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RESIDENTIAL PROPERTY TRIBUNAL

LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0014/06/17

In the matter of number 31 Pine Court, Forest Hills, Talbot Green, Pontyclun, CF72 8LA

In the matter of an application under Section 21(1)(a) of the Leasehold Reform Act 1967

TRIBUNAL: **Timothy Walsh (Chairman)**

APPLICANT: **Mrs. Dorothea Elizabeth Edwina Donovan**

RESPONDENT: **Whitehall Place Properties Limited**

REASONS FOR THE DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

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1. This matter has been determined without a hearing by a single member of the Leasehold Valuation Tribunal in accordance with Regulation 13 of the Leasehold Valuation Tribunals (Procedure) Wales Regulations 2004.

2. On 17 June 2017, by application in form LVT11, the Applicant, Mrs. Dorothea Elizabeth Edwina Donovan, made an application under section 21(1)(a) of the Leasehold Reform Act 1967 ("the 1967 Act") in relation to premises at number 31 Pine Court, Talbot Green, Pontyclun ("the Premises"). It is common ground that the Respondent is the freehold owner of that property. It is also apparently common ground that the Premises are subject to a lease dated 17 July 1979 which was granted for a term of 99 years from 30 December 1963 ("the Lease").

3. The sole issue for determination in the present decision is whether the Leasehold Valuation Tribunal presently has jurisdiction to determine the current application brought under section 21 of the 1967 Act.

4. The broad terms of the Act, insofar as relevant, may be stated shortly.

5. Part I of the 1967 Act is concerned with tenants' rights to enfranchisement or extension of long leases. Where the material tenancy satisfies certain statutory requirements, Part I of the Act confers on the tenant of a leasehold house a right to acquire the freehold of the house and premises. By virtue of section 22 of the Act the provisions of Schedule 3 of the 1967 Act apply generally for regulating procedure under Part I of the Act. Part II of Schedule

3 contains the requirement, at paragraph 6, that a tenant's notice of their desire to have the freehold shall be in prescribed form. The prescribed form is to be found in the Leasehold Reform (Notices) Regulations 1997 (SI 1997/640) as amended by the Leasehold Reform (Notices) (Amendment) (Wales) Regulations (SI 2002/3187). Regulation 3(1) prescribes the Form 1 in the Schedule to those regulations although regulation 2 permits a form "*substantially to the same effect*".

6. More generally, the landlord's obligation to enfranchise is contained in section 8 of the Act. Section 8(1) is in these terms:

8 Obligation to enfranchise

(1) Where a tenant of a house has under this Part of this Act a right to acquire the freehold, and gives to the landlord written notice of his desire to have the freehold, then except as provided by this Part of this Act the landlord shall be bound to make to the tenant, and the tenant to accept, (at the price and on the conditions so provided) a grant of the house and premises for an estate in fee simple absolute, subject to the tenancy and to tenant's incumbrances, but otherwise free of incumbrances.

7. In short, the statutory obligation upon a landlord to transfer the freehold reversion to the tenant arises when the tenant has given written notice of his desire to acquire the freehold. That triggers the creation of a statutory contract as indicated in section 5(1) of the Act:

5(1) Where under this Part of this Act a tenant of a house has the right to acquire the freehold or an extended lease and gives notice of his desire to have it, the rights and obligations of the landlord and the tenant arising from the notice shall inure for the benefit of and be enforceable against them, their executors, administrators and assigns to the like extent (but no further) as rights and obligations arising under a contract for a sale or lease freely entered into between the landlord and tenant; and accordingly, in relation to matters arising out of any such notice, references in this Part of this Act to the tenant and the landlord shall, in so far as the context permits, include their respective executors, administrators and assigns.

8. The price to be paid for the reversion is governed by section 9 which, as section 9(1) states, concerns *"the price payable for a house and premises on a conveyance under section 8"*. Namely, a conveyance which the landlord is bound to make after receipt of the tenant's written notice of their desire to have the freehold.

9. Where agreement as to the price cannot be reached, an application may be brought under section 21(1)(a) of the 1967 Act. That is an application to the Leasehold Valuation Tribunal to determine *"the price payable for a house and premises under section 9 [of the 1967 Act]"*. It should be noted, however, that section 21(1B) provides that no application can be made under section 21(1)(a) unless either: "*(a) the landlord has informed the tenant of the price he is asking; or (b) two months have elapsed without his doing so since the tenant gave notice of his desire to have the freehold under this Part of this Act*".

10. Turning to the current case, the material background is as follows.

11. The Applicant is the widow of the late Mr. James Donovan. She has apparently lived in the Premises since June 1984 and is now about 88 years of age.

12. It would appear that when steps were taken to put the Applicant's personal affairs in order in January of this year it came to be appreciated that the Premises were probably leasehold rather than freehold. The Applicant's son is a Mr. Kevin Francis. He is a retired surveyor and began making enquiries in order to ascertain whether the late Mr. Donovan had, in fact, already purchased the freehold. Through those enquiries he was able to ascertain from HM Land Registry that the Respondent is the registered freehold proprietor. After further research Mr. Francis was eventually directed to Messrs. Hamways who, he understood, acted as letting agents for the Respondent. This appears to have followed an email on 19 January 2017 to an associated company.

13. By email dated 25 January 2017 a Ms. Sharon Elliot emailed on behalf of Hamways stating that the reversion was still owned by the present Respondent. The email added that, if the Applicant wished to purchase the reversion, then the Respondent required that a valuation be undertaken. More specifically the letter stated: *"The cost of the valuation is covered by the Lessee as per the Statute".* The Respondent's surveyor's fee was stated to be £500 plus VAT. The email then added that once a report had been obtained *"Terms will then be offered based on the report. The offer will remain open for acceptance for 2 months"*

14. On 23 February 2017 Mr. Francis replied to Hamways on his mother's behalf stating that: *"Patently we will want to proceed to buy the freehold and will formally trigger the process and put you in funds asap".* This was followed on 2 March 2017 by a letter from Mr. Francis confirming that his mother "*would like to pursue buying the freehold interest [of the Premises]".* He enclosed a cheque for £600 which he stated was to cover the cost of the valuation and to "*initiate the process"*.

15. It appears that a Mr. Evans valued the reversion for the Respondent and fixed the price at £10,500 and on 20 April 2017 he, as the Respondent's surveyor, emailed that his client would be prepared to sell the freehold for that sum and that "*This offer is open for two months from the date of this note"*.

16. There was further email correspondence and on 19 May 2017 the surveyor subsequently emailed Mr. Francis stating that the Respondent would be willing to proceed with a sale at £9,500 plus costs. Mr. Francis counter-offered a figure of £6,000 on 7 June 2017 and that was declined by the Respondent on 13 June 2017. Mr. Francis made a further offer on behalf of the Applicant proposing a purchase price of £6,700. No agreement was reached, however, and so the LVT11 application under section 21(1)(a) of the 1967 Act was duly filed. That application was received by this tribunal on 19 June 2017. A potentially significant particular of the Application is that it relates that the Applicant occupies the Premises as a life tenant beneficiary under a trust.

17. Accompanying the Application was a covering letter from Mr. Francis which conceded that there was no Notice of Claim in the form (Form 1) prescribed by the 1997 Regulations. There is, moreover, nothing in the correspondence that could reasonably be construed as a form "substantially to the same effect" as that prescribed.

18. On 11 July 2017 Messrs. Mills Reeve wrote to the Tribunal objecting that this Tribunal had no jurisdiction to entertain the present application as the Respondent had not been served a Notice of Claim in prescribed form.

19. In light of this correspondence the Tribunal invited the parties to provide written submissions on the issue of jurisdiction. On 25 July 2017 Mr. Francis provided a detailed three-page submission dated 24 July 2017. He also provided a further three page submission on 5 September 2017. Submissions on behalf of the Respondent were also filed; they extended to some five pages.

The Parties' Submissions

20. In the submission dated 24 July 2017 it is stated on behalf of the Applicant that she is not, in fact, the leasehold proprietor. Rather, it is asserted that the Applicant's husband died in December 1989 leaving a will dated 26 October 1987. The will erroneously describes Mr. Donovan's interest in the Premises as freehold. It then leaves one beneficial half share to the Applicant and the other half share to Mr. Donovan's four children subject to the Applicant's right to reside for "as long as she shall desire". The submission adds that the Premises are accordingly held by trustees subject to a trust for sale (now a trust of land).

21. The balance of the submission concedes that there is no Claim Notice in prescribed form but it points to the fact that this was not to the Respondent's prejudice and to the fact that earlier correspondence from the Respondent's representatives made reference to the Act and often echoed the terms of the Act. Those are points that are repeated in Mr. Francis's subsequent submission of 5 September 2017. Again, he concedes that there is no prescribed Claim Notice but he points out that the correspondence betrays the reality. Namely, that the Respondent landlord appears not to be prejudiced by not receiving a notice with all of the prescribed particulars. Most of the information that should be in such a notice is, he says, known to the Respondent and was referred to in correspondence.

22. At the risk of over-simplifying the submission, the Respondent's case is that no prescribed Claim Notice has been given nor has any notice in a form "substantially to like effect". The requirements of the prescribed amended Form 1 were recited in the submission to make good the point. Perhaps most significantly, the Respondent's submission makes two assertions of particular note. First, in reliance upon *Speedwell Estates Limited v. Dalziel* [2002] 1 EGLR 55 it is asserted that a landlord's knowledge of the facts is not relevant for the purpose of determining the sufficiency or otherwise of the particulars required to be provided by the prescribed form of notice. Secondly, it is submitted that is irrelevant that

any omission had no material affect upon the actual recipient (citing *Sabella Limited v. Montgomery* [1998] 1 EGLR 65).

23. The foregoing is only a succinct summary of the detailed submissions made on behalf of both parties although I have, of course, had regard to the detailed points made in each.

Determination

24. There are a number of points raised on by the foregoing. First what is the effect, on the facts of this case, of the failure to serve the prescribed Claim Notice? Secondly, and allied to this first point, do the terms of section 21(1B) operate to confer jurisdiction upon the LVT notwithstanding the absence of any Claim Notice? Thirdly, what is effect of the Applicant's status as a beneficiary under a trust of land rather than as the legal owner of the leasehold interest in the Premises?

25. As I have already indicated, it has been conceded on behalf of the Applicant that no prescribed Claim Notice has been given which is in the terms required by the 1997 regulations (as amended) nor is there any single notice to substantially the same effect. I understand that to be common ground. If it is not, it should be as the correspondence passing between the parties contains no notice that could reasonably be described as being in substantially the same terms as the Form 1 notice introduced by the 2002 Regulations.

26. Is the absence of such a Claim Notice fatal? For the following reasons, it is my view that it is.

27. The purpose of giving a Notice of Tenant's Claim is three-fold. First, it is to notify the landlord that the tenant intends to exercise her statutory right to acquire the freehold of the house. Secondly, it is to provide the landlord with the information that it needs to enable it to decide what course to adopt in response to the tenant's notice. It's third purpose is to bind the landlord and the tenant into a statutory contract for the sale. For this reason, it has been stated that there is a need to provide, at least to the best of the tenant's ability, the particulars from which it can be assessed whether the statutory right to enfranchisement exists.

28. Whilst paragraph 6(3) of Schedule 3 of the 1967 Act provides that a notice is not invalidated by any inaccuracy in the particulars required by paragraph 6, it remains the case that, as noted above, there must be a notice in the prescribed form in the material Regulations or in a form substantially to the same effect. As was noted in one of the earliest cases on the Act, *Brynlea Property v. Ramsay* [1969] 2 QB 253 at page 267, paragraph 6(3) of Schedule 3 does not relax the insistence under paragraph 6(1) that the tenant's notice must be in the prescribed form.

29. Whether a notice is substantially to the same effect depends on a comparison of the words used with corresponding words in the prescribed form to see whether, in their ordinary significance, the words compared bear the same meaning. For these purposes, I accept that it is immaterial that any addition or omission had no material impact upon the actual

recipient. As was stated by Aldous LJ in *Sabella Ltd. v. Montgomery*: "*…If the notice is not the same as or substantially to the same effect, it is invalid and it cannot be saved by establishing that the recipient did not suffer any prejudice…".*

30. The required particulars are set out in paragraphs 6(1) and (2) of the Act in these terms:

"6(1) A tenant's notice under Part I of this Act of his desire to have the freehold or an extended lease of a house and premises shall be in the prescribed form, and shall contain the following particulars:—

(a) the address of the house, and sufficient particulars of the house and premises to identify the property to which the claim extends;

(b) such particulars of the tenancy and, in the case of a tenancy falling within section 4(1)(i) of this Act, of the rateable value of the house and premises as serve to identify the instrument creating the tenancy and show that

(i) (apart from the operation, if any, of the proviso to section 4(1) of this Act) the tenancy is and has at the material times been a long tenancy at a low rent;

(ii) …

(c) the date on which the tenant acquired the tenancy;

(d) . . .

(e) in the case of a tenancy falling within section 1(1)(a)(ii) of this Act, the premium payable as a condition of the grant of the tenancy.

(1A) Where the tenant gives the notice by virtue of section 1AA of this Act, sub-paragraph (1) above shall have effect with the substitution for paragraph (b) of—

"(b) such particulars of the tenancy as serve to identify the instrument creating the tenancy and show that the tenancy is one in relation to which section 1AA(1) of this Act has effect to confer a right to acquire the freehold of the house and premises;".

(2) Where the tenant gives the notice by virtue of section 6, 6A or 7 of this Act, sub-paragraph 1(c) … above shall apply with the appropriate modifications of references to the tenant, so that the notice shall show the particulars bringing the case within section 6, 6A or 7."

31. Mr. Francis's correspondence on behalf of his mother communicates her wish to buy the freehold and gives her name and the address of the Premises but there is no single document that I have seen that gives the necessary particulars and the Applicant does not claim that there was such. There is certainly nothing even closely approximating the

detailed notes and particulars that the amended Form 1 requires in the prescribed Notice of Tenant's Claim.

32. As Hague: Leasehold Enfranchisement (6th Ed.) explains (at paragraph 5-05): *"The landlord's knowledge of the facts is not relevant for the purpose of determining the sufficiency or otherwise of the particulars required to be provided by the prescribed form of notice".* This was repeated most recently by the Court of Appeal in *Osman v. Natt* [2015] WLR 1536 at paragraph [32]: *"…the outcome does not depend on the particular circumstances of the actual parties, such as the state of mind or knowledge of the recipient or the actual prejudice caused by non-compliance on the particular facts of the case*".

33. This is not a case in which it can be said that there has been the required notice. In truth, there is no material notice at all.

34. As the cases on the validity of notices make plain, without any such notice the application cannot proceed successfully. The reason for this is that the notice is necessary to trigger the obligation to convey the freehold and to generate a "statutory contract" binding on landlord and tenant. The giving of the tenant's notice is necessary to trigger the effect under section 5(1) of creating that statutory contract.

35. *Brynlea Property v. Ramsay* (cited above) is also important in its parallels with the present case. There, the tenant had written two letters to the landlord in very much the same terms as those sent by Mr. Francis in this case. Namely, they stated unequivocally that the tenant was giving notice that he wished to acquire the freehold reversion. In that case the tenant subsequently also sent the prescribed form but he omitted to make the necessary deletions to part of the form which would have indicated whether he wanted to extend the lease or enfranchise. Notwithstanding that the landlord knew of the mistake by reason of the earlier letters, the Court of Appeal determined that there was no valid notice and so no statutory right to contract with the landlord for the purchase of the reversion. The Applicant's case here is weaker still because nothing other than the letters confirming a wish to buy the freehold was sent.

36. Part of the Applicant's answer to the Respondent's submissions is that the Respondent's agents have engaged with the Applicant's as though the Act was engaged. As noted above, section 21(1B) prohibits an application under section 21(1)(a) unless: (a) the landlord has informed the tenant of the price he is asking, or (b) two months have elapsed without his doing so since the tenant gave notice of his desire to have the freehold. Here the landlord has informed the Applicant of the price he is asking. Does that therefore confer jurisdiction on the Tribunal to determine the price payable under section 9 if there is no Claim Notice? In my view, it does not. The reason section 21B does not have this effect is because section 21(1)(a) is only concerned with the price payable for a house and premises under section 9 of the Act. Section 9, however, is only concerned with the fixing of a price payable on a conveyance under section 8. This, in turn, leads back to section 8 which concerns the statutory obligation on a landlord to convey a freehold where a tenant has given the landlord written notice which, by virtue of section 22 and Schedule 3, must be in the

prescribed form and include the mandatory particulars enumerated in the Schedule. Stated shortly, the foundation of the jurisdiction to determine the price under section 21(1)(a) is the service of a Claim Notice. The fact that landlord has informed the tenant of the asking price does not mean that section 21(1B) alters those preconditions for the Tribunal to assume jurisdiction.

37. I have, finally, considered whether the Respondent can be said to be estopped from taking an issue on jurisdiction. As Hague explains (at paragraph 5-06) in many cases, a landlord may expressly or impliedly by its conduct agree to accept a Claim Notice as valid notwithstanding its defects and, in doing so, may be estopped from subsequently denying its validity. That, in reality, is the gist of Mr. Francis's submissions on behalf of his mother. Namely, that the Respondent has engaged with him as though the need for a Claim Notice was unnecessary after his initial correspondence communicated her wish to buy the freehold.

38. I have some sympathy with the Applicant's case in this regard but, on balance, I do not accept that the Respondent is estopped from requiring a formal Claim Notice.

39. Hamways were evidently acting as the Respondent's agent but it would be wrong to regard references in their email of 25 January 2017 to "the statute", or the basis upon which offers would be made, as indicating that they were waiving the need for a formal notice. Indeed, as that email and the replies that followed make plain, at that point the Applicant had not even communicated that she was going to pursue an application. The most that can be said about what follows is that the Applicant paid for a valuation, she did not agree with the resulting figure and offers and counter-offers could not bridge the gap. This is not a case in which a defective notice was met with a Landlord's Counter-Notice in prescribed form nor any other communication that could properly be read as accepting that the landlord regarded itself as subject to the statutory duties to contract in the Act. There is, moreover, no reason why a Claim Notice could not be given by a suitable applicant or applicants now.

40. Neither party has raised any issue concerning the present Applicant's standing to bring an application as distinct from an application by, or in conjunction with, her husband's will trustees or the trustees of the leasehold of the Premises (e.g. under section 6 of the 1967 Act). In the circumstances, I refrain from making a determination on standing which would extend beyond the terms of this preliminary issue which is limited to jurisdiction.

41. In the circumstances, it necessarily follows that the Leasehold Valuation Tribunal presently has no jurisdiction to determine the price payable for the Premises under sections 21(1)(a) and 9 of the 1967. A tenant of the premises must first serve written notice in the terms and form prescribed by the Act and the material regulations (as amended). That has not yet been done.

42. I would add that, in reaching the foregoing conclusion, I have not ignored Mr. Francis's repeated observations that this process has caused much anxiety and distress to the Applicant who is an 88 year old widow living alone (having previously believed that the

Premises were owned freehold). In practical terms, the Respondent's decision to take a point on jurisdiction may only serve to delay the process. Nonetheless, the short point is that it is simply not open to this Tribunal to act without the jurisdiction that is conferred by due compliance with the requirements of the Act and its accompanying regulations.

43. In the circumstances, I accordingly dismiss the Applicant's application and make the following order.

ORDER

Upon the Tribunal determining that it has no jurisdiction to determine the price payable for the material premises at number 31 Pine Court, Forest Hills, Talbot Green, Pontyclun, CF72 8LA under sections 9 and 21(1)(a) of the Leasehold Reform Act 1967 in the absence of a valid Notice of Tenant's Claim the application dated 17 June 2017 is dismissed.

DATED this 19th day of October 2017

CHAIRMAN