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		**FIRST-TIER TRIBUNAL PROPERTY CHAMBER (RESIDENTIAL PROPERTY)**
Case Reference	:	**LON/OOBK/OLR/2013/1131 LON/OOBK/OLR/2013/1514**
Property	:	**Flats 1, 2 and 21 Melcombe Regis Court, 59 Weymouth Street, London W1G 8NS**
Applicants	:	**F. Khazaal (leaseholder of flat 1), Z. Khazaal (leaseholder of flat 2) and B. Hussein (leaseholder of flat 21)**
Representatives	:	**Mr J. O'Mahoney of counsel (instructed by William Sturges LLP, solicitors) with Mr M. Lawson (solicitor)**
Respondent	:	**Launcelot Properties Limited**
Representative	:	**Ms K. Helmore of counsel (instructed by Ashfords LLP, solicitors) with Ms C. Frampton, solicitor**
Type of Application	:	**Applications for the determination of the premium payable and the determination of the terms of a new lease in a claim made under section 48 Leasehold Reform, Housing and Urban Development Act 1993 (the 'Act') for the grant of new leases.**
Tribunal Members	:	**Professor James Driscoll, solicitor (Tribunal Judge) and Mr Neil Martindale FRICS (Tribunal Member)**

Date and venue of Hearing	:	**15 April 2014**
Date of Decision	:	**15 April 2014**
DECISION		

Summary of the decision

1. The application to adjourn the hearing of the application generally is refused.

2. Under Rule 10(1) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 the respondent is removed as a party to the application.

3. The application to substitute a new respondent under Rule 10(1) is refused.

4. Under Rule 9(2)(a) the application is struck out as the tribunal no longer has jurisdiction to make the determinations sought in the application.

Introduction

5. The three applicants are each a leaseholder of a flat in the subject premises which consists of some 60 flats in a block of flats. (The representatives who appeared at the hearing on 15 April 2014 could not tell us the exact number of the flats). Each of them gave a notice under section 42 of the Leasehold Reform, Housing and Urban Development Act 1993 seeking the grant of new leases. These notices were given in 2013 to Launcelot Properties Limited as the competent landlord ('the landlord') as defined in section 40(4)(b)) of the Act.

6. We were told that a majority of the leaseholders have exercised the collective right to enfranchise under Part I of the Act and they between them acquired the freehold in 2011. However, not all of the leaseholders participated in that claim. The non-participants include the three leaseholders who are the applicants in this case.

7. As part of the background leading to the acquisition long intermediate leases were granted in relation to each of the non-participating leaseholders. There is a separate head lease for each of the flats held by non-participating leaseholders. As a result the applicant leaseholders claims for new leases

were made of the landlord as the 'competent landlord' (and not of the freeholder).

8. During 2013 those advising the landlord gave counter-notices admitting the right to a new lease but proposing a different premium and different terms for the new lease.

The application to the tribunal

9. As the parties could not agree on the premium and the terms of the new lease application was made to this tribunal in 2013 and directions were given. Dates were given for a two day hearing which started on 15 April 2014.

10. On Monday 14 April 2013 the tribunal was notified by the parties that they wished to obtain an adjournment. They were informed that this application should be made to the tribunal on 15 April 2014.

11. On the 15 April 2014 the leaseholders were represented by Mr O'Mahoney of counsel who appeared with his instructing solicitor Mr Lawson of William Sturges LLP. The landlord was represented by Ms Helmore of counsel and Ms Frampton her instructing solicitor of Ashfords LLP. We were given a short bundle of correspondence.

12. It is common ground that on 20 March 2014 the respondent sold the head leases and the other 22 flats it owns to Launcelot Investments Limited. It is also agreed that those advising the leaseholders had failed to protect the section 42 claims by registration at the Land Registry under section 97 of the 1993 Act.

13. In view of this non-registration the landlord submits that the section 42 notices are void and do not bind the new landlord. The landlord also submits that it is no longer the competent landlord for the purposes of the claim.

14. In response the leaseholders argue that the transactions affecting their flats were made simply to defeat the claims. Mr O' Mahoney told us that the leaseholders are considering an application in the county court for a determination that as a result of using the transfer to defeat the section 42 claims that they are not void because of of fraud or unfair conduct. He added that there is legal authority to the effect that non-registration may not prevent notices binding the new landlord. He did not have this authority with him at the hearing.

15. Mr O'Mahoney agreed with us that the respondent landlord is no longer the relevant competent landlord as it has assigned the head leases to the three flats. He submitted that the new landlord, Launcelot Investments (which he suggests is part of the same company structure as Launcelot Properties) should be made a party to the application under Rule 10(1). The tribunal should then, he argues, adjourn the application generally pending the outcome of the county court proceedings. Should the leaseholders be

successful the tribunal could then consider any disputes over the premium to be paid or any disputed terms of the new lease.

16. Ms Helmore relies on the decision of the West London County Court in *Melbury Road Properties 1995 Limited v Kredi* [1999] 43 EG 157 which shows that non-registration of notices given under section 42 means that the claims do not bind the new landlord.

17. According to Ms Helmore the respondent should now be removed as a party under Rule 10. She accepts that if this is ordered the tribunal would no longer have jurisdiction to deal with the leaseholder's application.

Reasons for our decision

18. We adjourned after hearing the submissions to consider our decision on the application to adjourn generally.

19. After the adjournment we gave an oral decision which is summarised at the beginning of this decision. Here are our reasons for these decisions.

20. First, it is clear that the respondent is no longer the competent landlord. The reason for this is simple: the leaseholders failed to register their section 42 notices at the Land Registry as a result of which they do not bind the new landlord.

21. Very sensibly, counsel for the leaseholders did not resist the application under Rule 10(1) for the removal of the landlord as a party to the application. Although that landlord was correctly treated as the competent landlord for the purposes of the claims for new leases, it has assigned the relevant intermediate leases to the new landlord (counsel for the landlord told us that the freeholder had granted a licence to assign). Because of the failure to protect the section 42 notices by registration at the Land Registry they do not bind the new landlord.

22. We note in passing that the right of first refusal (Part I of the Landlord and Tenant Act 1987) had no application to these assignments as each of the intermediate leases related to only one flat. The 1987 Act only applies to disposals of interests with two or more flats (section 1(2)(b) of the 1987 Act).

23. The leaseholder's application under Rule 10(1) for the new landlord to be added as a party, that is as a new respondent, is dismissed. As matters stand the new landlord is not the competent landlord and is in no position to grant a new lease under the 1993 Act let alone to make representations on the premium payable and the terms of the three new leases.

24. Moreover the leaseholders have not given notice to the new landlord that they proposed that it is added as a party.

25. As a consequence of this the only parties to the application are now the three leaseholders. The existing respondent is no longer to be treated as a respondent as a result of the application to be removed as a party (which

was not opposed by the leaseholders). And we have refused to add the new landlord as a respondent.

26. As a result, we no longer have jurisdiction to make orders under section 48 of the 1993 Act. Under Rule 9(2) we must strike out the proceedings if the tribunal does not have jurisdiction. We direct that the leaseholder's application for a determination of the premium and terms of the new leases are struck out.

27. Of course, the leaseholders may give fresh section 42 notices to the new landlord as their previous notices are void. This may result in them paying a higher premium as their leases will be shorter and because of the likely rise in property prices.

28. These are the main reasons why we refuse the application to adjourn the applications generally.

29. Although we are not required to comment on the proposal that the leaseholders will mount a county court challenge to the effects of the non-registration of their section 42 notices we have the following observation. As to the allegation that there was some kind of fraud or related misconduct on the part of the landlord we note the contents of a letter dated 7 April 2014 from the landlord's solicitors to the leaseholder's solicitors enclosing a copy of the Transfer dated 20 March 2014. This relates to all of the 23 separate head leases of various flats in the premises which were sold in the sum of £9,777,000.00. That letter states also that Launcelot Properties sold all of the other properties it owns in England for a total consideration of £45,000,000.00. It seems to us that if the purpose of the transfer was simply to defeat the new lease claims there would have been no need to have transferred any properties other than the three relevant head leases.

30. To summarise, the respondent to these applications is removed as a party and the application for the new landlord to be added as a party is refused. As a result we no longer have jurisdiction to make orders under the three applications and under Rule 9(2) we strike out the applications. For that reason and the other reasons given above the application for an adjournment generally of the leaseholder's applications is refused.

31. A copy of this decision will be sent to the solicitors and the counsel advising the parties and to the three leaseholders.

32. The procedural statutory provisions referred to in this decision are appended.

Professor James Driscoll, solicitor (Tribunal Judge) and Mr Neil Martindale, FRICS (Tribunal Member)

APPENDIX (procedural statutory references)

The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

Striking out a party's case

9. (1) The proceedings or case, or the appropriate part of them, will automatically be struck out if the applicant has failed to comply with a direction that stated that failure by the applicant to comply with the direction by a stated date would lead to the striking out of the proceedings or that part of them.
(2) The Tribunal must strike out the whole or a part of the proceedings or case if the Tribunal—
(a)
does not have jurisdiction in relation to the proceedings or case or that part of them; and
(b)
does not exercise any power under rule 6(3)(n)(i) (transfer to another court or tribunal) in relation to the proceedings or case or that part of them.
(3) The Tribunal may strike out the whole or a part of the proceedings or case if—
(a)
the applicant has failed to comply with a direction which stated that failure by the applicant to comply with the direction could lead to the striking out of the proceedings or case or that part of it;
(b)
the applicant has failed to co-operate with the Tribunal such that the Tribunal cannot deal with the proceedings fairly and justly;
(c)
the proceedings or case are between the same parties and arise out of facts which are similar or substantially the same as those contained in a proceedings or case which has been decided by the Tribunal;
(d)
the Tribunal considers the proceedings or case (or a part of them), or the manner in which they are being conducted, to be frivolous or vexatious or otherwise an abuse of the process of the Tribunal; or
(e)
the Tribunal considers there is no reasonable prospect of the applicant's proceedings or case, or part of it, succeeding.
(4) The Tribunal may not strike out the whole or a part of the proceedings or case under paragraph (2) or paragraph (3)(b) to (e) without first giving the parties an opportunity to make representations in relation to the proposed striking out.
(5) If the proceedings or case, or part of them, have been struck out under paragraph (1) or (3)(a), the applicant may apply for the proceedings or case, or part of it, to be reinstated.
(6) An application under paragraph (5) must be made in writing and received by the Tribunal within 28 days after the date on which the Tribunal sent notification of the striking out to that party.
(7) This rule applies to a respondent as it applies to an applicant except that—
(a)

a reference to the striking out of the proceedings or case or part of them is to be read as a reference to the barring of the respondent from taking further part in the proceedings or part of them; and
(b)
a reference to an application for the reinstatement of proceedings or case or part of them which have been struck out is to be read as a reference to an application for the lifting of the bar on the respondent from taking further part in the proceedings, or part of them.
(8) If a respondent has been barred from taking further part in proceedings under this rule and that bar has not been lifted, the Tribunal need not consider any response or other submission made by that respondent, and may summarily determine any or all issues against that respondent.

Addition, substitution and removal of parties

10. (1) The Tribunal may give a direction adding, substituting or removing a person as an applicant or a respondent.
(2) If the Tribunal gives a direction under paragraph (1) it may give such consequential directions as it considers appropriate.
(3) A person who is not a party may apply to the Tribunal to be added or substituted as a party.