

3049



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

Case Reference : LON/00AJ/OLR/2014/1701

Property : 40 The Vale Court, The Vale,
London W3 7SA

Applicant : Roger Banks (1)
Valerie Banks (2)

Representative : PJH Solicitors

Respondent : Golden PD (1) LLP

Representatives : Michael Simkins LLP Solicitors

Type of Application : For the determination of the
premium payable for the grant of a
new lease (jurisdiction issue).

Tribunal Members : Ms N Hawkes
Mrs E Flint DMS FRICS IRRV

Venue : Alfred Place, London WC1E 7LR

**Date of Paper
Determination** : 4.2.15

DECISION

Background

1. This is an application under section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 (“the 1993 Act”) for the determination of the premium payable for the grant of a new lease and for the determination of the other terms of acquisition which remain in dispute.
2. By a notice dated 9th July 2014 pursuant to section 42 of the 1993 Act, the applicants claim to exercise the right to acquire a new lease of the property. The respondent has served a counter notice under section 45 of the 1993 Act dated 20th June 2014.
3. By letter dated 17th December 2014 copied to the applicants’ solicitors, the respondent’s solicitors informed the Tribunal that, by way of a transfer dated 26th September 2014, their interest in the property had been transferred to Launcelot Investments Limited (“Launcelot”).
4. The letter stated that Launcelot, via their solicitors, had submitted their application to register the transfer at the Land Registry. They had been informed that there are three lease extensions to be registered before Launcelot’s application can be dealt with and that it is unclear how long the Land Registry will take to deal with the registration because the Land Registry has a backlog of applications. The respondent invited the Tribunal to stay the application pending completion of the registration of Launcelot’s freehold interest.
5. By letter dated 16th December 2014, Turners Solicitors LLP who act on behalf of the intermediate landlords, NTS Trustees Limited and Richard Earnest Wright, also requested that the Tribunal directions be stayed pending completion of the registration of Launcelot’s freehold interest.
6. It was apparent from the correspondence that the applicants’ section 42 notice did not appear to have been protected by registration.
7. By letter dated 23rd December 2014, the Tribunal gave directions for written submissions to be provided by the parties in order to enable the jurisdictional issue to be determined. The letter also stated:

If it is correct that the competent landlord, Golden PD (1) Ltd, has sold the freehold reversion without the section 42 notice having been protected by registration at H M Land Registry then it would appear that the new competent landlord, Launcelot Investments Ltd, will not be bound by the notice and the Tribunal is unlikely to have any continuing jurisdiction to determine the premium and lease terms.

It would also appear that the intermediate landlords, NTS Trustees Ltd & Richard Wright, are not likely to be in a position to grant a new

lease under the 1993 Act even if they were bound by the original counter notice.

The position is complicated by the fact that the original competent landlord, Golden PD (1) Ltd, is still on the register of the freehold title and, until the new company is registered, it cannot be certain that an effective transfer of the freehold has taken place. However, there is clearly scope for significant costs to be incurred by the parties and by the Tribunal, with no eventual benefit at the end of the day.

The submissions

8. By letter dated 8th January 2015, Turners Solicitors LLP on behalf of the intermediate landlords stated that as intermediate landlords their clients have been content to rely upon the authority of the superior landlord in the present case pursuant to section 40(2) of the 1993 Act.
9. However, in accordance with the directions of 23rd December 2014, they submitted that:
 - (1) The respondent is no longer the competent landlord having disposed of its interest on 26th September 2014.
 - (2) Launcelot is not bound by the section 42 notice because the applicants failed to register the notice against the freehold title of the property.
 - (3) The intermediate landlords are not in a position to grant a new lease under the 1993 Act.
10. By letter dated 13th January 2015, the respondent's solicitors also submitted that the Tribunal has no jurisdiction to determine this application. They stated that the applicants first served a notice on 9th April 2014 on their client's predecessors. They said that the applicants failed to take steps to protect their interest by registration and that, accordingly, the first notice is void against the respondent.
11. The applicants then served a further notice dated 9th July 2014 on the respondent but again failed to protect the notice by registration. The respondent's solicitors stated that, accordingly, the applicants' second notice will be void against Launcelot once the registration formalities have been completed. They noted that the applicants' solicitors have recently submitted an application to the Land Registry but that Launcelot's application has priority over the applicants' application.
12. The respondent submits (relying upon Hague, Sixth Edition, paragraph 30-10) that regardless of which notice the applicants intend to rely upon the notice is void against a purchaser of the freehold; that the respondent has transferred its interest to Launcelot; and that the respondent is therefore no longer the "competent landlord".

13. By letter dated 19th January 2015, the applicants' solicitors submit that

- (1) The obligation to grant a new lease is not conditional upon the "landlord" continuing to be the landlord for any specific period after service of the notice.
- (2) The intermediate landlords are effectively bound by the counter notice.
- (3) Although the respondent has disclosed the TRI and the application to register, it has not produced a copy of the contract referred to in the TR1 and to which it is expressly subject. Without considering the terms of the contract, it is impossible to construe the TR1 or its potential effect.
- (4) It is not certain that an effective transfer of the freehold will take place.
- (5) The respondent's solicitors have not returned the deposit paid by the applicants and therefore presumably consider that they "remain an active party to the s.42 procedure and the Tribunal application."
- (6) The application to the Tribunal could have been processed whilst the respondent remained the registered owner.
- (7) Both the respondent and Launcelot must have been aware of the proposed transfer for some time before it took place but they chose not to inform the Tribunal even though they must have been aware that it would have in impact on the Tribunal's directions.
- (8) The applicants have not defaulted and have dealt with the matter in good faith. If the existing application is dismissed they will be left in a position where they are unable to serve an alternative notice as there will be no effective competent landlord, the registered freeholder having been released from liability and there being no new freeholder against whom the lessees can proceed.
- (9) The 1993 Act does not require that a section 42 notice must be protected by registration.
- (10) A section 42 notice has now been served on Launcelot in response to the assertion that Launcelot is the new freehold owner and it will be the applicants' intention to ask that Launcelot be joined to the present application.

The Tribunal's determination

14. The Tribunal has carefully considered the parties submissions. The Tribunal has also had regard to the overriding objective, which includes provision that that dealing with a case fairly and justly includes: *dealing with the case in ways which are proportionate to the ... anticipated costs and the resources of the parties and of the Tribunal*
15. In all the circumstances, the Tribunal determines that it would be appropriate to stay the application for a period of 3 months pursuant to Rule 6(3)(m) of the Tribunal Procedure Rules 2013.
16. It is not appropriate to dismiss the applicants' application because, until the Launcelot's application for registration has been dealt with, it cannot be certain that an effective transfer of the freehold interest has taken place. However, it would not be appropriate to incur the time and expense of proceeding with the application when the respondent may well no longer be the competent landlord.
17. Any party may apply to the Tribunal for an extension of the stay if Launcelot's application for registration is not processed within the next three months but it is hoped that such an application will not be necessary.

Judge N Hawkes

4th February 2014