

LON/ENF/1797/2006

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON AN APPLICATION UNDER THE LEASEHOLD REFORM HOUSING AND
URBAN DEVELOPMENT ACT 1993 SECTION 24**

PROPERTY: 602 HIGH ROAD LEYTONSTONE LONDON E11 6DA

APPLICANTS: DEIRDRE GWENDA FORREST and ATA KASAP &
MARY TERESA KASAP

Represented by: Edell Jones and Lessers

RESPONDENT: G & O ESTATES LIMITED
Represented by: Glenisters

TRIBUNAL

Mrs T I Rabin Chairman
Mr J Avery

Date of Tribunal's decision: ~~26~~ 8 2006

602 HIGH ROAD LEYTONSTONE LONDON E11 3DA

INTRODUCTION

1. The Tribunal were dealing with a preliminary hearing on papers only to determine whether the Tribunal had jurisdiction to deal with an application under Section 24 of the Leasehold Reform Housing and Urban Development Act 1993 ("the 1993 Act") to determine the terms upon which the freehold of 602 High Road Leytonstone E11 3DA ("the Property") was to be acquired by the qualifying lessees, who were the long leaseholders of Flats A, B and C..
2. The Applicants, together with Kevin Atkins and Rebecca Kingsnorth who were lessees of Flat B at that time, served a notice dated 16th June 2005 ("the Notice") under Section 13 of the 1993 Act claiming the right of collective enfranchisement of the freehold pursuant to the 1993 Act. This notice was served upon the freeholder, who was the Respondent. The notice offered the sum of £2,749 for the freehold interest in the Property.
3. The claim was rejected by Messrs Glenisters, acting on behalf of the Respondent on 26th August 2005. The grounds were that the Notice was invalid as it failed to comply with Section 13 of the 1993 Act since it did not contain the required particulars and, in particular, did not contain details of the Nominee Purchaser.
4. The Applicants and Kevin Atkins and Rebecca Kingsnorth served a notice on the Respondent under Section 15 of the 1993 Act amending the identity of the Nominee purchaser to those people. In effect, the Section 15 Notice purported to provide that the persons who originally served the Notice were to be considered thenceforth as the Nominee Purchasers. A further Section 15 Notice was served on 24th February 2006 after Kevin Atkins and Rebecca Kingsnorth disposed of their interest in Flat B in which the identity of the Nominee Purchaser was stated to be amended to that of the Applicants.
5. The Property was transferred from the Respondent to G & O Securities Ltd some time before 15th March 2006. Messrs Glenisters stated that G & O Securities Ltd is an associated company of the Respondent and that, in the absence of registration of the Notice at HM Land Registry, the restriction in Section 19(1) of the 1993 Act would not apply and the Respondent was free to dispose of the freehold interest in the Property.

REPRESENTATIONS

6. Both Messrs Edell Jones and Lessers and Messrs Glenisters provided skeleton arguments. Messrs Edell Jones and Lessers, on behalf of the Applicants, stated that the Nominee Purchasers and the qualifying tenants were one and the same and that Paragraph 15(1) of Schedule 3

specifically provided that the Notice should not be invalidated by an inaccuracy in any of the particulars required by Section 13 (3) and that under Section 15 of the 1993 Act, the identity of the Nominee Purchaser could be changed by notice. No application was made to the County Court under Section 22 of the 1993 Act as this is only relevant where the Respondent disputes the Applicants' entitlement to acquire the freehold and not the validity of the Notice itself.

7. Messrs Glenisters argued on behalf of the Respondent that if an invalid Notice is served, the Tribunal's jurisdiction to determine the terms of the acquisition is not triggered. The Notice was defective in that it did not specify the name of the Nominee Purchaser and that the inclusion of the name of the Nominee Purchaser was a mandatory requirement of the 1993 Act. No application was made to the County Court in accordance with Section 22 of the 1993 Act within the time limits permitted and the Respondent no longer had an interest in the Property and the Tribunal therefore did not have jurisdiction.

DECISION

8. The requirements for a valid Section 13 Notice are set out in detail in Section 13 (2) and (3) of the 1993 Act. In particular, Section 13(3)(f) requires that the Section 13 Notice shall

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 notice may be given to that person or those persons under this Chapter

The Notice served in this case did not specify a person or persons as the nominee purchaser or purchasers. However, there could be no doubt in the Respondent's mind that those persons who gave the Notice were the qualifying tenants and there could also be no doubt that they wished to purchase the freehold of the Property from the Respondent for the price stated in the Notice.

9. Section 15 of the 1993 Act provides that the nominee purchaser or purchasers should, on behalf of the participating tenants, conduct all proceedings arising out of the Notice with a view to the eventual acquisition by him or them of the freehold. Section 15 provides for the appointment of the nominee purchaser to be terminated by notice provided that the new nominee purchaser is named in the notice. There was no Nominee Purchaser cited and the provisions of Paragraph 15(1) of Part III of the Third Schedule to the 1993 Act, which provides that the initial notice will not be invalidated by any inaccuracy in any of the particulars required will not apply as the omission of the identity of the Nominee Purchaser goes beyond an inaccuracy.
10. The Respondent rejected the Notice on the grounds that no nominee purchaser was named in contravention of Section 13 (3) (f) and that this was a mandatory provision. However, this was the only ground upon which the Notice was rejected and the Respondent included in its

response, without prejudice to their contention that the Notice was invalid, alternative proposals for the Applicants to acquire the freehold in the Property, including proposing a price for the freehold interest, requiring a lease back of the First Floor flat to the Respondent and the payment of the statutory costs by the Applicants. The Notice stated the names of five persons, even though they were in fact long leaseholders of only three flats. Although only four persons or a Trust Corporation can own the legal estate in land, there is provision that the first four named will hold the legal estate as trustees for all the purchasers so there was no bar to the Respondent transferring the Property in accordance with the Notice.

11. The Tribunal acknowledge that there had been a failure of the Applicants to name a Nominee Purchaser in the Notice. This is a requirement of Section 13 (3)(f) of the 1993 Act but the Tribunal must consider the effect of the Applicants' failure to comply with the requirement. The Tribunal considered the Court of Appeal case of **R-v-Immigration Appeal Tribunal ex parte Jeyeanthan [1999] 3 All ER 231** where Lord Woolf considered the approach to be adopted when considering non-compliance with procedural requirements. The Tribunal must consider, not only whether the requirement which was not complied with was mandatory or directive but what the legislation intended should have been the consequence of non-compliance. The Tribunal considered the case of **York-v-Casey[1998]30 EG 110[1998]2 EGLR 25** where Lord Justice Peter Gibson stated:

what the Court must do is to see whether the error in the notice was obvious or evident and second, whether notwithstanding that error the notice read in its context is sufficiently clear to leave a reasonable recipient in no reasonable doubt as to the terms of the notice

The case of **York -v- Casey** related to a prescribed form for the termination of an assured shorthold tenancy under the Housing Act 1988 but the Court held that the defective notice, when read with the covering letter, was clear.

12. This approach was followed by the Lands Tribunal in the case of **Sinclair Gardens Investments (Kensington) Limited and Oak Investments RTM Company Limited LRX/52/2004.** This related to the failure to serve notice on a qualifying tenant in accordance with Sections 78 and 79 of the Commonhold and Leasehold Reform Act 2002 before acquiring the Right to Manage a property and the Lands Tribunal, having considered the case of **Jeyeanathan**, determined that the failure to comply with the statutory requirement was not fatal as the tenant was aware of the proceedings and the landlord had not been prejudiced by the failure to serve a notice under Section 79(8) of the 2002 Act.
13. Although the Notice failed to state the name of the Nominee Purchaser in accordance with the requirements of Section 13 (3) (f) of the 1993 Act, the Tribunal must ask itself whether this was a mandatory requirement, not capable of remedy, or a directory requirement, when it could be disregarded. The Tribunal must also look at the consequences of that failure. The legislation provides for a Nominee Purchaser to be specified

to enable the landlord to be aware of the identity of the person to whom notices should be served and who will conduct the negotiations for the acquisition of the freehold. Section 13 (3)(f) refers to the person or persons appointed, which indicates that the Nominee Purchaser need not be one person, and requires an address for service of notices to be specified. There are cases of collective enfranchisement where there are a large number of qualifying tenants and then it is important that the landlord is not required to deal with all the qualifying persons, which would be cumbersome and could lead to conflict. In this case, the qualifying tenants are the owners of only three flats in the Property and, since there were initially five in total, now reduced to three, those difficulties in communication would not arise. The Applicants had also provided an address for service and appointed a person to act on their behalf.

14. The Respondent was well aware of the identity of those persons who were the qualifying tenants from the terms of the Notice. The terms for the proposed purchase of the freehold by the Applicants were also clearly stated and there was an address for notices to be given under Chapter 1 of Part 1 of the 1993 Act. The Tribunal has followed the reasoning in the case of Jeyeanathan, which was followed in the Lands Tribunal decision of Sinclair Gardens Investments (Kensington) Limited, and gone beyond a decision limited to whether the requirement to name a Nominee Purchaser in the Notice was mandatory to procedural and considered the intention of Parliament and the consequences of the procedural failure. The Tribunal has come to the conclusion that the Respondent has not been prejudiced by the Applicant's failure to name a Nominee Purchaser in the Notice. The Respondent rejected the Notice on that ground but acknowledged that, had the Notice been valid, the Applicants were entitled to acquire the freehold and gave alternative proposed terms and would have been prepared to proceed on the revised terms or such terms as were determined by the Tribunal. In the absence of any prejudice to the Landlord, the Tribunal determines that the Notice was effective in commencing the procedure for acquisition of the freehold in the Property under Chapter 1 of the 1993 Act.
15. The Applicants subsequently made two errors which have adversely affected their application. They failed to make an application to the County Court under Section 22 of the 1993 Act for a determination of the validity of the initial contract and, having maintained that the Notice was valid and effective, they failed to register the Notice in accordance with Section 97(1) of the 1993 Act. This provides that, once a Notice has been registered, the freeholder cannot "make any disposal severing his interest in the premises or any property specified in the Notice" nor may they, in effect, grant any lease. This meant that the Applicants did not benefit from the protection given by Sections 19 (2) and (3) of the 1993 Act which provides that on a sale of the freehold where the Notice has been registered, this will not take effect and the parties will be in the same position as they would have been had the sale of the freehold (or the grant of lease) not taken place.

16. In fact the Respondent transferred the freehold interest to another company, G & O Securities Limited in March 2006, which was stated to be an associated company of the Respondent. In the absence of any representations by the Applicants, the Tribunal accepts that this is an associated company of the Respondent and that pursuant to Section 4 (2) (l) of the Landlord and Tenant Act 1987 ("the 1987 Act"), the disposal of the freehold to a company which has been an associated company is not a relevant disposal for the purposes of Section 1 of the 1987 Act and that the Respondent was not required to offer the Applicants first refusal. In the absence of the Notice having been registered in accordance with the provisions of Section 97(1) of the 1993 Act, the Respondent was quite entitled to transfer the freehold.
17. It might be argued on behalf of the Applicants that the transfer of the Property from G & O Estates Ltd to G & O Securities Ltd, an associated company, was nothing more than a transparent device to avoid the provisions of the 1993 Act. The 1993 Act has provision to block such action, provided that the Applicants register the Notice under Section 97(1). By omitting to effect registration, the Applicants have no grounds for resisting or avoiding the consequences of the transfer of the freehold interest by the Respondent.
18. At the date this application is being considered the Respondent has no interest in the Property and there are no issues relevant to this application between the parties. Thus any decision of the Tribunal would be nugatory and the Tribunal determines that it has no jurisdiction to hear this application which is accordingly dismissed.


CHAIRMAN

Mrs T I Rabin

Date: 28th August 2006

**THE LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL.**

LON/ENF/1797/06

Leasehold Reform Housing and Urban Development Act 1993

**DECISION ON AN APPLICATION FOR LEAVE TO APPEAL
RE: 602 HIGH ROAD LEYTONSTONE LONDON E11 3DA**

**Applicant: DEIRDRE GWENDA FORREST (1)
 ATA KASAP and MARY TERESA KASAP (2)**

Respondent: G & O ESTATES LIMITED

The Tribunal has considered the Respondent's request for Leave to Appeal dated 10th October 2006 and determines that Leave be allowed to appeal to the Lands Tribunal as the application raises a point of potentially wide implication..

**Tribunal: Mrs T I Rabin
 Mr J AVERY**

**Signed: .....
 T I RABIN**

Dated: 1st November 2006