include effecting and maintaining the insurances mentioned in the 8th schedule. The Tribunal accepts the evidence of Mr. Paine that Mr. Coombs has not joined with the other lessees in arranging the insurance of the Property. Mr. Coombs has produced no evidence to the contrary. The Tribunal finds as a fact that Mr. Coombs has not joined with the other lessees in arranging for insurance of the Property. The Tribunal determines that a breach of covenant has occurred to that extent.
24. For those reasons, the Tribunal determines that breaches of covenants or conditions in the Lease have occurred.

Right of Appeal

25. Any party to this application who is dissatisfied with the Tribunal’s decision may appeal to the Upper Tribunal (Lands Chamber) under

section 176B of the Commonhold and Leasehold Reform Act 2002 or section 11 of the Tribunals, Courts and Enforcement Act 2007.

26. A person wishing to appeal this decision must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with this application. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit. The Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal and state the result the party making the application is seeking.
27. The parties are directed to Regulation 52 of the Tribunal Rules . Any application to the Upper Tribunal must be made in accordance with *the Tribunal Procedure (Upper Tribunal)(Lands Chamber) Rules 2010 SI 2010/2600*.

J G Orme
Judge of the First-tier Tribunal
Dated 17 November 2014