

LON/00AS/LSC/2005/0238

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON AN APPLICATION UNDER SECTIONS 27A OF
THE LANDLORD AND TENANT ACT 1985, AS AMENDED.

Address

Flats 31,37,39 Morgans Lane, Hayes,
Middlesex UB3 2UA

Applicants

Jacqueline Akapo Flat 31
Edward Broad Flat 37
Patricia Conlon Flat 39

Respondents

Hillingdon Homes Ltd

The Tribunal

Mrs J Goulden JP
Mr D Levene OBE MRICS

Hearing:

23rd September 2005

Date of Decision

23RD September 2005

BACKGROUND

1. The Leasehold Valuation Tribunal ("the Tribunal") has received on 25 August 2005 an application dated 24 August 2005 for a determination of liability to pay service charges under section 27A of the Landlord and Tenant Act 1985, as amended ("the Act").
2. The original Applicant is Mr E C Broad. Two further parties, Ms J Akapo of 31 Morgans Lane and Ms P Conlon of 39 Morgans Lane are joined as Applicants to the application.
3. The Respondent is Hillingdon Homes Ltd.
4. The Applicant stated in his application that he wished the Tribunal to determine the following.

"As a flat dweller in a block of six I am collectively seeking the freehold of the block and I wish to contest a clause in the Leasehold Agreement from being interposed as a freehold covenant on the grounds of discrimination.

While both council house tenants and leaseholders pledge liabilities to ground maintenance, the house freeholder's liabilities cease on the success of the enfranchisement and are futured within the council tax. I claim the same treatment.

The landlord furnished me a written statement on a previous but aborted attempt at enfranchisement that we would be disallowed to use the communal drying or which all participants were in agreement. But for the landlord's change of direction my appeal to LVT would be unnecessary."

Hearing

5. The Hearing took place on 23 September 2005.
6. Mr E C B Broad, one of the Applicants appeared and was accompanied by his son in law, Mr B Atkinson.
7. Mrs T Robson, Solicitor, London Borough of Hillingdon, and Mr D Ollendorff, Housing Manager, Hillingdon Homes Ltd appeared on behalf of the Respondent.
8. Mr Broad handed to the Tribunal written submissions, to which he referred, in which it was stated:-

"I represented the Gansmor Property Company and I bring charges of discrimination against my landlords Hillingdon Homes Ltd appertaining to Estate Maintenance Charges in my endeavours to attain the enfranchisement of the block of six flats in which I reside.

Whereas both the Council House Tenants and the Council Flat tenants have pledged to pay Estate Maintenance charges, the House tenant's liabilities cease on the attainment of the freehold, but in the case of the Flat tenant the landlord is proposing to adopt liability as a covenant. That is my opinion is discriminatory beyond all doubt.

The reason given for this proposal is "discrimination extended". In the case of the flat tenant the non payment would cause a shortfall in revenue that would have to be borne by the community. How would the deficit be made up in the case of the House of Tenant?

You will already have in your possession a copy of a letter that I received from the council referring to a previous but aborted attempt at the enfranchisement showing in effect that there would be no charge and it was with that stipulation in mind that we undertook the present attempt.

A big disappointment to me would be if after both sides stated their case the tribunal decided that they had no jurisdiction over the hearing. If that were to be the case I would like to put forward a solution that may possibly give them the authority to adjudicate.

I would propose that a clause be inserted into the new lease whereby my company would be obliged to inform Hillingdon Homes of the Gansmor tenants remaining leaseholders, thus giving the Council the right to demand maintenance charges direct from the leaseholders."

9. Mr Broad added that the nominee purchaser company did not want to use the amenities and should therefore not be charged. He said the council had already agreed to this. He drew attention to a letter to him dated 15 March 1996 from Housing Asles Tear, London Borough of Hillingdon which related to an earlier application to enfranchise. In that letter the local authority stated *"you will be aware that upon acquisition of the freehold your current figures to use the amenity areas, parking spaces, drying areas etc within the estate will cease"*.
10. Mrs Robson said that Section 27A of the Act was not relevant to the Applicants' case and the appropriate legislation was set out in section 24 of the Leasehold Reform, Housing and Urban Development Act 1993. She provide relevant extracts of both Acts together a copy of the Initial Notice and Counter Notice. She said that Mr Broad had taken action under incorrect legislation and in any event his action had been premature since the Counter Notice was dated 13 July 2005 and no negotiations had yet taken place within the two month period provided for in the Counter Notice.
11. Mrs Robson also pointed out that under the terms of the Initial Notice the Applicants had specifically requested the transfer to incorporate *"all rights currently enjoyed under the terms of the leases"* which had been accepted by the Respondent in the Counter Notice and these rights included the amenities which Mr Broad now said were not required and for which he did not wish to pay. Mrs Robson referring to the letter relied on by Mr Broad of 15 March

1996 (paragraph 9 above) said that it related to an earlier application to enfranchise which had not proceeded. The Respondent did not agree with its contents.

12. Mr Ollendorff said that once the Applicants had purchased the freehold, Hillingdon Homes Ltd, would not agree to approach the three non participating tenants direct but would only deal with the nominee purchaser.

The Tribunal's Determination

13. The Tribunal's jurisdiction under section 27A of the Act is as follows:-

(1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is , as to

- (a) the person by whom it is payable.**
- (b) the person to whom it is payable.**
- (c) the amount which is payable.**
- (d) the date at or by which it is payable, and**
- (e) the manner in which it is payable.**

14. The issues raised in the present application before the Tribunal do not fall within the Tribunal's narrow remit as set out in Section 27A of the Act.

15. Accordingly the Tribunal has no jurisdiction and the application before it is dismissed.

16. In order to assist the parties the Tribunal, after an adjournment in order to consider the issues, gave an oral decision to the parties at the end of the Hearing.

17. The Tribunal, as was stated at the Hearing, is unable to give legal advice but it was suggested to Mr Broad that in view of the issues raised both by him and

by Mrs Robson, he should consider seeking legal advice as to what further action might be appropriate.

CHAIRMAN 
DATE 29.10.2005