



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

Case Reference : CHI/29UC/OCE/2014/0058

Property : 57, Oxford Street, Whitstable,
Kent CT5 1DA

Applicant : Katie Emma Gordon

Representative : Hancocks, solicitors

Respondent : Mrs F Portch

Representative :

Type of Application : Collective enfranchisement

Tribunal Member(s) : Judge D. Agnew

Date of Order : 24th April 2014

ORDER

1. On 27th November 2013 the Applicant's solicitors, Messrs Hancocks, filed an application for a determination by the Tribunal of the purchase price payable by the Applicant nominee purchaser for the freehold of 57 Oxford Street, Whitstable, Kent CT5 1DA ("the Property") owned by the Respondent.
2. The documents in support of the application included a copy of the Tenants' Initial Notice under section 13 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") which starts the enfranchisement process. That Initial Notice was addressed to Mrs Fatima Portch, the Respondent, and gave her address as Stoneywood, Wraik Hill, Whitstable, Kent CT5 3BY.
2. It transpires that on or about the 1st August 2013 the Applicant's solicitors purported to serve by post that notice on Fosters Law, a firm of solicitors whom they considered were Mrs Portch's solicitors. The notice required the service of a counter-notice under the Act by 31st August 2013.
3. The Applicant's solicitors having received no response to the Tenants' Initial Notice contacted Fosters Law who advised Messrs Hancocks that they were without instructions from Mrs Portch and suggested that Hancocks write to her direct, which they did on 18th September 2013.
4. Mrs Portch eventually responded to that letter on 10th October 2013 in which she stated that she was not willing to sell the freehold for the price proposed by the tenants but would sell at the price she requested in March 2013. This prompted the Applicant's solicitors to submit the application to the Tribunal.
5. Whilst there are other problems with this application, which will be alluded to below, the Tribunal was concerned first of all as to whether the Tenants' Initial Notice had been properly served upon the Respondent as this was the first step in the enfranchisement procedure from which all the other steps flow. As the Notice was sent by post to Fosters Law and not direct to Mrs Portch at her home address that would only have been good service on Mrs Portch if she had authorised her solicitors to accept service on her behalf and Fosters Law had represented to Messrs Hancocks that they had instructions to accept service on her behalf.
6. As there was no evidence before the Tribunal that such a representation had been made, the Tribunal issued Further Directions on 10th March 2014 giving notice that it was minded to strike out the application on the ground that it lacks jurisdiction if the Initial Notice was never properly served. The Tribunal invited a party who disagreed with the application being struck out to send their representations to the Tribunal and to the other party by 26th March 2014. The Applicant's solicitors wrote to the Tribunal with such representations by way of a letter dated 24th March 2014. Having received those representations the Tribunal listed the matter for a jurisdiction hearing by way of a

determination on written representations without an oral hearing under the provisions of Rule 31 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. The Tribunal gave the parties a further opportunity to make further representations on the question of jurisdiction by 16th April 2014. In particular the Tribunal invited the Applicant's solicitors to submit any further evidence they might have that Fosters Law had ever stated that they had instructions to accept service on behalf of Mrs Portch.

7. In their letter to the Tribunal dated 24th March 2014 Messrs Hancocks submitted that it was clear that Mrs Portch's solicitors had received the Initial Notice, at no time did they say they did not have authority to accept service thereof and they did not return the Notice to them. They say they informed Mrs Portch direct that the Notice had been served on her solicitors, that she was well aware of the Notice having been served and its content, that she has a history of not responding to correspondence from the tenants and that it would be harsh if the claim were to be struck out.
8. Mrs Portch wrote to the Tribunal on 2nd April 2014 saying that she did not receive the Initial Notice that was "apparently sent to be actioned by 31st August 2013" and she supplied documentation evidencing that she was abroad from 10th August to 1st September 2013.

DETERMINATION

9. The Tribunal determines that it does not have jurisdiction to deal with the Application and make a determination because the Initial Notice was not properly and effectively served upon the Respondent and therefore the whole enfranchisement process was not properly initiated. The Tribunal decides that the Applicant's solicitors have not been able to prove proper service. In the Tribunal's opinion the onus of proving proper service is upon the Applicant. Her solicitors cannot assume that Fosters Law had authority to accept service of the Notice. There is no evidence provided by the Applicant's solicitors that Fosters Law ever represented to them that they did have instructions to accept service of the Notice. It was not incumbent upon Fosters Law to say on receipt of the Notice that they did not have instructions to accept service, although it might have been professionally helpful to have done so. It is clear that Mrs Portch never did give them authority to accept service of the Notice and Messrs Hancocks did not write to her until well after the date by which she was required by the Notice to serve a counter-notice. Even then they did not send her a copy of the Initial Notice, although by that time it would have been too late for effective service.
10. **The Tribunal therefore hereby exercises its power under rule 9(2)(a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 to strike out the Applicant's case and the case is hereby struck out.**

11. The Applicant does not have a right to apply to have her application reinstated under the aforesaid Rules of 2013 but does have a right to apply for permission to appeal this decision. Notes as to how this can be done appear at the end of these Reasons. However, in deciding whether or not to seek permission to appeal the Applicant and her solicitors may wish to bear the following in mind. First, section 13(5) of the Act specifies that the date for the reversioner to serve a counter-notice to be specified in the tenants' Initial Notice is "not less than two months after the relevant date". "The relevant date" is defined in section 1(8) of the Act as the date when notice of the claim is given. In this case, notice of the claim was given on 1st August 2013 and the Notice required the reversioner to serve any counter-notice by 31st August 2013. It would therefore appear that insufficient time was stipulated for service of the counter-notice.
12. If this problem were not enough, had service of the Notice been effected properly and there had been no problem with regard to the period for service of the counter-notice, the correct procedure would have been to apply to the County Court and not the Tribunal for an order under section 25 of the Act for a determination of the terms on which the applicant is to acquire the freehold.
13. As the Tribunal has not asked for representations on either of the problems with regard to the application as set out in paragraphs 12 and 13 above, the Tribunal makes no determination and does not strike out the application on either of those grounds but the Applicant may well wish to bear these points in mind when deciding whether or not to seek permission to appeal the strike-out on the ground that the Initial Notice was not properly served.

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. 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.
3. 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.

4. 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.

Dated the 29th April 2014

Judge D. Agnew