FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AW/OCE/2014/0209**
Property	:	**10 Egerton Place, London SW3 2EF**
Applicant	:	**The Wellcome Trust Limited**
Representative	:	**CMS Cameron McKenna**
Respondent	:	**Egerton Place Limited**
Representative	:	**Forsters LLP**
Separately represented other landlord	:	**Stephanie Gillibrand**
Representative	:	**Bircham Dyson Bell**
Type of Application	:	**Collective Enfranchisement s.24 Leasehold Reform, Housing and Urban Development Act 1993**
Tribunal Members	:	**Judge Dickie** **Ms Krisko, FRICS**
Date and venue of Hearing	:	**27 January 2015** **10 Alfred Place, London WC1E 7LR**

DECISION

Decision of the Tribunal

The Tribunal determines that there are no issues in dispute between the parties and that it therefore has no jurisdiction in respect of this application.

The application

1. Application was made on 7 August 2014 to the Tribunal under Section 24(1) of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") for a determination of the premium to be paid and the terms of acquisition of the freehold and head leasehold interests in 10 Egerton Place, London SW3 2EF ("the Property"). The Applicant is the Freehold Reversioner and the Respondent is the Nominee Purchaser for the purposes of the Act. Stephanie Gillibrand, as executor of the estate of Jennifer Amelie Gillibrand, is the Intermediate Landlord.

2. On 19 March 2014 an initial Notice under section 13 of the Act was served by the Participating Tenants, being the tenants of flat 1 and 2, proposing prices for the interests in the property. The Notice identified four flats in the Property – flats 1 and 2, as well as the basement and ground floor flat, held by Jennifer Astele Gillibrand and Michael Gray Gillibrand under a lease dated 26 October 1959, and flat 4, held by Jennifer Amelie Mons and John Peter Mons under a lease dated 13 August 1958.

3. On 23 May 2014 a Counter Notice was served by the Freeholder. This admitted that the Participating Tenants were, on the date of that Notice, entitled to exercise the right of collective enfranchisement in relation to the Property. It proposed the transfers of the freehold and headlease in the form of the draft transfers attached to the Counter Notice and did not accept the prices proposed in the initial Notice but made counter proposals for the interests to be acquired, including a proposal of £600 for the headlease.

4. On 2 June 2014 Ms Gillibrand served on the Freeholder a notice of her claim to exercise the right to a new lease under s.42 of the Act of the ground and basement flat.

5. On 5 August 2014, Cacique Investments Limited ("Cacique"), a Jersey company, was registered as proprietor of title number LN187874, being the ground floor and basement flat. It took an assignment of the benefit of the claim made by the s.42 notice served by Ms Gillibrand.

6. On 16 September 2014 the Tribunal issued directions, and subsequently a hearing was fixed for 27 and 28 January 2015.

7. On 11 December 2014 the Nominee Purchaser wrote to the Intermediate Landlord purporting to accept the Counter Notice proposals for (1) draft transfer terms for headlease interest and (2) premium of £600.

8. On 19 January 2015 an application was made by Cacique to be joined as a party to the proceedings. Ms Gillibrand has not formally been joined

as a Respondent. However, having on 15 October 2014 served a notice of separate representation under Paragraph 7(1) of Part II of Schedule 1 to the Act in her capacity as "other relevant landlord", is entitled to be separately represented in these legal proceedings so far as relating to the acquisition of any interest of hers.

9. By the date of the hearing, all terms of acquisition for the freehold interest had been agreed between the Nominee Purchaser and Wellcome. With the agreement of the parties, the Tribunal has considered the question of its jurisdiction to determine the terms of acquisition for the leasehold interest as a preliminary issue.

10. At the hearing the Freehold Reversioner was represented by Mark Loveday of counsel, the Intermediate Landlord by Mr Johnson QC and the Nominee Purchaser by Mr Jourdan QC.

Evidence and Outline Submissions

11. The position of the Applicant Freeholder and the Nominee Purchaser is that the Tribunal has no jurisdiction in respect of this matter since all terms of acquisition of the freehold and leasehold interest in the Property have been agreed, and there is therefore nothing in dispute. The Intermediate Landlord's position is that no agreement has been reached on any of the terms of acquisition of the head leasehold interest, and that the Tribunal thus has jurisdiction to determine them.

12. The Tribunal derives its jurisdiction from Section 24(1) of the Act, which entitle either the Nominee Purchaser or the Reversioner to apply to the Tribunal where "any of the terms of acquisition remain in dispute" after two months beginning on the date of the Counter Notice, whereupon the Tribunal "may determine the matters in dispute".

13. It was agreed between the parties that there was no acceptance of any terms of acquisition prior to the service of the notice of separate representation by Ms Gillibrand on 15 October 2014.

14. Mr Johnson for the Intermediate Landlord and Cacique submitted that the purported acceptance of terms in the letter from the Nominee Purchaser dated 11 December 2014 did not constitute an agreement as to the terms of acquisition, and that they remained to this day in dispute.

15. Mr Johnson argued that after service of the notice of separate representation, and upon proper interpretation of Section 9(3) and Schedule 1 Paragraphs 6 and 7 of the Act, agreement on the terms of acquisition for the headlease could only be reached with the Intermediate Landlord, and not with Wellcome. It was the Intermediate Landlord's position that no such agreement had been

reached, in spite of the view of both the Reversioner and the Nominee Purchaser that it had, since the Intermediate Landlord's solicitors had made it clear in correspondence with the Nominee Purchaser and Wellcome that terms of acquisition of the headlease could not be agreed.

16. The concern underlying the position of the Intermediate Landlord and Cacique is that the Nominee Purchaser has taken contradictory positions in correspondence on the issue of whether the basement and ground floor flat underlease is void, since it was originally granted by Lord Hardwicke as tenant under the headlease to himself as tenant under the underlease. This was prior to the decision of the House of Lords in *Rye -v- Rye* [1962] AC 496, which decided that a party could not grant a lease to himself. There had been a deed of confirmation entered into on 27 October 1965 between the (different) parties who were then landlord and tenant under the ground floor and basement flat underlease, but before having sight of that, in a letter dated 22 October 2015, the Nominee Purchaser contended that the ground floor and basement flat underlease was void, on the basis that a party cannot grant a lease to himself.

17. If the underlease in question is indeed void, it would follow that the headlease, far from having a nominal value as an intermediate leasehold interest in the Property, would constitute a valuable interest in the ground floor and basement flat. Furthermore, the question would arise as to whether the Nominee Purchaser was entitled to acquire the interest in that flat constituted by the headlease, or whether this interest was excluded from the obligation of acquisition by the severance provisions in Section 2(4) of the Act. The answer to these questions would in turn affect all of the terms of acquisition of the headlease as between the Nominee Purchaser and the Intermediate Landlord.

18. The Intermediate Landlord fears a potential future scenario which Mr Johnson described as follows: In the Claim the Intermediate Landlord could agree terms of acquisition for the headlease, on the basis set out in the initial Notice, and receive payment of a nominal sum for the headlease. With the headlease safely acquired for this nominal sum, the Nominee Purchaser (now as Freeholder) could then raise their arguments that the basement and ground floor underlease was void and that flat was not a flat. If either of those arguments succeeded, the Nominee Purchaser would be able to defeat the new lease claim, and would be left with a valuable interest in the flat for which it would have had to pay only a nominal sum.

19. For this reason, and on a protective basis and without prejudice to her principal position, the Intermediate Landlord has recently made a second Claim under s.42 of the Act for an extended lease, in her capacity as tenant under the headlease.

20. Mr Jourdan observed that the Intermediate Landlord never substituted new counter proposals as to the price payable for the headlease, or the terms of the transfer of the headlease for those made in the Counter Notice. Those counter proposals were made at a time when Wellcome was authorised by Section 9 and Schedule 1 of the Act to make them on her behalf. It was therefore, observed Mr Jourdan, open to the Nominee Purchaser to accept those counter proposals and that is what it did on 11 December 2014. At that point, all the terms of acquisition of the headlease were agreed in his submission, and therefore there was nothing left for the Tribunal to determine.

21. Mr Jourdan's further submitted that at all times there must be a complete offer capable of acceptance by the Nominee Purchaser, and that as no counter proposals were made by the Head Lessee it was entitled to accept the proposals already made within the Counter Notice but not expressly replaced. He argued that the requirement that the Counter Notice contain all elements of such an offer, as set out in the statute, suggested a statutory scheme in which such or a revised offer must always be capable of acceptance. He observed that acceptance of the terms in the Counter Notice constitutes agreement as to the terms of acquisition (*Bolton v Godwin-Austen* [2014] L & TR 11). He argued that it is therefore open to the Nominee Purchaser to agree those proposed and that in the event of such agreement that term is no longer in dispute.

22. It is appropriate to set out a chronology of the relevant correspondence:

(i) *Letter 15 October 2014 BDB to CMS and Forsters*

A notice of separate representation, setting out the reasoning why the basement underlease may arguably be void and the consequences.

"We will need, as part of the settlement of this claim, or to be determined by the FTT if settlement is not achievable, to get binding confirmation as to the status of the Basement Underlease for the purposes not only of the freehold claim but also the s.42 claim, and the resultant consequences of that agreement or determination in terms of the price payable for the head leasehold interest, the extent of the head lease to be acquired, and the terms of the TP1"

(ii) *Letter 22 October 2014 Forsters to BDB*

"You say in that letter [15 October 2014] that what you call "the Basement Underlease" was granted by Lord Hardwick to himself, which was indeed the case. The result is that the purported underlease was a nullity: Rye v Rye [1962] A.C. 496 and the whole of the ground floor and basement has, therefore, at all times been held under the headlease. You refer in your letter

of 15 October to a Deed of Confirmation in October 1965. Please supply a copy.

...

"Third, the accommodation on the ground floor and basement is not a "flat". The purported Basement Underlease describes the demised premises as "the ground and basement flat". When the headlease was granted in 1954 there clearly was such a flat – we will refer to it as the "Lower Maisonette", ... However, at some point after that, the basement was opened up and certainly since Ms Erkman acquired her flat there has been no physical separation between the former Lower Maisonette and the common parts"

(iii) *27 October 2014 BDB to Forsters*

"In your Section 13 Notice, you offered a nominal sum for the head lease, presumably on the basis that the ground floor and basement underlease was valid, because it is listed in the schedule of qualifying tenancies in your Section 13 Notice. Please confirm specifically, therefore, that you accept that the Section 13 Notice was wrong in that respect and that the schedule to that Notice should have shown the Head Lease as being the qualifying tenancy in respect of the ground floor and basement flat. We are drawing the attention of CMS Cameron McKenna to this correspondence, as you will appreciate that if *[sic]* Section 13 Notice was incorrect, and should in effect be corrected as mentioned above, the Head Lease will not be acquired under the 1993 Act procedure in so far as it relates to the ground floor and basement flat."

"As you rightly stated in your Section 13 Notice ... there are four flats in the building and four qualifying tenancies. You may care to re-visit paragraph 2 of your Section 13 Notice. The evidence of your letter is that your clients are seeking to obtain the entirety of the head leasehold interest, by whatever statutory means, for a nominal sum, and then to assert in the contect of the Section 42 claim for the ground floor and basement under lease, that that Lease in effect does not exist, and (we presume) your clients will consider themselves entitled to vacant possession of the flat. While we are sure that your firm would not countenance such conduct on behalf of any client of your firm, we would be grateful for your confirmation to this effect.

"Put simply, your clients have to choose between these very simply alternatives:-

"a) Your client's Section 13 Notice is correct, there are 4 flats in the building, 4 qualifying tenancies, all underleases, which would result in the freehold claim proceeding as envisaged by your Section 13 Notice, from which you would then be estopped from denying the validity of the ground floor and basement underlease; or

"b) You wish to assert that the ground floor and basement underlease is void, which means that your Section 13 Notice is wrong, the nominal amount offered for the head leasehold interest is patently inappropriate and the head leasehold interest in the ground floor and basement flat would not be subject to acquisition under the Section 13 procedure. We should say that we do not, of course, accept this argument, but if that argument was successful, that would be the consequence.

"We look forward to your response and as we say, we are drawing the terms of this letter to the attention of the Wellcome Trust's solicitor. Pennington Manches have, of course, given notice of separate representation for the head lessee in the freehold negotiations, and clearly the terms of the transfer, which are covered by that Notice, will not be agreed until this point is settled."

(iv) *Letter 20 November 2014 CMS to Forsters*

"our client considers that the Deed of Confirmation remedies any potential argument that the basement flat is void and our client is proceeding on the basis that the lease is perfectly valid .... in circumstances where there remains a dispute on this point, our client wishes to ensure that there is clear agreement between the respective parties as to how this should be resolved."

(v) *Letter 5 December 2014 Forsters to CMS*

"We confirm that the Transfer relating to the freehold interest is agreed as drafted..... Following service of the Notice of Separate Representation served by Pennington Manches LLP, we will deal with them directly in relation to the terms of the transfer of the headlease."

(vi) *Email 9 December 2014 BDB to Forsters*

"Swita on behalf of Wellcome is understandably concerned that the issues to be determined by the FTT in January are clarified as a matter of some urgency so that preparations can be made for the hearing.

"For example, if you continue to assert that the basement lease is invalid, this will mean, if you are successful in that assertion, that the transfer will have to reflect that the head lease is not transferred to your clients in respect of the basement flat. That is just one example of an issue which will need to be properly prepared for. Can you please clarify your client's position on these and all other issues relating to the freehold claim without delay."

(vii) *Letter 10 December 2014 CMS to Forsters*

"As per our earlier letter, we must now insist on hearing from you as soon as possible with clarification as to your client's position as to whether there remain any arguments as to the validity of the lease of the basement flat,

taking into account the Deed of Confirmation dated 27 October 1965. We reiterate that in circumstances where there remains a dispute on this point, our client wishes to ensure that there is a clear agreement between all respective parties as to how this should be resolved and this agreement needs to be reached in good time agread of the Tribunal hearing before the parties incur significant costs preparing for the hearing."

(viii) *Letter 11 December 2014 Forsters to CMS*

"Thank you for your letters of 20 November and 11 December 2014. Having considered the position, our client accepts that the lease of the ground floor and basement flat dated 26 October 1959 is valid.

As the terms of the Transfer of the freehold have been agreed, the only issue which remains between our client and yours is the premium."

(ix) *Letter 11 December 2014 Forsters to Pennington Manches*

"We enclose a copy of our letter of today's date to CMS Cameron McKenna. As you can see from that, having considered the position, our client accepts that the lease of the ground floor and basement flat dated 26 October 1959 is valid.

Our client, the nominee purchaser, agrees the draft transfer of the headlease provided by CMS Cameron McKenna, a copy of which is herewith enclosed for ease of reference.

Our client also agrees the price payable for the headlease proposed in the counter-notice of £600.

There are, therefore, no longer any matters in dispute as between our client and yours in the collective enfranchisement claim."

(x) *Letter 17 December 2014 BDB to Forsters LLP*

"On the face of it, your letter of 11 December does seem to resolve a fundamental issue, namely the validity of the Lease of the ground floor and basement flat dated 26 October 1959. However, before we are able to confirm that this issue is fully resolved, we need to make two points to you and obtain your confirmation in relation to each.

The 1987 Act Procedure

"If you accept that the 1959 underlease is valid, and therefore not only your own Section 13 Notice but the Head Lessee's Section 5 Notice were correctly drawn, then, quite apart from any issues as to whether the 1987 Act process was actually required, it must follow that your client's Section 6 Acceptance

Notice was not valid, because it was only served by two of the Qualifying Tenants. Please confirm that this is agreed.

Post-freehold Completion

"Please confirm that your client's acceptance of the validity of the ground floor and basement Underlease applies for all purposes, including after the completion of the freehold purchase and of course specifically in respect of the underlessee's Section 42 Notice in relation to the ground floor and basement flat, which is currently in statutory suspension during the collective freehold process. You will appreciate that this is highly relevant for the Head Leaseholder's; if the ground floor and basement Underlease were found to be invalid, then in the freehold process then the Head Lessee would either be entitled to vacant possession value of the Head Leasehold interest in the flat, or more likely, the flat would be severed under the provisions of Section 2 of the 1993 Act so that the Head Lease was not acquired by your clients in respect of the flat. Accordingly, if you were after the freehold completion to assert once again the invalidity of the underlease, and be successful, the Head Leaseholder would have suffered significant loss on the basis of your confirmation in your recent letter that you accept its validity. For this reason, therefore, we must ask you to confirm that its invalidity will not be asserted at any point in the future, including in relation to the Section 42 Notice served, and that your client understands that any subsequent attempt to assert its invalidity would be regarded by the Head Lessee as an intention on your client's part to defraud the Head Lessee of its entitlement in the freehold process.

"It is a small point, but the Head Lessee requires £1,000 for the head leasehold interest subject to the four underleases; as you are aware the figures in the Notice and Counter-Notice are not binding, even if purportedly agreed."

(xi) *Letter 12 January 2015 Forsters to Pennington Manches*

"We refer to our letter of 11 December 2014 to you which enclosed a copy of our letter to CMS Cameron McKenna of the same date which confirmed that our client accepts that the lease of the ground floor and basement flat dated 26 October 1959 is valid.

"In that letter we also confirm to you that our client, the nominee purchaser, agrees the draft transfer of the headlease provided by CMS Cameron McKenna and the price payable for the headlease to be £600 as proposed in the Counter Notice.

"Our letter pointed out that there are no longer any matters in dispute between our client and yours in the collective enfranchisement claim.

"We do not understand the point of Bircham Dyson Bell's letter of 17 December 2014. It should be clear from both our letters of 11 December 2014

but, in any event, we confirm again that our client accepts the lease of the ground floor and basement flat dated 26 October 1959 is valid.

"As to the headlessee requiring £1,000, for the reason CMS Cameron McKenna has already provided, the figure of £600 is binding on the head lessee."

(xii) *email 13 January 2015 Forsters to BDB and Pennington Manches*

"We have already responded with the necessary confirmation, however, again confirm that our client accepts the validity of the lease of the basement flat for the purposes of the collective claim proceedings. As to any other points raised, we do not see any relevance or need to respond. Our client is not obliged to give further confirmation regarding future events, and we have responded to your queries as far as they relate to these proceedings.

"The only issue outstanding for the Tribunal is the premium payable to the Freeholder and we do not see that the Tribunal has jurisdiction to deal with any other issue in any event."

(xiii) *email 13 January 2015 BDB to Forsters*

"The relevance of the further confirmation in respect of the s42 claim is relevant to the section 13 claim for the reasons stated in my 17 December letter, and your client's twice-repeated refusal (at least on the second occasion without the disingenuous pretence of not understanding our letter) to give the requested confirmation does nothing to damped the suspicion that it does intend to raise exactly this issue in that s42 process, with the risk of the head lessee having been defrauded in the current process in the way set out in my 17 December letter."

(xiv) *Letter 21 January 2015 Forsters to First Tier Tribunal (Property Chamber) London Residential Property*

"3. The nominee purchaser has accepted in open correspondence with the solicitors acting for Wellcome and Ms Gillbrand, and continues to accept that:

"(a) The underlease, the title to which is registered at HM Land Registry under title number LN187874, and the registered proprietor of which is Cacique Investments Ltd. ("Cacique") is a valid and sustaining leasehold estate which entitles the registered proprietor of that title to possession of the demised premises on the terms set out in the underlease dated 26 October 1959 (the Lower Flat Underlease") for a term expiring on 24 March 2018.

"(b) The demised premises under the Lower Flat Underlease constitute a "flat" for the purposes of Part I of the Leasehold Reform, Housing and Urban Development Act 1993.

4. There is no issue between the parties as to either of those matters.

(xv) *Letter 23 January 2015 BDB to First Tier Tribunal (Property Chamber) London Residential Property*

"we confirm firstly that no terms are agreed as between the Head Lessee and the Nominee Purchaser, and secondly that our Rule 10(3) application will be pursued at the start of the hearing on Tuesday"

Decision and Reasons

23. The Tribunal finds that there is nothing in the statutory language which requires, after the service of the Counter Notice, that a complete offer capable of acceptance by the Nominee Purchaser must continue to exist at all times, and thus rejects Mr Jourdan's argument on this point. In fact the Counter Notice must constitute such an offer, but if it is not accepted the legislation enables a period of negotiation. It is wrong to understand such negotiation as a series of exchanges of complete offers capable of acceptance, as in particular any valuer involved in negotiations over price would understand. There is nothing in the wording of the Act, this Tribunal considers, which would prevent a negotiating party from refusing to enter into any agreement pending clarification on some matter or another. It seems clear to the Tribunal that this is what the Intermediate Landlord did in the exchange of correspondence set out above.

24. The Tribunal does not consider that the Freehold Reversioner has the power to agree a term with the Nominee Purchaser after notice of separate representation had been served by the Intermediate Landlord. Such a notice was served on 15 October 2014, giving an entitlement pursuant to Paragraph 6(1)(b)(ii) of Part II of Schedule 1 of the Act to "deal" with the Nominee Purchaser "in connection with" negotiating and agreeing the terms of acquisition.

25. The Tribunal applies the decision of *Howard De Walden Estates Limited v Accordway Limited, Stella Kateb* [2014] UKUT 0486 (LC), in which HHJ Gerald considered a very narrow question in relation to a notice of claim pursuant to section 42 of the Act which he answered in the affirmative, namely "Does the competent landlord have the authority or power to agree the terms of the grant of a new lease with the tenant so as to bind the intermediate landlord even though that intermediate landlord has served a notice of intention to be separately represented?" Or, using more prosaic language, the competent landlord is able to "trump" the notice of intent to be separately

represented served by the intermediate landlord. Sufficient remedies were available to a dissatisfied intermediate leaseholder – namely an application to the court for directions in the event of a dispute (pursuant to Paragraph 6(2)(b) of Schedule 1) and seeking damages against the reversioner (subject to the good faith and reasonable care and diligence defence prescribed in Paragraph 6(4)).

26. Upon reaching his conclusion, HHJ Gerald contrasted the parallel provisions of Schedule 11 in relation to a claim for a lease extension and Schedule 1 in relation to collective enfranchisement. The latter provide under paragraph 7(1)(a) for the intermediate landlord to serve a notice to have a right to negotiate in dealings, but the former does not. HHJ Gerald considered that the more complex nature of collective enfranchisement and the acquisition of the intermediate landlord's interest was the undoubtable reason for this difference.

27. Furthermore, the Tribunal notes that any other relevant landlord may give a notice pursuant to Paragraph 7(3) of Schedule 1 to the reversioner requiring him to apply to the Tribunal for the determination of any of the terms of acquisition so far as relating to the acquisition of any interest of the landlord. Such a provision does not exist in Schedule 11. In the present case such a notice was not required, since the Freehold Reversioner did apply to the Tribunal on 7 August 2014, before the issue of the validity of the underlease was raised. However, a provision to require the reversioner to seek a determination of the Tribunal would be ineffective if, once seized of its jurisdiction, the Nominee Purchaser was in any event able to negotiate and agree directly with the Reversioner in spite of objection and over the head of the Intermediate Landlord.

28. The question that now arises for consideration is therefore whether there was an offer by the Intermediate Landlord which was capable of acceptance by the Nominee Purchaser on 11 December 2014. The Tribunal concludes on the evidence and submissions before it that there was.

29. The Tribunal accepts Mr Jourdan's submissions that the Counter Notice, as a matter of law, must constitute an offer capable of acceptance and that the Intermediate Landlord at no time made new counter proposals to those made in the Counter Notice. Since those counter proposals were made at a time when Wellcome was authorised by Section 9 and Schedule 1 of the Act to make them on behalf of the Intermediate Landlord, it was open to the Nominee Purchaser to accept them when they were made. They could clearly have been accepted immediately after service of the Counter Notice and, but for their variation or withdrawal by the Intermediate Landlord, they continued to be available for acceptance.

30. It is necessary carefully to analyse the correspondence between solicitors to determine whether those counter proposals were varied or withdrawn by the Intermediate Landlord, and this is what the Tribunal has done. On a proper interpretation of that correspondence, BDB did not withdraw or vary the counter proposals in the Counter Notice, but in effect imposed a condition on their agreement that there be an unconditional acceptance of the validity of the lease in question. The issue set out in the letter of 15 October 2014 as to the resultant consequences only arose if the lease was not accepted by the Nominee Purchaser to be valid.

31. Whether a term has been agreed is a question of fact for the Tribunal. The Tribunal was referred to the High Court decision of Mr Justice Lewinson in *Pledream Properties Ltd. v 5 Felix Avenue Ltd.* 201 EWHC 3048, which approved as "workable" the test proposed by HHJ Robinson in the Upper Tribunal to determine whether a term had been agreed:

"It must be clear that negotiations have been completed and final agreement has been reached either orally or in writing on specific term or terms that is not in any way contingent on agreement or determination of some other term of terms".

32. In the present case, the condition for settlement set out by BDB was met by Forsters in correspondence dated 11 December 2014 and subsequently. That being the case, and there having been no express withdrawal or amendment of the terms of acquisition set out in the Counter Notice, the Tribunal finds that those terms were then capable of acceptance, and were indeed accepted in that letter. Therefore, the Tribunal finds that all terms of acquisition for the Headlease were agreed on 11 December 2014.

33. The letter of 27 October 2014 requests as a condition an acceptance that the Section 13 Notice is acknowledged to be wrong (and that by implication the underlease is invalid) and the headlease would not be acquired under the 1993 Act procedure, then later asks for confirmation that Forsters would not countenance an assertion in the section 42 claim that the underlease does not exist, and offers two options, a) and b).

34. By asserting on 11 December 2014 that the terms of acquisition of the Headlease had been agreed, and this being pursuant to a process which began with the s.13 Notice referring to 4 flats and qualifying underleases, the Nominee Purchaser accepting the validity of the basement underlease, was uneqivocally choosing option a).

35. It would have been open to the Nominee Purchaser's solicitors to make counter proposals, but they plainly did not do so. The Tribunal rejects Mr Johnson's submission that no agreement was possible at all. No

further act of affirmation is required by an Intermediate Landlord after service of a notice of separate representation in order to adopt the proposals in the Counter Notice. They were made on the Intermediate Landlord's behalf and continue to be capable of acceptance but for their express withdrawal or variation. By asserting that the terms of the transfer will not be agreed until this point is settled, without withdrawing or altering the proposals in the counter notice, BDB are clearly implying that those terms will be agreed once this point is settled. The Tribunal concludes that having received the concessions recited above on 11 December 2014 (and again on 12 January 2015), the Counter Notice proposals were capable of acceptance and were so accepted. The acceptance in the letter of 11 December 2014 was unqualified.

36. It had been Mr Jourdan's alternative to his principal position that the Nominee Purchaser had done exactly as was asked in being requested to choose between options a) and b), and it chose a). The Tribunal agrees with his analysis.

37. The email of 9 December 2014 merely discusses the consequences of asserting that the basement underlease is invalid, but does not alter the position in negotiations as to the terms of acquisition of the headlease.

38. Subsequent correspondence, beginning with that on 17 December 2014, seeks to attach further conditions to acceptance – namely confirmation that the Participating Tenants' Section 6 Acceptance Notice was not valid and the request for a premium of £1000 for the headlease – but binding agreement had already been reached. The unqualified acceptance already given was repeated without even reference to the relevant part of the statute in the subject heading of the letter of 12 January 2015 from Forsters. The attempt to qualify that acceptance in the email of the 13 January 2015 was, in the opinion of this Tribunal, ineffective.

39. The statement that there is created an estoppel in future from denying that the basement flat is a "flat" and that the underlease is valid is merely an assertion as to a consequence that arises.

40. The question of whether the lower flat is a "flat" for the purposes of Section 101(1) of the Act was implicitly not in issue. Until the hearing, and for example in the letter of 17 December 2014, the point was not pressed by BDB. In any event, to the extent that the question of whether the basement flat is a "flat" for all purposes constitutes a separate issue, this has been subsequently address explicitly in correspondence to the Tribunal dated 21 January 2015. In this letter Forsters again made clear its concessions, both as to the validity of the underlease and the existence of "flat" for the purposes of Part I of the Act.

41. To the extent that it is within the jurisdiction of this Tribunal on this application, it is satisfied the Nominee Purchasers concessions were for all purposes.

42. The Tribunal concludes that BDB was wrong in its assertion in correspondence to the Tribunal dated 23 January 2015 that no terms were agreed as between the Intermediate Landlord and the Nominee Purchaser. The issue of the determination of alternative price and terms of transfer, as set out in the letter of the letter of 15 October 2014, does not arise in these circumstances.

43. The Tribunal cannot consider the application by Cacique to be joined as a party, since it has no jurisdiction in respect of the proceedings.

44. The parties have been invited to consider whether to seek an order for transfer of the remaining issues to the Upper Tribunal. Consideration must be given to whether the Tribunal may make an order under Rule 25 in respect of "a case" and when it has no jurisdiction in relation to an application.

Name: F. Dickie **Date:** 8 March 2015

Appendix

Section 9(3)

(3) Subject to the provisions of Part II of Schedule 1, the reversioner in respect of any premises shall, in a case to which subsection (2) [or (2A)] applies, conduct on behalf of all the relevant landlords all proceedings arising out of any notice given with respect to the premises under section 13 (whether the proceedings are for resisting or giving effect to the claim in question).

Section 24 - Applications where terms in dispute or failure to enter contract

(1) Where the reversioner in respect of the specified premises has given the nominee purchaser —

(a) a counter-notice under section 21 complying with the requirement set out in subsection (2)(a) of that section, or

(b) a further counter-notice required by or by virtue of section 22(3) or section 23(5) or (6),

but any of the terms of acquisition remain in dispute at the end of the period of two months beginning with the date on which the counter-notice or further counter-notice was so given, [the appropriate tribunal] may, on the application of either the nominee purchaser or the reversioner, determine the matters in dispute.

Schedule 1, Part II Conduct of Proceedings on Behalf of other Landlords

Acts of reversioner binding on other landlords

6

(1) Without prejudice to the generality of section 9(3)—

(a) any notice given by or to the reversioner under this Chapter or section 74(3) following the giving of the initial notice shall be given or received by him on behalf of all the relevant landlords; and

(b) the reversioner may on behalf and in the name of all or (as the case may be) any of those landlords—

(i) deduce, evidence or verify the title to any property;

(ii) negotiate and agree with the nominee purchaser the terms of acquisition;

(iii) execute any conveyance for the purpose of transferring an interest to the nominee purchaser;

(iv) receive the price payable for the acquisition of any interest;

(v) take or defend any legal proceedings under this Chapter in respect of matters arising out of the initial notice.

(2) Subject to paragraph 7—

(a) the reversioner's acts in relation to matters within the authority conferred on him by section 9(3), and

(b) any determination of the court or [the appropriate tribunal] under this Chapter in proceedings between the reversioner and the nominee purchaser, shall be binding on the other relevant landlords and on their interests in the specified premises or any other property; but in the event of dispute the reversioner or any of the other relevant landlords may apply to the court for directions as to the manner in which the reversioner should act in the dispute.

(3) If any of the other relevant landlords cannot be found, or his identity cannot be ascertained, the reversioner shall apply to the court for directions and the court may make such order as it thinks proper with a view to giving effect to the rights of the participating tenants and protecting the interests of other persons, but subject to any such directions—

(a) the reversioner shall proceed as in other cases;

(b) any conveyance executed by the reversioner on behalf of that relevant landlord which identifies the interest to be conveyed shall have the same effect as if executed in his name; and

(c) any sum paid as the price for the acquisition of that relevant landlord's interest, and any other sum payable to him by virtue of Schedule 6, shall be paid into court.

(4) The reversioner, if he acts in good faith and with reasonable care and diligence, shall not be liable to any of the other relevant landlords for any loss or damage caused by any act or omission in the exercise or intended exercise of the authority conferred on him by section 9(3).

Other landlords acting independently

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(1) Notwithstanding anything in section 9(3) or paragraph 6, any of the other relevant landlords shall, at any time after the giving by the reversioner of a counter-notice under section 21 and on giving notice of his intention to do so to both the reversioner and the nominee purchaser, be entitled—

(a) to deal directly with the nominee purchaser in connection with any of the matters mentioned in sub-paragraphs (i) to (iii) of paragraph 6(1)(b) so far as relating to the acquisition of any interest of his;

(b) to be separately represented in any legal proceedings in which his title to any property comes in question, or in any legal proceedings relating to the terms of acquisition so far as relating to the acquisition of any interest of his.

(2) If the nominee purchaser so requires by notice given to the reversioner and any of the other relevant landlords, that landlord shall deal directly with the nominee purchaser for the purpose of deducing, evidencing or verifying the landlord's title to any property.

(3) Any of the other relevant landlords may by notice given to the reversioner require him to apply to [the appropriate tribunal] for the determination by the tribunal of any of the terms of acquisition so far as relating to the acquisition of any interest of the landlord.

(4) Any of the other relevant landlords may also, on giving notice to the reversioner and the nominee purchaser, require that the price payable

for the acquisition of his interest shall be paid by the nominee purchaser to him, or to a person authorised by him to receive it, instead of to the reversioner; but if, after being given proper notice of the time and method of completion with the nominee purchaser, either —

(a) he fails to notify the reversioner of the arrangements made with the nominee purchaser to receive payment, or

(b) having notified the reversioner of those arrangements, the arrangements are not duly implemented,

the reversioner shall be authorised to receive the payment for him, and the reversioner's written receipt for the amount payable shall be a complete discharge to the nominee purchaser.