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MIDLAND RENT ASSESSMENT PANEL

Case Nos: BIR/00CN/OAF/2004/0163
BIR/00CN/OC6/2004/0127

Leasehold Reform Act 1967

LEASEHOLD VALUATION TRIBUNAL

In the matter of

Saiqa Bi
and

(the Applicant)

SJ and GJ Laing and DM and GR Atkinson

(the Respondent)

And in the matter of the Applicant's applications under section 21 for:

Determination of the price payable on enfranchisement by the Applicant under section 9 and the reasonable costs payable under section 9(4)

Re: 159, Northfield Road, Kings Norton, Birmingham B30 1EA

RULING ON THE TRIBUNAL'S JURISDICTION:

On the validity of the Applicant's applications to the LVT for the determinations sought by the Applicant pursuant to the Applicant's claim to have the freehold of the house and premises under Part 1 of the Act

HEARD ON 29 SEPTEMBER 2004
AT THE PANEL OFFICE

MEMBERS OF THE TRIBUNAL

Mr T F Cooper (Chairman)
Mr W J Martin
Miss B Granger

THE ISSUE, DATE OF HEARING AND APPEARANCES

1. Miss S Bi (the Applicant) is the tenant of 159, Northfield Road, Kings Norton, Birmingham B30 1EA (the 'Property'). By her notice (the 'Notice') 29 April 2004 she claims to acquire the freehold of the Property under the Leasehold Reform Act 1967 (the 'Act'). The Notice is given in the prescribed Form 1 of the Schedule to the Leasehold Reform (Notices) (Amendment) (England) Regulations and is given to Mansal Securities Limited ('Mansal'). By her applications (the 'Applications') 30 June 2004 under s.21 she applies to us: (a) for the determination of the price payable under s.9; and (b) for a determination of the reasonable costs payable under s.9(4). By its letter 9 July 2004 to the Tribunal, Mansal says: 'we do not own the freehold and have not done for the last four years.' Subsequently, Mr J Moore of Midland Valuations Limited (for Miss Bi) exchanged correspondence with Mansal in which our jurisdiction is contested. Mr Moore says we have jurisdiction as the Notice is validly given and served; Mansal says we do not have jurisdiction as it is not the freeholder.

2. The Tribunal is unable to proceed with the Determinations sought by the Applicant in the Applications unless it is satisfied that it has jurisdiction.
3. The issue (the 'Issue') is whether the Applicant's Notice is 'served' (s.22(5)) on the freeholder (the Respondent). The Tribunal heard the Issue at its Panel Offices on 29 September 2004 and reserved its ruling. Other than the Issue, the validity of the Notice and the Applications are not contested. Neither the Respondent nor Mansal was represented but Mansal has provided written representations. Mr J Moore appeared for the Applicant.

OUR RULING

4. Upon hearing the Issue, as a preliminary issue, we find and hold that the Applicant's Notice is validly served on the Respondent; and that, in consequence, the Applicant's Applications are valid; and that we have jurisdiction. Accordingly, we shall proceed with the cases and direct that there will be, on the first convenient available date, a hearing to hear the parties on the price payable and the reasonable costs payable.
5. In giving our ruling we recognise that we do not have the jurisdiction to determine our jurisdiction on the Applicant's Applications conclusively to bind the parties. Only the Court can do that. We make our ruling solely for the purpose of deciding whether to proceed with the Applicant's Applications.

EXPLANATION OF OUR RULING

6. It is common ground that there is no intermediate landlord (Schedule 3. para 8(1)(a)).
7. Mansal's ground (for the Respondent) for submitting that the Applicant's Applications are not valid is that the Notice is not served on the freeholder (the Respondent); it is served on Mansal which is not the freeholder.
8. Mr Moore says Miss Bi has no notification of the name and address of the landlord (the Respondent). Mansal refers us to the s.48(1) Landlord and Tenant Act 1987 (the '1987 Act') notice 4 October 2000, notifying the name and address of the Respondent. Mr Moore points out it is addressed to a predecessor in title, not Miss Bi. Mansal says neither it nor the Respondent has received notice of assignment to Miss Bi. However, Mr Moore informed us that notice of the assignment to Miss Bi had been given but it had been returned by Mansal with the cheque for the notice because a notice fee was outstanding from the previous assignment.
9. We find and hold, on the evidence, that the tenant (Miss Bi) has not been given notice under s. 48(1) 1987 Act of an address at which notices may be served by the tenant; leaving her to infer notices may be served on Mansal. However, we note that the sanction, in s.48(2), is limited to recoverability of rent

or service charge; there is no reference to any other sanction in the event of the landlord failing to comply.

10. Mr Moore says that, by s.47 1987 Act, Mansal, as the Respondent's agent demanding rent from the tenant of the Property, should identify, in demands, the name and address of the landlord and, on the evidence of several copy demands before us, Mansal has not complied; leaving Miss Bi to infer that the landlord is Mansal at PO Box 1822 Warwick CV35 8ZZ (the name and address on the demands) on which the Notice was served pursuant to para 8. Part II Schedule 3 of the 1967 Act.
11. Neither the Respondent nor Mansal has complied with s.47 1987 Act. The copies of the written demands for rent, introduced by Mr Moore, do not contain the name and address of the landlord (Respondent). However, again, we note that the sanction, in s.47(2), is limited to recoverability of service charge; there is no reference to any other sanction in the event of the landlord failing to comply.
12. Mr Moore says the wording in the rent demands, including the demand 26 February (for rent due 25 March 2004 plus arrears), from Mansal addressed to 'The Occupier' or the predecessor in title: '... our approval as freeholder is required to alterations and additions to your property', clearly represents that Mansal was the freeholder; and we have no evidence, prior to the date of the Notice, negating the representation.
13. We accept Mr Moore's evidence and submission. Miss Bi has a representation ('Mansal as freeholder') on which she is entitled to rely.
14. Mr Moore says that, by paras 7. and 8. of the Notice, Mansal has an obligation to serve a copy of the Notice on the Respondent freeholder or must give written notice of the freeholder to the Applicant; and Mansal has not complied with the obligation. He says that, in the LVT case of *Gooding v Mansal Securities Ltd* [2002] M/LRC 381 (West Midlands RAP), in which Mr Moore appeared for the applicant tenant, Mr S J M Laing appeared for Mansal Securities Ltd and declared an interest in it. Accordingly we should infer that one of the Respondent's (Mr Laing) has a connection with Mansal and it cannot be said that he would not have known of the Notice.
15. We accept that it may reasonably be argued that Mansal has obligations, in paras 7. and 8. of the Notice. However, on reading para 8(1)(d) Part II Schedule 3 of the Act, we note that the obligation in para 7. of the Notice applies, 'unless he is a person having no such interest'; and as Mansal has no such interest it, therefore, has no obligation. On reading para 8(2)(b) Part II Schedule 3 of the Act and accepting Mr Laing's connection with Mansal, we find that although it cannot be said that Mansal did not know who is the person designated as the reversioner the obligation to give notice to the claimant and to serve copies of that notice on the reversioner appears only to apply to a recipient under para 8(1)(d) because of the word 'and' at the end of para 8(2)(a) and accordingly we do not find that Mansal should have given written notice to Miss Bi stating who is the reversioner.

16. Mr Moore refers us to Radevsky and Greenish, *Hague on Leasehold Enfranchisement* (4th Edn. 2003), p.117, saying: 'An agent with authority to demand and accept rent will usually have sufficient authority [to receive service of a tenant's claim to enfranchise]. Also there is deemed service on the landlord if the notice is given to a former landlord and the tenant has not received notice of the change in landlord.'
17. We accept Radevsky and Greenish's proposition.
18. Mr Moore says that, on the collective facts, Mansal has general authority from the freeholder/Respondent in relation to dealings in respect of the Applicant's lease of the Property.
19. On the authorities relied on in *Hague*, we decide we should be cautious in accepting Mansal's general agency without reference to the Respondent but we find, on the evidence, Mansal cannot be said to have only special or limited authority as Mansal has acted as if it were the landlord. We find we have clear evidence supporting the inference of Mansal's general agency.
20. For the above reasons we rule that the Applicant's Notice is 'served' (s.22(5)) on the freeholder.

Date: 15 OCT 2011

T F Cooper (Chairman)

