

RESIDENTIAL PROPERTY TRIBUNAL SERVICE**LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT
PANEL****COMMONHOLD AND LEASEHOLD REFORM ACT 2002 SECTION 168(4)****IN THE MATTER OF : 3A WINCHESTER COURT, VICARAGE GATE, LONDON W8
4AB****CASE NUMBER LON/00AW/LBC/2007/0031**

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| Parties | Winchester Court Freehold Limited | Applicant |
| | Dr. Nazieh Zaki | Respondents |

Appearances:

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| For the Applicant | Mr G French of Alan Edwards & Co., Solicitors Mrs P Brennan Company Secretary of Winchester Court Freehold Limited |
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| For the Respondent | in person |
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| Date of Application | 25 June 2007 |
| Date of Hearing | 27 September 2007 |

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| Tribunal | Mr A A Dutton | Chair |
| | Mr N Martindale | FRICS |
| | Ms T L Downie | MSc |

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| Date of Decision | 4th October 2007 |
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DECISION

A. BACKGROUND:

1. By an application dated 25 June 2007 the Applicants sought a determination that a breach of Covenant or condition in the lease had occurred. This was a pre-requisite to them serving a Notice under s146(1) of the Law of Property Act 1925 leading to a potential claim for forfeiture. The application which was in the bundle of papers before us clearly set out the circumstances which were relied upon by the Applicant and which we shall refer to in due course.
2. At a pre-trial review held on 17 July 2007 certain Directions were given leading to the matter coming before the Tribunal on 27 September 2007.

B. EVIDENCE:

3. For the Applicants they sought to rely upon proceedings which had been commenced by the resident porter, Mr John Rodriguez against the Respondent in the West London County Court in 2006. Those proceedings claimed an injunction against Dr Zaki and damages. A defence was filed by Dr Zaki but the matter came before the West London County Court on the 8th March 2007 following the granting of an interim injunction against Dr Zaki on 10th October 2006.
4. We had in the papers before us a copy of the approved Judgment of District Judge Nicholson given after a hearing at which both Mr Rodriguez and Dr Zaki were represented by Counsel. We have read the terms of the Judgment and note all that is said. It is perhaps appropriate to set out a couple of the paragraphs, in which the District Judge said the following:

24. *"I reluctantly, and I say reluctantly only because the Defendant is a man of good reputation, a professional man, a Consultant Surgeon forced to retire through ill health, find the Defendant has engaged in a course of obsessive conduct, which is not directed, if it is right to direct such conduct at all, at the Claimant's employer but at the Claimant, who really is in the middle of this dispute, and he should not be."*
5. The Judgment went on to say at paragraph 27:

"In my Judgment a reasonable person armed with the facts that I have found them to be, would come to the conclusion that there was something of a campaign by the Defendant being waived against the Claimant that would cause at the very least distress, and I so find."

6. It was therefore in essence the Applicant's case that as findings of fact had been made by the learned District Judge in March of this year, which had not been appealed by Dr. Zaki, we were bound to follow those and the findings clearly resulted in a breach of the terms of the lease which would therefore entitle the Landlord to seek to forfeit. We also heard briefly from Mrs Brennan who explained the arrangements for the transient parking of vehicles at the entrance and the security arrangements for access to this area.
7. It is perhaps appropriate at this stage to set out the terms of the lease that it is alleged Dr Zaki has breached. That is to be found in the Fourth Schedule of a lease dated 13 November 1973 which was included in the papers before us. We should add at this stage that we are aware there has been a subsidiary document which has extended the term of the lease but has not changed the other provisions and clause 26 of the Fourth Schedule still applies. It says as follows:

"Not to do or permit to be done whether by himself, his family, servants, Agents or visitors any act to the damage or annoyance of the Lessor or the tenants of the Lessor or the occupiers of any part of the building or any adjoining or neighbouring premises or the neighbourhood or any illegal or immoral act".
8. It was confirmed that there had been no further breaches since September 2006 but Mr French did point out that of course there had been injunctions in place since that time.
9. Dr Zaki attending the hearing before us and was invited to comment on the matters. He told us that he did not concede that there had been a breach of the terms of the lease. He said he had been an owner/occupier for some twenty years and had no problems with the people in the building. The difficulties started some 4-5 years ago when the Applicants applied for planning permission to develop the roof and to put car parking spaces in front of his flat's windows, That planning application was subsequently refused but he believes that since that time there has been difficulties. He did accept that he spoke to the porter in a firm voice and also that there were no parking signs previously in place but which had been broken, he believed, and had not been replaced for at least two years.
10. He confirmed he had not appealed the decision of the District Judge and indeed in a letter that he wrote to the Tribunal dated 22 August 2007 he said as follows:

"The events to which the District Judge found to have occurred before that date (that is to say before September 2006) did not in fact occur but the since the District Judge has made

those findings I am advised that the Tribunal will not be able to go behind the findings or form its own view."

It is evident that the events which the District Judge found to have occurred would have been breaches of the lease since I am told that the Tribunal will have to assume that they have occurred it is inevitable that the Tribunal will make a determination that breaches of the lease have occurred. I consent to the making of such a determination.

Naturally this consent is given without prejudice to any forfeiture proceedings which the applicant may choose to bring based upon the determination. Those will be defended.

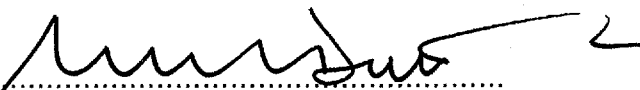
11. Dr Zaki emphasised that he was a peaceful person, a well respected surgeon, now retired and that the allegations made against him were wholly inconsistent with his character. He did however accept the Judges' decision. He told us that he had attempted to sell his flat but that he had been frustrated by apparent difficulties with the Licence to Assign.

C. DECISION:

12. It is quite clear from the Judgment of the Court that there had been something of a history of difficulties particularly with regard to the parking of vehicles which may or may not have been made worse following the unsuccessful attempt to apply for planning to develop the property. At the hearing Dr Zaki provided a couple of photographs which showed vehicles which appeared to be parked in front of his window but of course it was not possible to tell how long they were there and whether this was a regular occurrence. As the District Judge said, it may well be that there is something of a bone of contention of having vehicles parked outside the windows but Mrs Brennan indicated that any such parking would be temporary whilst there was some unloading going on and that the gates were in any event shut from 6.00 pm until the porters came on in the morning. Not a matter with which Dr Zaki appeared to take issue.
13. It seemed to us that it is not possible to go behind the findings of fact made by District Judge Nicholson in the hearing of March 2007. He had the opportunity of seeing the witnesses and assessing their honesty and consistency. He found, having heard from all concerned that the Defendant had acted in a manner which was sufficient to enable an injunction to be given and in our finding therefore has acted in a manner which would breach paragraph 26 of the Fourth Schedule of the Lease in that he has clearly caused

potentially damage, but certainly annoyance and possibly illegal acts to an occupier of the building, namely Mr Rodriguez.

14. Accordingly it is our finding that there has been a breach of paragraph 26 of the Fourth Schedule to the Lease.


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Chairman

Dated..... 4th October2007