

IN THE COUNTY COURT AT CENTRAL LONDON

Thomas More Building
Royal Courts of Justice
Strand
London,
WC2A 2LL

Tuesday, 21 February 2023

BEFORE:

HIS HONOUR JUDGE SAGGERSON

BETWEEN:

(1) AIRSPACE DEVELOPMENTS LIMITED
(2) BENNETS COURTYARD AIRSPACE LIMITED

Claimants

- and -

BENNETS COURTYARD FREEHOLD LIMITED

Defendant

MR A. RADEVSKY (instructed by Wallace LLP) appeared on behalf of the Claimants
MR B. MALTZ (instructed by Legal Studio Solicitors) appeared on behalf of the Defendants

JUDGMENT
(APPROVED)

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1. JUDGE SAGGERSON: The claimant's Part 8 claim, which was initiated on 6 February 2023, is for an order pursuant to paragraph 3 of schedule 1 to the Leasehold Former Housing and Urban Development Act, 1993. The relief sought before me today is for an order appointing the first claimant in the first instance and, in due course, the second claimant when certain Land Registry documentation has been properly completed, as the so-called reversioner within the meaning of paragraph 3 in place of the present reversioner, which is the defendant.
2. As a matter of background, the proceedings arise out of a collective enfranchisement claim in respect of a block of flats, numbers 1-52 Bennett's Courtyard at Watermill Way in London, SW19. It appears that in the fairly recent past, the flat lessees acquired the freehold of Bennett's Courtyard by means of a previous claim under the 1993 Act, and that was brought to completion in or about September 2022.
3. A second claim is now made, solely in order to acquire the claimant's lease of the roof space within this same property. The roof space element, and other common parts of the property, were specifically and deliberately not included in the first enfranchisement claim which was finished in the autumn of 2022. As it happens, there is a roof space lease that was granted on 29 April 2019, for a term of 999 years, and in November 2022, as I suspect many will not be surprised to learn in this day and age, planning permission was granted in respect of the roof space to build a further seventeen flats on top of the existing flats, and it is considered, accordingly, that this roof space and roof space lease is of considerable commercial value, or at least potentially so.
4. It is plain from evidence that has been produced by Alsop LLP that potentially, and this is not common grounds by any means, but potentially the roof space lease could be worth as much as £1.8 million, various offers having already been received in respect of it. However, nobody is suggesting I am concerned with a valuation today, all I am required to note is the potential for a considerable commercial value to be placed on this aspect of the property, as distinct from what would appear, at the moment, to be

the projected comparatively nominal values of various different parts of the common parts, including a nominal value of £1,000 for the roof space.

5. At all events, just before Christmas on 22 December 2022, a group of lessees served notice under section 13 of the 1993 Act, claiming the relevant freehold only months after the defendant company had acquired it. The section 13 notice as I have already foreshadowed, seeks to claim the roof space lease at a price of £1,000.
6. A counter notice is required in respect of this section 13 notice on or before 6 March 2023, and that is why the matter has been brought on before me with a degree of urgency. Indeed, at a previous hearing, his Honour Judge Monty KC of this court, granted an interim injunction to prevent any earlier and adverse moves being taken in respect of this notice and counter notice procedure, to prevent the position of the claimants in this action being irretrievably prejudiced as a result of the statutory procedure. That is why it falls to me to resolve the question under paragraph 3 of schedule 1 of the 1993 Act, as to whether there should be a substitution as the claimants' claim.
7. This is because under the provisions of section 13 of the 1993 Act, the notice under section 13 must be served on the reversioner. The reversioner is the freeholder of the relevant property, and the holder of the roof space lease in this instance is, for the purposes of the statutory provisions, a relevant landlord.
8. According to the default provisions of the Act, the reversioner is the only party enabled and entitled to serve a counter notice, which must be served by the date specified in the notice itself under the statutory rules and, as I have indicated in this case that must be by 6 March 2023. It is only under this statutory procedure, that is only after a counter notice has been validly served in accordance with the statutory provisions, that other interested parties can intervene and give notice of their interest in the property rights engaged and then themselves become separate and independent parties involved in the valuation process that will take place within the notice and counter notice procedure.

9. However, by paragraph 9 of schedule 1 of the Act, there is an additional procedure that may be adopted:

"If it appears to the court on the application of a relevant landlord of any premises (a) that the respective interests of the relevant landlords of those premises, the absence or incapacity of the person referred to in paragraph 1, or other special circumstances require that some person other than the person now referred to shall act as the reversioner in respect of the premises, the court may appoint to be the reversioner in respect of those premises in place of the person designated by paragraph 1, such person as it thinks fit."

10. Plainly, a very straightforward and simple provision. Therefore, in the context of schedule 1, paragraph 3 in the present case, the notice given under the statutory procedure has been served by relevant and appropriate parties on the freeholder, that is to say the reversioner, as required by section 13. What becomes engaged then is paragraph 3 of schedule 1.
11. The application made by the claimants here is an application made by a relevant landlord. I pause there only to note that the difference between the two claimants is only that the first claimant has already assigned the lease of the Airspace to the second claimant. The only fly in the ointment being that the Land Registry has not yet completed the registration process for that assignment, which is why, subject to what I said at the beginning of this judgment, it is the first claimant who is really taking the lead, until such time as the registration process is complete as relevant landlords in this case. Application is made pursuant to paragraph 3 of schedule 1.
12. I am satisfied on the evidence of Mr Serota, which appears both in its original form as put before his Honour Judge Monty, and with the additional evidence that has been submitted to me in the revised and updated bundle, extending to over 240 pages for the purposes of this hearing, I am satisfied that the conditions in paragraph 3(a) have been made out.

13. First, I am satisfied there is a significant and material discrepancy between the interests of the claimants, as relevant landlords and the freeholder reversioner (the defendant) and a material discrepancy in the way in which each has identified their respective potential interests. The parties are not to be taken to have taken their final and irretrievable position on valuation, but the discrepancy exists between a valuation of something of the order of £1,000 or even £100,000, and the potential for the extensive commercial redevelopment of this property being, as things stand, alleged to be £1.8 million. Even in today's property market, on the basis of the Alsop report, there being some potential that is more than fanciful of a residual commercial development value of even more than that. This discrepancy in potential value and the resulting competing interests of the parties is such as to trigger the potential exercise of the court's discretion in the claimant's favour, as requested.
14. I am also satisfied, however, that there are special circumstances in this case that require that the claimants are substituted to act as the reversioner in respect of these premises. I am satisfied that there are special circumstances, because as it seems to me from submissions, both parties accept that this situation is out of the run of the norm. It may be putting matters too highly to say that the situation, as it has developed here, is unique, but it is certainly something that is outside the normal course of events. That is sufficient within paragraph 3 to give rise to special circumstances.
15. I am also satisfied that the special circumstances extend in this case beyond what I have said so far, to this extent. Having canvassed some provisional ideas of alternative dispute resolution orders to conclude this matter in a different way, by making the defendants subject to various mandatory orders not to put in a counter notice below a certain value, but nonetheless to require them to put one in on or before 6 March, the context of discussions about this idea canvassed from the bench, it seems to me that it became very difficult to discern quite what the current reversioner, that is the defendants, real problem was with the substitution proposed by the claimants.
16. That in itself does not provide for or create special circumstances, but it is something that demonstrates the context in which the special circumstances I have identified arise.

Those special circumstances are further fuelled, in my judgment, by the fact that even if the compromised proposal I ventilated were to be adopted, the real controllers or the real whip hand in the notice and counter notice procedure would, in any event, be the claimants, the relevant landlords. The Defendants would for all practicable purposes be securing an order that the current reversioner, the defendant, did exactly what they wanted. Such a pointless process strikes me as being disproportionate, inefficient and unduly expensive and unnecessary, and highlights the fact that the order which is sought is the only sensible, efficient and proportionate way forward. It is a mechanism which can be adopted to nobody's prejudice, as far as I see it. I do not see anybody is prejudiced by the proposed order.

17. It also highlights and reinforces the difference in the respective interests between the parties and so here, respective interests and special circumstances, as will often be the case in such statutory schemes, are very closely allied and interlinked.
18. Taken as a whole, I am satisfied that paragraph 3(a) is made out. I have not ignored the, no doubt, deliberate use of the word "require" in the body of paragraph 3(a). That, undoubtedly, connotes that the court should only be considering exercising the substitution discretion that it has under paragraph 3, where there are cogent, strong and good reasons for doing so. It is not an unfettered discretion to be exercised in favour of substitution on mere grounds of convenience, or because one option is mildly more preferable than another. Neither, however, does the word "require", in my judgment, in this context demand that the respective interests of the parties, or other special circumstances, must be so dramatically unusual as to put up a barrier to be surmounted only in the most exceptional circumstances.
19. The default position is that the current defendants, as freeholder, is the reversioner and one must pay proper respect to the statutory default position. That is why I conclude the requiring of circumstances under paragraph 3(a) is a strong or a high threshold, but it has nonetheless been surmounted in the present case, for the reasons I have briefly set out.

20. The court has a discretion, but I see no reason for not exercising the discretion as I am invited. Indeed, in the light of what I have said, there can be no other sensible outcome.
21. I am satisfied that whilst it may just be that parties, particularly those initially acting on behalf of the defendants, were somewhat cagey and not fully informed about the statutory process, they were not being deliberately evasive and uncooperative. I am, in addition, satisfied that the lack of engagement and cooperation offered by the defendants in this process, which appears to me to have little benefit for them, one way or the other, has given me pause to reflect in addition to everything else, that special circumstances require that someone other than the defendants are put into the shoes of the reversioner in this particular case.
22. I will so order and the rest, as they say, will be for the counter notice, the then predictable joining in of all other interested parties, I have no doubt quite legitimately, including the defendants in this action, and the valuation process in first of the First Tier Tribunal. However, none of those matters are matters for me.
23. There will be judgment for the claimants on this Part 8 claim in the terms I have indicated.

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This transcript has been approved by the Judge