

York House (Chelsea Ltd) v Thompson & Thompson [2019] EWHC 2203 (Ch)

Leases granted from joint landlords to one of them did not trigger the tenants' rights of first refusal under Part I of the Landlord and Tenant Act 1987.

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Facts

The joint landlords of a block of flats (T&T) granted 14 leases at nil premium and at peppercorn rents of various parts of the block (e.g. internal corridors, the courtyard, the sub-soil, the airspace etc.) to one or other of them. They did this because they were concerned that the tenants were looking to exercise their collective rights of enfranchisement under the Leasehold Reform, Housing and Urban Development Act 1993 (the 1993 Act) at a price which did not take into account the potential development opportunities in relation to the block.

T&T did not serve notices on the qualifying tenants of the block under section 5 of the Landlord and Tenant Act 1987 (the 1987 Act) (which would have entitled the qualifying tenants to exercise a right of first refusal in relation to the relevant disposals).

The company set up to acquire the freehold on the tenants' behalf (Y) applied to court for an order requiring T&T to transfer the leases to it (which T&T would be obliged to do had they failed to comply with their obligations under the 1987 Act).

Issue

Were the leases granted by T&T relevant disposals for the purposes of the 1987 Act?

Decision

The leases were not relevant disposals as they were specifically excluded by sections 4(2)(e) and 4(2)(h) of the 1987 Act.

Section 4(2)(e) excludes a disposal by way of a gift to a member of the landlord's family. This was broad enough to include the grant of a lease where the lease was granted otherwise than in exchange for anything of value (and the covenants entered into by the tenant would not prevent the lease being by way of gift). Moreover, it was possible to describe a gift from a husband and wife to one of them alone as a gift to a member of the family. The motive behind the grant of the lease was irrelevant.

Section 4(2)(h) excludes a disposal consisting of a transfer by two or more members of a family to fewer of their number or to a different combination of family members (as long as at least one of the transferors remains). The use here of the word 'transfer' did not exclude the grant of a lease.

Points to note/consider

1. Landlords who fear a collective enfranchisement claim under the 1993 Act will often try to ring-fence any potential development opportunities for their own future benefit. This decision shows that it is possible to put a structure in place to achieve that objective

without triggering the tenants' statutory rights of first refusal. However, the tenants may still be able to acquire any such leases as part of their collective enfranchisement claim (the problem for the tenants in this case was that the leases had not been registered at the time the tenants started their collective enfranchisement claim, so they did not know about the leases and had not therefore formally sought to acquire them).

2. Despite the outcome, this case is an important reminder of how broadly the tenants' rights under the 1987 Act have been interpreted by the courts. For example, in the case of *Dartmouth Court Blackheath Ltd v Berisworth Ltd* [2008] EWHC 350 (Ch), the High Court held that the tenants of a block of flats should have been offered first refusal of a lease of the airspace above the block.

T&T tried to argue in this case that this earlier decision was incorrect and that the rights of first refusal only apply to a disposal of part of a building which is either part of the common parts of the building or a part over which two or more qualifying tenants enjoy rights in their leases. The judge disagreed with T&T. The disposal of any part of a building in which the tenants' flats are located is a relevant disposal for the purposes of the 1987 Act, unless specifically excluded by the 1987 Act. This would include, for example, the grant of a market rent lease of a commercial unit within a mixed-use building.

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