



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

**Case reference** : **LON/00BK/OCE/2018/0050**

**Property** : **183 Saltram Crescent, Paddington,  
London W9 3JU**

**Applicant** : **Mr Richard Arthur John Wotton (1)  
Mr Giles Edmund Webster (2)  
Mrs Joy Helen Webster (3)**

**Representative** : **Mr A Redpath-Stevens – Counsel  
Mr A Conway of Lawrence  
Stephens Solicitors**

**Respondent** : **Ms Wieslawa Smith (1)  
Mr Timothy Garbutt (2)**

**Representative** : **Mr Garbutt**

**Type of application** : **Section 13 of the Leasehold  
Reform, Housing and Urban  
Development Act 1993 (the Act)**

**Tribunal members** : **Tribunal Judge Dutton  
Mr W R Shaw FRICS**

**Date of determination  
and venue** : **23<sup>rd</sup> May 2018 at  
10 Alfred Place, London WC1E 7LR**

**Date of decision** : **23<sup>rd</sup> May 2018**

**DECISION**

**Background**

1. On 14<sup>th</sup> February 2018 at the County Court at Central London in claim number D10CL659 District Judge Langley made certain findings and ordered as follows:

*1. the interests and rights particularised in the notice of intention pursuant to section 13(3) of the Act dated 03.01.2017 (“The Notice”)*

*shall be vested in the nominee purchaser on the Terms set out in the Order in a form of conveyance approved by the First-Tier Tribunal and at the price set out in the Notice being £17,400 together with such sums (if any) as may be payable in accordance with paragraph 3(b) of Schedule 5 to the Act (“the Sums”) together (“the appropriate amount”)*

*2. this claim shall be transferred to the First-tier Tribunal for the purposes of*

*(i) approving a form of conveyance containing such provisions as may be so approved for the purposes of giving effect to the Terms (“the Conveyance”) in accordance with paragraph 2(1)(a) of Schedule 5 to the Act and*

*(ii) determining the Sums.*

The remaining terms of the Order are not relevant to this Tribunal.

2. The matter came before us for hearing on 23<sup>rd</sup> May 2018 when the Applicants were represented by Mr Redpath-Stevens and Mr Conway. Mr Garbutt attended. He produced a bundle of papers which included a copy of what purported to be an affidavit in proceedings before the Chancery Division of the High Court. In addition he provided a copy of Rule 6 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 and various emails which included a document bearing a hand written notation “Statement of Truth”. These emails contained allegations of fraud against members of the legal profession which appeared to arise from other proceedings, although it was not possible to discern the provenance from that which was before us.
3. The Applicants had also produced a bundle of papers which included the Claim form, witness statements, a valuation report from Anderson Wilde & Harris, chartered surveyors dated 24<sup>th</sup> June 2016, copies of the freehold and leasehold titles and a specimen lease. In addition a draft of the proposed transfer was provided and statement addressing the Sums.
4. Mr Garbutt was invited to make any relevant comments on the procedure before us. He submitted that by reason of Rule 6 of the procedural rules we were entitled to, in effect, set aside the various Orders that had been made in the County Court, in particular that dated 14<sup>th</sup> February 2018. He said that we were obliged to do so where his ‘statement of truth’, which he said had not been challenged, raised issues of fraud.
5. We endeavoured to explain to Mr Garbutt that our jurisdiction came from the order made in February 2018 and that we had no power to

interfere with same. He was told that the proper way for him to challenge the County Court proceedings was to appeal them, albeit that he was considerably out of time to do so. After some further discussions Mr Garbutt left the hearing.

### **Findings**

6. As we had made clear to Mr Garbutt our remit was to consider the terms of the Transfer and to determine whether there were any Sums to be recovered. The price of £17,400 was determined by reference to the unchallenged Initial Notice served under the provisions of section 13 of the Act.
7. Dealing firstly with the Transfer. This is in standard form TR1 and is made pursuant to Chapter 1 of Part 1 of the Act as amended. We are content with same save that we consider the Transfer should be with Limited title guarantee. The wording for the execution of same by the District Judge should be *“Signed as a Deed by District Judge .....in accordance with the order of the First-Tier Tribunal (Property Chamber) dated 23<sup>rd</sup> May 2018 in case number LON/00BK/OCE/2018/0050.”*
8. Although Mr Garbutt attended and we had invited him to let us have any comments on the Sums payable he left the hearing before that could be explored. In a statement included in the bundle we were told that the Ground Rent was a peppercorn only and that no demands for service charges had been made. In those circumstances we find that there are no Sums that need to be considered, there being no evidence produced to the contrary.

*Andrew Dutton*

**Name:** Tribunal Judge Dutton      **Date:** 23<sup>rd</sup> May 2018

### **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

## **The Relevant Law**

### ***13 Notice by qualifying tenants of claim to exercise right.***

(1) A claim to exercise the right to collective enfranchisement with respect to any premises is made by the giving of notice of the claim under this section.

(2) A notice given under this section ("the initial notice")—

(a) must

(i) in a case to which section 9(2) applies, be given to the reversioner in respect of those premises; and

(ii) in a case to which section 9(2A) applies, be given to the person specified in the notice as the recipient; and

(b) must be given by a number of qualifying tenants of flats contained in the premises as at the relevant date which—

(i) is not less than one-half of the total number of flats so contained;

(2A) In a case to which section 9(2A) applies, the initial notice must specify—

(a) a person who owns a freehold interest in the premises, or

(b) if every person falling within paragraph (a) is a person who cannot be found or whose identity cannot be ascertained, a relevant landlord,

as the recipient of the notice.

(3) The initial notice must—

(a) specify and be accompanied by a plan showing—

(i) the premises of which the freehold is proposed to be acquired by virtue of section 1(1),

(ii) any property of which the freehold is proposed to be acquired by virtue of section 1(2)(a), and

(iii) any property over which it is proposed that rights (specified in the notice) should be granted in connection with the acquisition of the freehold of the specified premises or of any such property so far as falling within section 1(3)(a);

(b) contain a statement of the grounds on which it is claimed that the specified premises are, on the relevant date, premises to which this Chapter applies;

(c) specify—

(i) any leasehold interest proposed to be acquired under or by virtue of section 2(1)(a) or (b), and

(ii) any flats or other units contained in the specified premises in relation to which it is considered that any of the requirements in Part II of Schedule 9 to this Act are applicable;

(d) specify the proposed purchase price for each of the following, namely—

(i) the freehold interest in the specified premises, or, if the freehold of the whole of the specified premises is not owned by the same person, each of the freehold interests in those premises

(ii) the freehold interest in any property specified under paragraph (a)(ii), and

(iii) any leasehold interest specified under paragraph (c)(i);

(e) state the full names of all the qualifying tenants of flats contained in the specified premises and the addresses of their flats, and contain in relation to each of those tenants, —

(i) such particulars of his lease as are sufficient to identify it, including the date on which the lease was entered into, the term for which it was granted and the date of the commencement of the term,

(f) state the full name or names of the person or persons appointed as the nominee purchaser for the purposes of section 15, and an address in England and Wales at which notices may be given to that person or those persons under this Chapter; and

(g) specify the date by which the reversioner must respond to the notice by giving a counter-notice under section 21.

(5) The date specified in the initial notice in pursuance of subsection (3)(g) must be a date falling not less than two months after the relevant date.

(8) Where any premises have been specified in a notice under this section, no subsequent notice which specifies the whole or part of those premises may be given under this section so long as the earlier notice continues in force.

(9) Where any premises have been specified in a notice under this section and—

(a) that notice has been withdrawn, or is deemed to have been withdrawn, under or by virtue of any provision of this Chapter or under section 74(3), or

(b) in response to that notice, an order has been applied for and obtained under section 23(1),

no subsequent notice which specifies the whole or part of those premises may be given under this section within the period of twelve months beginning with the date of the withdrawal or deemed withdrawal of the earlier notice or with the time when the order under section 23(1) becomes final (as the case may be).

(10) In subsections (8) and (9) any reference to a notice which specifies the whole or part of any premises includes a reference to a notice which specifies any premises which contain the whole or part of those premises; and in those subsections and this “specifies” means specifies under subsection (3)(a)(i).

(11) Where a notice is given in accordance with this section, then for the purposes of this Chapter the notice continues in force as from the relevant date—

(a) until a binding contract is entered into in pursuance of the notice, or an order is made under section 24(4)(a) or (b) or 25(6)(a) or (b) providing for the vesting of interests in the nominee purchaser;

(b) if the notice is withdrawn or deemed to have been withdrawn under or by virtue of any provision of this Chapter or under section 74(3), until the date of the withdrawal or deemed withdrawal, or

(c) until such other time as the notice ceases to have effect by virtue of any provision of this Chapter.

(12) In this Chapter “the specified premises”, in relation to a claim made under this Chapter, means—

(a) the premises specified in the initial notice under subsection (3)(a)(i), or

(b) if it is subsequently agreed or determined under this Chapter that any less extensive premises should be acquired in pursuance of the notice in satisfaction of the claim, those premises;

and similarly references to any property or interest specified in the initial notice under subsection (3)(a)(ii) or (c)(i) shall, if it is subsequently agreed or determined under this Chapter that any less extensive property or interest should be acquired in pursuance of the notice, be read as references to that property or interest.

(13) Schedule 3 to this Act (which contains restrictions on participating in the exercise of the right to collective enfranchisement, and makes further provision in connection with the giving of notices under this section) shall have effect.

**25 Applications where reversioner fails to give counter-notice or further counter-notice.**

(1) Where the initial notice has been given in accordance with section 13 but—

(a) the reversioner has failed to give the nominee purchaser a counter-notice in accordance with section 21(1), or

(b) if required to give the nominee purchaser a further counter-notice by or by virtue of section 22(3) or section 23(5) or (6), the reversioner has failed to comply with that requirement,

the court may, on the application of the nominee purchaser, make an order determining the terms on which he is to acquire, in accordance with the proposals contained in the initial notice, such interests and rights as are specified in it under section 13(3).

(2)The terms determined by the court under subsection (1) shall, if Part II of Schedule 9 is applicable, include terms which provide for the leasing back, in accordance with section 36 and that Part of that Schedule, of flats or other units contained in the specified premises.

(3)The court shall not make any order on an application made by virtue of paragraph (a) of subsection (1) unless it is satisfied—

(a)that the participating tenants were on the relevant date entitled to exercise the right to collective enfranchisement in relation to the specified premises; and

(b)if applicable, that the requirements of Part II of Schedule 3 were complied with as respects the giving of copies of the initial notice.

(4)Any application for an order under subsection (1) must be made not later than the end of the period of six months beginning with the date by which the counter-notice or further counter-notice referred to in that subsection was to be given to the nominee purchaser.

(5)Where—

(a)the terms of acquisition have been determined by an order of the court under subsection (1), but

(b)a binding contract incorporating those terms has not been entered into by the end of the appropriate period specified in subsection (8),

the court may, on the application of either the nominee purchaser or the reversioner, make such order under subsection (6) as it thinks fit.

(6)The court may under this subsection make an order—

(a)providing for the interests to be acquired by the nominee purchaser to be vested in him on the terms referred to in subsection (5);

(b)providing for those interests to be vested in him on those terms, but subject to such modifications as—

(i)may have been determined by a leasehold valuation tribunal, on the application of either the nominee purchaser or the reversioner, to be required by reason of any change in circumstances since the time when the terms were determined as mentioned in that subsection, and

(ii)are specified in the order; or

(c)providing for the initial notice to be deemed to have been withdrawn at the end of the appropriate period specified in subsection (8);

and Schedule 5 shall have effect in relation to any such order as is mentioned in paragraph (a) or (b) above.

(7)Any application for an order under subsection (6) must be made not later than the end of the period of two months beginning immediately after the end of the appropriate period specified in subsection (8).

(8)For the purposes of this section the appropriate period is—

(a)the period of two months beginning with the date when the order of the court under subsection (1) becomes final, or

(b)such other period as may have been fixed by the court when making that order.