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

Case Reference : LON/00AJ/OCE/2015/0257

Property : 48 Kenilworth Lane

Applicant : Redgate Residents Association Limited

Representative : Mr. P Barnes

Respondents : (1) Gil Lemon & Paul Woods
(Trustees in bankruptcy for Mr. Raymond James Gallagher)
(2) Eugene Losowski-Gallagher

Representative : (1) Mr. R Alford counsel instructed by Summit Law LLP
(2) In person

Type of Application : Enfranchisement

Tribunal Members : Judge LM Tagliavini
Mrs Helen Bowers BSc (Econ) MSc MRICS

Date and venue of PTR : 10 Alfred Place, London WC1E 7LR

Date of Decision : July 2016

DECISION

- (1) The tribunal determines that the sum of £47,500 is payable by the Applicant to the First Respondent for the freehold premium for the subject property.
- (2) The tribunal assesses the costs payable by the Applicant to the First Respondent pursuant to section 33 as £2,000 plus VAT.
- (3) The terms of the transfer are in accordance with those agreed and between the Applicant and the Trustee in Bankruptcy.
- (4) The terms of the transfer as set out in the document between the Applicant and the Second Respondent (TR2) are stayed indefinitely.

The application

1. The Applicant seeks a determination pursuant to section 33 of the Leasehold Reform Housing and Urban Development Act 1993 (as amended) in respect of the price payable for the freehold of the subject property; the terms of the transfer and the section 33 costs payable.

The hearing

2. Mr. Paul Barnes represented the Applicant at the hearing. Mr. Alford of counsel represented the First Respondent. The Second Respondent appeared in person.
3. Immediately prior to the hearing the Second Respondent made an application for an adjournment. Mr. Losowski-Gallagher sought an adjournment on the basis that he did not have sufficient notice of the hearing, having only been joined as a Second Respondent at the invitation of the Applicant on 10 June 2016 and was unaware of the hearing before 11 June 2016; that having the sole beneficial interest in the property pursuant to an alleged Declaration of Trust dated 24 December 2003, he should be allowed an opportunity to obtain valuation evidence.
4. The application to adjourn was opposed by both Respondents on the basis that the tribunal only had the jurisdiction to consider (i) the freehold value of the subject premises; (ii) the Terms of Transfer and (iii) section 33 costs.
5. Mr. Barnes asserted that at the time of the service of the section 13 notice dated 5 May 2015 and counter notice Mr. Gallagher had not been

declared bankrupt as the order declaring his bankruptcy is dated 2 October 2015. Therefore, if as alleged, the property was subject to a purported Deed of Trust, Mr. Gallagher would have been under a duty to notify his son, the alleged beneficial owner, of the Applicant's proposed acquisition of the freehold. In any event the Second Respondent ought to have been informed by solicitors who were acting for both Mr. Gallagher and the Second Respondent at the time of the service of the counter notice of the Applicant's intention to purchase the freehold.

6. Mr. Barnes added that the tribunal should have regard to the overriding objective and the wasted costs and prejudice caused to the Applicant were this hearing to be adjourned. Mr. Barnes submitted that in any event, the Second Respondent is able to seek a declaration in respect of the validity of the trust and an injunction preventing any transfer and can, if further evidence arises, seek to a review or appeal the tribunal's decision pursuant to Part 6 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. However, the matters of the validity of a Declaration of Trust do not fall within the tribunal's jurisdiction.
7. Mr. Barnes also informed the tribunal that the Applicant and the First Respondent are broadly in agreement as to the issues before the tribunal and as the Second Respondent has no standing before the tribunal to adduce any valuation evidence, no purpose is served by the adjournment sought by the Second Respondent. In any event, Mr. Gallagher Snr. had already sought and received the benefit of valuation evidence in 2015, which had formed the basis for the service of the counter-notice and before he had been declared bankrupt. Mr. Alford adopted these arguments.
8. The tribunal is persuaded by Mr. Barnes' arguments and refuses the application for an adjournment. The tribunal is persuaded that unnecessary and substantial costs would be wasted by the grant of the adjournment and is satisfied that the Second Respondent's position is protected by his ability to seek a declaration in respect of the validity of his beneficial interest in the property; seek a review or appeal of the tribunal's decision on the substantive application and has been aware of these proceedings, through his father or their jointly instructed solicitors, for some time and has had indirectly the benefit of valuation evidence providing that the price of acquisition is 46,720 as obtained by his father, Mr. Gallagher

The background

9. The property, which is the subject of this application is a substantial detached building, originally constructed as a single private dwelling house in around 1885 but now converted into six flats.

The issues

10. At the start of the hearing the parties identified the relevant issues for determination as follows:
 - (i) The price payable for the freehold?
 - (ii) The terms of the transfer?
 - (iii) The section 33 costs?

The evidence

11. Having heard the agreement reached between the Applicant and the First Respondent, and the Second Respondent providing no valuation evidence, and having regard to the valuation evidence of Mr. Andrew Pridell FRICS dated 21 June 2016, the tribunal makes the following determinations:
 - (I) The price payable for the freehold is £47,500.
 - (ii) The terms of transfer are those set out in the document between the Applicant and the First Respondent?
 - (iii) Section 33 costs are payable by the Applicant in the sum of £2,000 plus VAT.
 - (iv) The terms of transfer (TR2) between the Applicant and the Second Respondent are stayed indefinitely.

12. The tribunal is satisfied that notwithstanding its determinations, the Second Respondent has an opportunity to pursue an application determining the validity of the Trust and can seek to stay, review or appeal the tribunal's findings. However, the onus is on the Second Respondent to carry out these steps expeditiously. In any event the tribunal understands that the proceeds of sale of the freehold are to be held on Trust pending the determination of the validity of the Deed of Trust.

Signed: Judge LM Tagliavini

Dated: 11 July 2016