

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL**

Property : 5 Edmunds Tower,
Harlow,
Essex CM19 4AD

Applicant : Harlow District Council

Respondent : Richard Peter Watson (now known as
Richard Peter Miguel)

Application number : CAM/22UJ/LBC/2009/0001

Date of Application : 27th February 2009

Type of Application : For a determination that the Respondent
is in breach of a covenant or condition in
a lease between the parties (Section
168(4) Commonhold and Leasehold
Reform Act 2002 ("the 2002 Act"))

Tribunal : Mr. Bruce Edgington (lawyer chair)
Mr. David Brown FRICS MCI Arb

DECISION

1. The Respondent is in breach of a covenant in a lease ("the lease") dated 14th November 2005 and made between the Applicant (1) and the Respondent (2) wherein the property was let to the Respondent for a term of 125 years from 8th August 1983.
2. The lease was granted to the Respondent pursuant to the right to buy provisions contained within the **Housing Act 2005** ("the 2005 Act") which enabled the Respondent to obtain a discount of £34,000.00 on the open market long leasehold value of the property provided he repaid all or part of the discount if he disposed of his interest in the Lease within 3 years.
3. On the 15th November 2005 the Respondent entered into a 'deferred resale agreement' as defined in Section 163A of the 2005 Act which acts as such a disposal. The Applicant has demanded that the sum of £34,000.00 be repaid but the Respondent has not done so.

4. The breach arises from clause 12 in the lease wherein the Respondent covenanted to repay the discount to the Applicant on demand following such disposal.

Reasons

Introduction

5. The lease was obtained by the Respondent under the right to buy provisions set out in the 2005 Act. This scheme enables long standing secure tenants of the Applicant to buy the property they rent at a discounted price. The Applicant states that the Respondent has told officers of the Applicant that he has changed his last name and prefers to be called 'Miguel' rather than 'Watson'.
6. The scheme sought to strike a balance between the interests of the tenant on the one hand and the remaining council tax payers on the other hand. The tenant obtains the property at the discounted price but in order to avoid profiteering, such tenant cannot dispose of his or her interest within a limited period of time without having to repay all or part of the discount.
7. The lease was dated 14th November 2005 and on the very next day, the Respondent entered into what is called a Declaration of Trust with a James Harvey of 45 St Michaels Close, Harlow, CM20 3QH ("Mr. Harvey") wherein the Respondent acknowledged that Mr. Harvey had provided the whole of the purchase price for the property paid by the Respondent to the Applicant. In such deed Mr. Harvey is called James and the Respondent is called Richard. The relevant part of the relevant clause in this deed states:-

"Richard HEREBY ACKNOWLEDGES that he holds the land on trust for James and that, after two years from the date of this Deed Richard DULY COVENANTS as follows:-

a) To transfer all his legal and equitable interest in the Property to James with nil consideration payable on such transfer to either Party at James' written request"
8. The copy document before the Tribunal does not appear to have Stamp Duty affixed to it. However, it is clearly a written agreement, signed by both parties with all the necessary constituent parts of a binding agreement for the disposal of land to comply with the **Law of Property Act 1925**. Land Registry office copy entries produced to the Tribunal state that as at 26th March 2009, the Respondent was still the registered owner of the leasehold interest in the property.
9. Upon discovery of the agreement, the Applicant considered that it was a deferred resale agreement and demanded the full discount back

'forthwith' from the Respondent in a letter dated 18th February 2009. Such money has not been repaid and this application was made.

10. The Tribunal decided that this was a case which could be determined on a consideration of the papers without an oral hearing. Notice was given to the parties in a directions order dated 25th March 2009 in accordance with Regulation 5 of **The Leasehold Valuation Tribunals (Procedure)(Amendment)(England) Regulations 2004** notifying the parties (a) that a determination would be made on the basis of a consideration of the papers including the written representations of the parties on or after 15th May 2009 and (b) that an oral hearing would be held if either party requested one before that date. No such request was received.
11. The Tribunal was also concerned about whether the Respondent had notice of this application. Harlow Council produced a transcript of a court hearing at the Harlow County Court on the 12th March 2009 before District Judge Pearce. This was a claim by Harlow Council to recover monies from the Respondent including service charges. The Respondent was present as was James Harvey. There was a full discussion about this application and it was absolutely clear that both the Respondent and Mr. Harvey are fully aware that this application is being made.
12. In the light of this, and as a further precaution to ensure that they were both fully aware that this decision was to be made, the Tribunal office wrote again to the Respondent on the 3rd June 2009 at all the addresses to which notice of the hearing of the court case was sent. The letter sent a further copy of this application, the directions order made and all statements and gave a further period up to the 19th June 2009 to respond. No response was received.
13. It should also be recorded that a man telephoned the caseworker at the Tribunal office on the same date i.e. 3rd June 2009 and identified himself as the Respondent. He said that he wanted to know what to do to make things better for himself. He was advised that he should write in to the Tribunal. He then started referring to Mr. Miguel and said that he was looking after his own interests and not Mr. Miguel. He was advised that if he wanted to become involved in the application, he should write in and ask to become a party. He did not.
14. Whilst this conversation would seem, on the face of it, to be a little confusing, it replicates the conversation before the judge on the 12th March when Mr. Harvey seemed to do most of the talking and at several stages seemed to be taking on the role of the Respondent.
15. The Tribunal is satisfied that both Mr. Watson and Mr. Harvey are aware of this application and have been given every opportunity to make representations.

The Law

16. The right to buy provisions are set out in the part commencing at Section 118 of the 1985 Act as amended by the various statutes but, in particular, the **Housing Act 2004**. No evidence has been given as to the Respondent's qualification to apply but as the Applicant clearly agreed to enter into the lease and agreed to the discount, it must be assumed that everything was in order at that stage.
17. Prior to the amendments contained in the **Housing Act 2004**, the provisions of Section 155 of the 1985 Act meant that a disposal of the property after 3 years would enable the Applicant to recover the discount from the tenant at a reducing rate, depending on when the disposal took place. After 18th January 2005, that period became 5 years. The lease must, as it does in this case, contain a covenant to repay the discount in the event of disposal.
18. Quite why the period stated in the lease for repayment of the discount is only 3 years is not known but this Tribunal does not consider that the repayment period of 3 years rather than 5 invalidates the transaction. It operates in favour of the tenant.
19. The **Housing Act 2004** also introduced Section 163A to provide that a 'deferred resale agreement' as defined in the Section would operate as a 'disposal' after 18th January 2005. The relevant parts of the new Section are:
 - (1) *If a secure tenant...enters into an agreement within subsection (3), any liability arising under the covenant required by section 155 shall be determined as if a relevant disposal which is not an exempted disposal had occurred at the appropriate time.*
 - (2) *In subsection (1) "the appropriate time" means---*
 - (a) *the time when the agreement is entered into, or*
 - (b) *(not relevant)*
 - (3) *An agreement is within this subsection if it is an agreement between the secure tenant or his successor in title and any other person---*
 - (a) *which is made (expressly or impliedly) in contemplation of, or in connection with, the tenant exercising, or having exercised, the right to buy,*
 - (b) *which is made before the end of the discount repayment period, and*
 - (c) *under which a relevant disposal (other than an exempted disposal) is or may be required to be made to any person after the end of that period*
 - (4) *Such an agreement is within subsection (3)---*
 - (a) *whether or not the date on which the disposal is to take place is specified in the agreement, and*

(b) whether or not any requirement to make the disposal is or may be made subject to the fulfilment of any condition.”

Conclusions

20. The relevant part of the document dated 15th November 2005 is set out above. It is this Tribunal's view that this document falls within the definition of a 'deferred resale agreement' as set out in Section 163A of the 1985 Act.
21. It specifically refers to the purchase from the Applicant and is dated the day following completion of the lease. Thus, in the absence of any other explanation, it seems to be clearly made 'in connection with' the exercise of the right to buy.
22. It is exercisable 'after two years from' 15th November 2005 which means that it is both made before the end of the discount period and the disposal contemplated may be required to be made after the end of that period.
23. Thus, Section 155 of the 1985 Act is engaged and the covenant in clause 12 in the lease can be enforced. The Respondent has been sent a demand to repay the whole discount forthwith. As no payment has been made, this amounts to a breach in the terms of the lease within the provisions of Section 168 of the 2002 Act.



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Bruce Edgington
Chair
23rd June 2009