

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

**S.26 and s.27 of the Leasehold Reform, Housing and Urban
Development Act 1993**

DECISION AND REASONS

Case Number: CH/29UL/OCE/2007/0029

In the matter of 176 Sandgate Road, Folkestone, Kent, CT20 2LQ

Applicant : (1) Richard Nurse
(2) Roma Gladys Madge Zielinski

Respondent : (1) Bruno Lucian Zani
(2) Susan Adele Falconer Zani

Date of Application: 15th May 2007

Date of Hearing: 16th July 2007

Tribunal Members: Mr. S Lal LI.M (Legal Chairman)
Mr. R Athow FRICS
Mr. C White FRICS

Date of Decision: 16th July 2007

Application

1. The Applicants applied to the Tribunal on the 15th May 2007 pursuant to an order of the Ashford County Court dated the 20th April 2007 for the Tribunal to determine the appropriate terms of the interests to be acquired being vested in the Applicants as if the same had given Notice under Section 13 of the above Act in respect of their claim for collective enfranchisement of the premises. The Tribunal were also asked to approve a form of conveyance to give effect to the said terms and to determine the appropriate sums pursuant to Schedule 6 and Section 27(5) of the 1993 Act.

Background

2. The Respondents are the registered proprietors of the property, the property consisting of 3 residential flats.

3. The Applicants are entitled to acquire the freehold of the property pursuant to Chapter 1 of the Act and accordingly they advertised their intention to do so in the Folkestone Herald on the 1st March 2007. The reason they did so was that Applicants were unaware of the whereabouts of the Respondent's since the early 1990's.
4. Pursuant to the above facts the Applicants obtained an Order of the Ashford County Court dated the 20th April 2007 where the County Court was satisfied that:

"1. The Applicants are entitled to a vesting order pursuant to section 26(1) of the 1993 with respect to all those interests of the Respondent which are liable to acquisition pursuant to sections 1(1), 1(20(a) or section 2(1) of that Act;

2. The vesting order shall be in favour of the Applicants, being persons appointed pursuant to section 27(1) (a);

3. The vesting order shall be on terms determined in the manner specified in section 27(1) (b);

4. The Applicants shall, in order to comply with all applicable requirements under section 26 and 27 of the 1993 Act within 21 days of this Order apply to the LVT to

(a) determine the appropriate terms with a view to the interests to be acquired being vested in the Applicants as if the Applicants had, at the date of the application, given notice under section 13 of their claim to exercise the right of collective enfranchisement in relation to the premises in respect of which the order is made.

(b) Approve a form of conveyance to give effect to the terms so determined by the Tribunal, and complying so far as possible with section 27(3)(b);

(c) Determine the appropriate sum or sums found to be due by the LVT pursuant to Schedule 6 and section 27(5) of the 1993 Act.

5. The conveyance shall be executed in the manner specified in 6 below upon payment into court of the appropriate sum or sums found to be due by the LVT pursuant to Schedule 6 and section 27(5) of the 1993 Act;

6. The Applicants shall be entitled, upon payment of the appropriate sums into Court, to apply for a District Judge of the Court to execute the conveyance in a form approved by the LVT.

7. It was quite clear that the Ashford County Court made the above order, in effect triggering the mechanism by which the application comes to this Tribunal on the basis that the Freeholder was "absent" or "missing."

Recent Events

5. Messrs Frederic Hall, Solicitors for the Applicants informed the Tribunal by way of letter dated the 11th July 2007, that "out of the blue we have just received a telephone call from Mr. Zani in Italy whose attention has been drawn to our advert in March." The letter also noted that they had told him that a LVT was fixed for the Monday and that the Applicants would be "pressing" for the Tribunal to fix a value. It should be said that the Applicants solicitors did absolutely the correct thing in notifying the Tribunal that the Respondents had now made contact. It should also be noted that other than the record of this conversation with the Applicants solicitors, nothing had actually been received from the Respondent himself.

The Hearing

6. The Applicants were represented by Mr. Duckworth of Counsel assisted by Mr. Ivor Jones, Solicitor. The First Applicant, Mr. Nurse was in attendance. The Tribunal informed Mr. Duckworth that they were concerned that what in effect had been a "missing" landlord matter had as a result of the phone call from Mr. Zani changed into a situation where the Landlord was very much in the picture. The Tribunal were concerned whether they had jurisdiction to deal with the matter in a situation where the Ashford County Court had given them jurisdiction to do so on the basis that the Landlord was in fact "missing." The Tribunal informed Mr. Duckworth that they wished to hear argument as to whether they had jurisdiction to now hear the matter pursuant to the Order of the County Court of the 20th April 2007. Mr. Duckworth, having taken instructions, informed the Tribunal that he was able to deal with the preliminary jurisdiction issue and addressed us as follows.
7. He submitted that s.26(1) of the 1993 Act allows a County Court to make a vesting order in the situation where the landlord cannot be found and once the Order is made, in this case on the 20th April 2007, the Tribunal then does have the jurisdiction to determine the matter under the provisions of s.27(1). He submitted that the provisions of s.27 (1) are the empowering jurisdiction provisions and the Tribunal has to determine the matter accordingly.

The Tribunal's Decision

8. The Tribunal were appointed by the County Court as a result of the interim Order that was made under Section 26(6) of the 1993 Act, on the basis that the landlord could not be found. It provides for the Vesting Order to be withdrawn at any time before the execution of the conveyance; that is at any time between the application to the County Court in the first instance and their final Vesting Order taking place.

9. The Case before us was most unusual in that landlords usually come to light soon after the Notice is published and the Tribunal are appointed to act. In this case the landlord came to light prior to the hearing by the Tribunal.
10. The Tribunal are therefore satisfied that now the landlord has been found its role has been terminated and the purpose of the Notice has been achieved.
11. The Applicants will no doubt be disappointed that the landlord came to light at such a late stage, but this now allows them to enter into the normal process of attempting to negotiate to purchase the Freehold direct with the landlord in the normal manner.
12. Accordingly the Tribunal could not accede to Mr. Duckworth's submission and therefore the Application is dismissed, the Tribunal heaving no jurisdiction to determine the matter substantively under the 1993 Act.
13. The Tribunal wish to commend the Applicants for bringing the record of the conversation with Mr. Zani to the Tribunal attention.

Chairman.....

Date.....16/7/07