



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **LON/00AT/LBC/2016/0112**

Property : **92 Brook Road South, Brentford,
TW8 0PH**

Applicant : **Wayne Barnett and Tatiana Elliot
(nee Croft – Murray)**

Representative : **Mr A Carr (counsel)**

Respondent : **The Personal Representatives of
Maureen Elizabeth Bayliss**

Affected Persons : **Dean Bayliss
The Public Trustee**

Type of Application : **Determination of an alleged breach
of covenant or covenants under
s168 (4) of the Commonhold and
Leasehold Reform Act 2002**

Tribunal Members : **Judge Shaw
Mrs A Flynn, MA MRICS**

**Date and venue of
Hearing** : **11th September 2017 at Alfred Place,
London WC1**

Date of Decision : **14th September 2017**

DECISION

Introduction:

1. This case involves an application made by Wayne Barnett and Tatiana Camilla Mary Elliot (née Croft-Murray) (“the Applicants”) in respect of a property situate at and known as 92 Brook Road South, Brentford TW8 0PH (“the Property”). Mrs Elliott and Mr Barnett are (although it will have to be proved for the purposes of this application) the freehold owners of the Property. The Respondents are the Personal Representatives of Maureen Elizabeth Bayliss. In a sense, this title is technical only, because for reasons to be explained, there are no formally appointed personal representatives of Mrs Bayliss’ estate.
2. Suffice it to say, Mrs Bayliss was, until her death last year, the leasehold owner of the Property pursuant to the provisions of a lease dated 12th July 1982, which lease was for a term of 50 years from 24th June 1981. That lease therefore has some 14 years left to run. There are other persons who have been joined as parties to the application termed “Affected Persons”. These persons are Dean Bayliss, who is the son of the deceased long leasehold owner, and the further affected person is the Public Trustee who pursuant to directions of the Tribunal was served with the application, because Letters of Administration have not been applied for to administer her estate.
3. The application is for a determination, pursuant to s.168(4) of the Commonhold and Leasehold Reform Act 2002, that a breach of the lease has occurred.
4. Directions were given in this case by the Tribunal on more than one occasion, most recently on 19th May 2017.

The Hearing

5. The second-named Applicant, Mrs Elliott, has appeared in person and represented by Mr Carr of Counsel. The first-named Applicant has not appeared in person today but has prepared a witness Statement which appears in the bundle of documents prepared by the applicants, and it should also be said that Mrs Elliott has also prepared a Witness Statement. Mr Carr also appeared on behalf of Mr Barnett. So far as the Respondent is concerned, there are no personal representatives of the deceased leaseholder's estate, and so no one has appeared in that capacity. Her son is, in fact, resident in the Property, as he has been for some years, but he has not appeared. The Public Trustee has made no representations and has not appeared before the Tribunal. Mr Bayliss was directed by the Tribunal to produce a bundle of any documents upon which he might choose to rely, but no such bundle has been produced. Indeed, the late leaseholder's son, Mr Bayliss, has not engaged with these proceedings at all.

6. Accordingly, the Tribunal heard submissions on behalf of the Applicants from Mr Carr, which were to some extent elaborated upon by Mrs Elliott. The Tribunal has also read the helpful statements prepared for the Applicants and was taken through the documents referred to in them.

The Issues

7. The main issue is whether the Tribunal finds that there has been a breach or breaches of covenant in this case. However, there has been a preliminary matter which does not often trouble Tribunals in applications of this kind, but which must be dealt with before considering the main issue in this case. That issue is whether the Applicants are indeed the freehold owners of the Property and therefore entitled to bring this application before the Tribunal.

8. The kind of application is very often, and indeed in this case it is, the preliminary to the landlord bringing a claim for forfeiture. It is therefore important that the Applicants should be able to demonstrate their locus to bring these proceedings.
9. On the question of proof of title, the issue is complicated because, unusually, freehold title to the Property is not registered. The reason it has not been registered is said to be that it has not been possible to put together a sufficient epitome of title so as to satisfy the Land Registry of entitlement as to first registration. It is not clear why that is the case, because the Applicants can show a line of title going back to the late 1800's, which one might have thought would be sufficient to satisfy the Land Registry. However, in any event, given that they are not registered as the freeholders, the Tribunal, with the assistance of the Applicants, has had to endeavour to trace the title of the Applicants.
10. Dealing first with Mrs Elliott, she has prepared as indicated above, a helpful Witness Statement which can be found at pages 32 to 36 of the Applicants' bundle. It appears that the Property is one of a number of properties which were purchased by an ancestor of Mrs Elliott, probably during the 19th Century. As observed by Mrs Elliott at paragraph 3 of her Witness Statement, in or around 1893 her great-grandmother Grace Murray (nèe Croft) owed the freehold of the Property. She was the person who granted the lease for a term of 90 years to Mr John Matthews. That lease is no longer available, but it is referred to in the preamble to the lease of the deceased, Mrs Bayliss. That lease appears in the Applicant's bundle at page 47. The lease is itself a statutory extension of an earlier lease. The lease was extended under the provisions of the Leasehold Reform Act 1967 and is dated 12th July 1982. The earlier lease, in respect of which this lease was an extension, is the lease granted by Mrs Elliott's great-grandmother and is mentioned in the recitals as having been granted on 29th September 1893. Upon the expiry of that lease, Mrs Elliott and her stepmother,

Rosemary Jill Croft-Murray, granted the lease in respect of which this application is made to Mrs Bayliss.

11. As indicated in Mrs Elliott's Witness Statement, when her great-grandmother died, a property trust was established ("the Croft-Murray Trust") to incorporate a number of properties in the Brentford area which had been owned by her great-grandmother. Under that trust, Mrs Elliott's grandfather received a 2/3 beneficial share and a cousin of his received the other 1/3 beneficial share. In due course, the 2/3 beneficial share was passed to Mrs Elliott's father and then on to Mrs Elliott. In due course, the other 1/3 beneficial share was passed to Mr Barnett after he acquired it at a public auction in 1986. At that time, there were only 2 properties remaining to the Croft-Murray Trust. Currently, the subject property is the only asset of the trust.
12. Mrs Rosemary Jill Croft-Murray, together with Mrs Elliott, are the current trustees of the trust. Mrs Croft-Murray is now a lady of some 87 years and has not attended the before the Tribunal, but has prepared a Witness Statement which appears at page 61 of the Applicants' bundle, and in which she confirms that she entirely supports this application, and the steps currently being taken by the Applicants.
13. Accordingly, the first question for the Tribunal is whether the Applicants have demonstrated sufficiently that they have the appropriate *locus* to make this application and are indeed the freehold owners of the Property. The Tribunal is satisfied on a balance of probabilities that they have so demonstrated. The Tribunal has the now deceased leaseholder's lease which in terms makes reference to the earlier lease which was granted by the second-named Applicant's great-grandmother, and Mrs Elliott has produced her marriage certificate demonstrating her maiden name. Of course, that could be a coincidence, but the other detail to which reference has already been made in this Decision above, is all borne out by other documentation in the Applicants' bundle. There is, for example, a copy of the

Assignment made between Mrs Elliott's father and herself on 12th March 1974 appearing at pages 41 to 44 in the Applicants' bundle and that Assignment lists the various properties which were then part of the portfolio. The auction particulars have also been provided to show the purchase by Mr Barnett, the first-named Applicant, of his interest in the Property and the consequent assignment which took place between Mrs Elliott's cousin and Mr Barnett to complete that purchase (see pages 141 to 142 of the Applicants' bundle). Further, there has been absolutely no challenge to their title made by or on behalf of either the Respondent or the Affected Persons. Indeed, Mr Bayliss really relies upon the Applicants' title, through which he maintains such entitlement as he may have to be in the Property. For all the above reasons, the Tribunal is satisfied on a balance of probabilities that the Applicants are entitled to bring this application.

14. The second and main issue is whether the Applicants have demonstrated, again on a balance of probabilities, that there has been a breach or breaches of the lease for the purposes of s.168(4) of the Commonhold and Leasehold Reform Act 2002. In this respect, the background is a little sad. It appears that for some years the Croft-Murray Trust, the freehold owners, were indulgent to the late Mrs Bayliss both in relation to the rent she was paying and the dates for payment and also in relation to her care (or lack of care) of the Property.
15. When she passed away, they became concerned that the disrepair in the Property, and damage to the very fabric of the Property, had become serious. Her son was contacted and appears in the email and other correspondence which have been shown to the Tribunal, fully to have accepted that the Property was indeed in disrepair, and he undertook to remedy that disrepair and to pay up some arrears of rent. It appears that the arrears were for some period of time paid up (although more arrears have accrued since then) and it appears also that Mr Bayliss made some effort to remedy the disrepair. However, such efforts were

not to the correct, standard and in due course a surveyor was instructed to inspect the Property and to produce a schedule indicating such repairs as were required. A Mr Roper of Roper Son & Chapman prepared an Interim Schedule of Dilapidations in or about May 2016. That Schedule appears at pages 209 to 215 of the Applicants' Bundle, and the Tribunal was taken through the Schedule by Mr Carr.

16. Before dealing with the substantive allegations of disrepair, it is appropriate that the Tribunal should set out in this Decision the particular covenants upon which reliance is placed by Applicants, and which are said to have been breached. Those covenants appear at clauses 2(3) and 2(4) of the lease and can be found at pages 19 and 20 of the Applicants' bundle. By those covenants the tenant undertakes to the landlord:

2(3): "At all times during the term at his own expense well and substantially to renew repair uphold support maintain cleanse amend and keep in good and substantial repair and condition the demised premises and all additions thereto including keeping in repair and replacing when necessary all cisterns tanks meters water gas and electricity supply pipes sewers drains channels pipes conduits and cables

servicing the demised premises and including all fixtures and fittings and appliances in the demised premises"

2(4): "To wash and paint with two coats of good quality paint and varnish in a proper and workmanlike manner all the wood and iron work and other parts of the demised premises and all additions thereto heretofore or usually washed painted and varnished during the said term as to the external work in every seventh year and in either case in the last year thereof and with all internal work to paint wash stop whiten and colour all such parts as are usually so dealt with and to strip and repaper the parts usually papered with suitable paper of a good quality"

17. The Schedule prepared by Mr Roper identifies the various breaches by reference to the appropriate clauses in the lease and in addition gives an estimate of the cost involved in remedying the breaches. In respect of several of the items, it was observed during submissions that the estimates given by Mr Roper are quite conservative. Notwithstanding that, the total cost (excluding surveyors' fees and VAT) amounts to some £36,365.

18. No purpose would be served by the Tribunal repeating *verbatim* the content of Schedule, but suffice it to say the major items include the disrepair of the roof which requires a thorough overhaul, the replacement of the windows which have been incorrectly replaced with fixed lights and louvred openings and are loose or badly affected by wet rot. Indeed, there are weeds growing around the rear bedroom window which require to be removed before the windows are replaced. The rear yard and garden is completely dilapidated and requires clearing and new cultivation. The ceilings and walls are defective for the reasons set out in the Schedule and both the electrical and gas installations are seriously – and possibly dangerously – defective in the manner described in Mr Roper's Schedule. If these breaches are made out, they would certainly constitute significant breaches of the repairing covenants in the lease. The Schedule has been prepared by Mr Roper, who is a Fellow of the Royal Institution of Chartered Surveyors and it is accompanied by a series of photographs, some clearer than others, which illustrate the extent of the disrepair which is in the view of the Tribunal quite serious. There has been no challenge to the allegations of breach of covenant by those persons affected and the Tribunal is satisfied on the evidence before it that the disrepair constitutes a breach of the covenants to which reference has been made above.

Conclusion:

19. For the reasons set out above, the Tribunal is satisfied that Applicants have made out their case that there have been the breaches of the covenants set out above, for the purposes of s.168(4) of the

Commonhold and Leasehold Reform Act 2002. It will be a matter for the County Court, if the matter proceeds to court, to decide what consequences flow from those breaches.

Judge Shaw

14th September 2017