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Our Ref: BIR/47UE/0AF/2002/0085

MIDLAND RENT ASSESSMENT PANEL

Leasehold Reform Act 1967

Housing Act 1980

DECISION OF LEASEHOLD VALUATION TRIBUNAL

ON AN APPLICATION UNDER S21 OF THE LEASEHOLD REFORM ACT 1967

Applicant: The Executors of Mrs E.R.Bradnock (deceased).

Respondent: Burford Estate & Property Company Limited.

Re: 1, St Michael's Road, Worcester WR3 7PD

Date of Tenant's Notice: 23rd September 2002

RV as at 1.4.73: Less than £500

Application dated: 15th November 2002

Heard at: The Panel Office

On: 22nd May 2003

APPEARANCES:

For the Tenant: Mr P Wintle

For the Landlord: Mr G Willetts (of counsel)

Members of the Leasehold Valuation Tribunal:

Mr A.J.ENGEL (Chairman)

Mr D.J.SATCHWELL

Mr G.CHIDLOW

Date of Tribunals decision: 29th July 2003

Background

1. On 2nd August 1945, a lease of 1, St Michael's Road, Worcester WR3 7PD (the property) for a term of 90 years (less 10 days) was granted to Edith Ruby Bradnock (Mrs Bradnock), who was already living in the property with her husband (who died in 1991) and son (Mr Bradnock, who gave evidence at the hearing).
2. By letter, dated 14th August 2002, the landlord wrote to Mrs Bradnock giving a quotation of £6,100 which the landlord was willing to accept for the freehold. Mr Bradnock told the Tribunal that this quotation was given in response to his having ticked a box on the back of a document (from the Landlord) requesting the ground rent, which he returned to the Landlord (together with the ground rent). This document was not produced to the Tribunal.
3. By letter, dated 23rd September 2002 (copy attached hereto, marked "A"), Mr Wintle (the representative of both Mrs Bradnock and her son, Mr Bradnock) notified that the Landlord that his client (Mrs Bradnock) "wishes to exercise her right to enfranchise under the terms of the Leasehold Reform Act 1967". The letter gives a valuation of £1,700 (for the acquisition of the freehold).
4. Mrs Bradnock died, intestate, within a few days of 23rd September 2002. Her son, Mr Bradnock is her only child and he is dealing with her estate.
5. On 15th November 2002, Mr Wintle applied to the Tribunal, under Section 21 of the Leasehold Reform Act 1967, for determination of the price payable for the freehold under Section 9 of the Leasehold Reform Act 1967.

This application refers to the Executors of Mrs. E.R. Bradnock (deceased); whereas Mrs Bradnock had died intestate but nothing turns on this error.

6. A preliminary hearing was arranged for 22nd May 2003 so that the Tribunal could consider the question of whether the Tenant had given a valid notice of desire to have the freehold.

Written Representations

7. Between 15th November 2002 and 22nd May 2003, Mr Wintle made written representations to the Tribunal referring to his letter of 23rd September 2002 (Annex A) as the formal application (to purchase the freehold) and solicitors (David Conway & Co), acting for the Landlord, made written representations to the effect that the letter (Annex A) was not a valid notice, as required by the relevant statutory provisions.

The Hearing

8. At the hearing on 22nd May 2003, Mr Willetts, counsel for the Landlord, referred the Tribunal to (parts of) the Leasehold Reform Act 1967, the Landlord and Tenant Act 1954, the Leasehold Reform (Notices) Regulations 1997, the Leasehold Reform (Notices) (Amendment) (England) Regulations 2002 and the following cases:-

Tergerdine v Brooks 1977 (Court of Appeal)

Cresswell v Duke of Westminster 1985 (Court of Appeal)

Dymond v Arundel-Timms 1990 (Court of Appeal)

Sabella v Montgomery 1997 (Court of Appeal)

8. Mr Willetts submitted that Annex A omitted a number of matters, which were required by Form 1 of the Leasehold Reform Act (Notices) (Amendment) (England) Regulations 2002, that it did not satisfy the statutory requirements and that it was not in the prescribed form or a form substantially to the same effect.

9. Mr Wintle submitted that any matters which were required by the prescribed form but omitted from Annex A, were matters which were well known to the Landlord and that, accordingly, Annex A was a valid notice.

10. Mr Bradnock gave oral evidence to the Tribunal concerning the history of the property. The Tribunal accepted this evidence.

11. At the conclusion of the hearing, the Chairman stated that he thought there were other relevant cases, which had not been referred to at the hearing. The Chairman said that he would research these cases and that the Tribunal would consider both the cases cited (by Mr Willetts) and any further relevant cases found by the Chairman and would then decide whether or not it was appropriate to invite the parties to make further representations.

The Chairman's Research

12. The Chairman's research produced the following extra cases:-

Mannai v Eagle Star 1997 (House of Lords)

<u>York v Casey</u>	1998 (Court of Appeal)
<u>Speedwell v Dalziel</u>	2001 (Court of Appeal)
<u>Burman v Mount Cook</u>	2001 (Court of Appeal)

13. The Tribunal met (on 9th July 2003) in private and considered the relevant statutory provisions, the cases cited by Mr Willetts and the extra cases (referred to at No. 12 above). The Tribunal decided that the legal position was clear that that it was not appropriate to invite the parties to make further representations.

The Statutory Provisions

14. Section 8(1) of the Leasehold Reform Act 1967 (the 1967 Act) provides that a Tenant wishing to acquire the freehold must give to the Landlord "written notice of his desire to have the freehold".

Section 5(1) of the 1967 Act provides that if such notice is given, the rights of the Tenant arising from the notice inures for the benefit of the tenant's executors/administrators.

Paragraph 6(1) of Schedule 3 to the 1967 Act provides that the Tenant's notice shall be in the prescribed form and it sets out the particulars that it must contain. Paragraph 6(3) contains a saving provision in respect of inaccuracies or a misdescription of the property.

15. Section 22 of the 1967 Act and Section 66 of the Landlord and Tenant Act 1954 provide the statutory basis for the making of Regulations.

Pursuant thereto, the following Regulations have been made:-

The Leasehold Reform (Notices) Regulations 1997. S.I. 1997/240
(the 1997 Regulations)

The Leasehold Reform (Notices) (Amendment) (England) Regulations 2002. S.I. 2002/1715
(the 2002 Regulations).

16. The 1997 Regulations provide that Form 1 (in the Schedule to the Regulations) "or a form substantially to the same effect" must be used when a Tenant gives written notice under Section 8(1) of the 1967 Act.

The 2002 Regulations provide for a new Form 1 to be used after 25th July 2002.

17. Thus the questions that the Tribunal had to answer were:-

- (1). Is Annex A in Form 1 (of the 2002 Regulations) or a form substantially to the same effect?
- (2). Does Annex A contain the particulars required by Paragraph 6(1) of Schedule 3 to the 1967 Act (having regard to Paragraph 6(3))?
- (3). If the answer to either Question 1 or 2 is "no", does this invalidate the Notice?

Decision

18. The Tribunal's answers to the questions set out at Paragraph 17 above are:-

- (1). Clearly, Annex A is not in Form 1 (of the 2002 Regulations); equally clearly, Annex A is not in a form substantially to the same effect as Form 1 (of the 2002 Regulations).
- (2) With regard to (a), (b) (c) and (d) of Paragraph 6(1) of Schedule 3 to the 1967 Act, the position is:-
 - (a) This is satisfied;
 - (b) This is not satisfied;
 - (c) This is not satisfied;
 - (d) This is not satisfied.

The missing particulars are not covered by the saving provision in Paragraph 6(3) of the Schedule, which refers to inaccuracies –as opposed to omissions.

- (3) The Notice (Annex A) is invalid.

This is clear from the cases referred to at Paragraphs 8 and 12 above; in particular, Speedwell v Dalziel 2001 (Court of Appeal) – reported in The Times on 19th October 2001, which is (of course) binding on the Tribunal. Speedwell v Dalziel concerned a notice to acquire the freehold given by a Tenant. The notice was given in Form 1 (of the 1967 Regulations) but certain information required by the Form and also by Paragraph 6(1) of Schedule 3 to the 1967 Act was omitted.

The Court of Appeal stated that if information (required under Paragraph 6 of Schedule 3) was omitted, then a tenant's notice was invalid even though the missing information was known to the Landlord . Thus, although the Tribunal sympathises with the submission made to it by Mr Wintle on this point, the Tribunal is bound by the Court of Appeal decision in Speedwell v Dalziel to reject it.

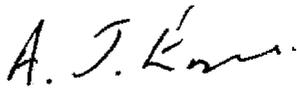
Further, the Court of Appeal in Speedwell v Dalziel ruled that failure to comply with the requirements of Schedule 3 to the 1967 Act invalidates a tenant's notice. Accordingly, we are bound by the Court of Appeal's decision in Speedwell v Dalziel to find that the Tenant's notice in this case (Annex A) is invalid.

We do not, in these circumstances, need to rule on the question of whether a notice which fails to comply with the 1967 Regulations (as amended by the 2002 Regulations) is invalid in the event that the particulars required by Schedule 3 to the 1967 Act were all given - although we think that it would be invalid (in view of the reference to the prescribed form in Paragraph 6(1) of the Schedule).

Conclusion

19. The Tenant's notice to acquire the freehold (Annex A) is invalid. It follows that the Tribunal has no jurisdiction to decide the application, dated 15th November 2002, to the Tribunal (under Section 21 of the 1967 Act). The application is, therefore, dismissed.

SIGNED



(Chairman)

DATED: 29th JULY 2003

ANNEX (A)

FAO: Angela Gershon
Burford Estate & Property Co. Ltd.
20 Faher Street
London
W1U 2DD

23 September 2002

Dear Sirs

PURCHASE OF THE FREEHOLD INTEREST IN 1
ST MICHAELS ROAD, CLAINES, WORCESTER WR3 7PD
- MY CLIENT: MRS R BRADNOCK

Thank you for your letter of 14 August 2002 to my client, Mrs Bradnock, in connection with the above. As you are aware, my client wishes to exercise her right to enfranchise under the terms of the Leasehold Reform Act 1967.

You are no doubt aware of the prescribed valuation method and as such I am most surprised that you are asking my client for £6,100 plus £498.27 for legal costs. I have carried out a valuation in accordance with the above mentioned act and my valuation is £1,700, which is considerably less than your own valuation. Clearly such a discrepancy is most concerning and I am wondering whether you consider that my client resides in 7-bedroomed country house set in three acres, rather than a small three bedroomed semi detached house without garage.

I look forward to hearing from you together with your reasons for your Valuation and whether or not you are prepared to negotiate on a realistic basis, in the near future. Should this not be the case, my client's instructions are to refer this matter to the Leasehold Valuation Tribunal.

Yours faithfully

Paul Wintle
BSc (Hons) M.R.I.C.S.