



Neutral Citation Number: [2024] EWHC 1312 (Ch)

Case No: PT-2022-000489

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**PROPERTY, TRUSTS AND PROBATE LIST (CHD)**

**Rolls Building**  
**Fetter Lane**  
**London**  
**EC4A 1NL**

**Handed down by email**  
**Date: 4 June 2024**

**Before :**

**MR NICHOLAS CADDICK K.C.**  
**(sitting as a Deputy High Court Judge)**

**Between :**

**MARIA JESUS EL MASSOURI**

**Claimant**

**- and -**

**OMANI ESTATES LIMITED**

**Defendant**

**HUGH JACKSON** (instructed by **Streathers Solicitors LLP**) for the Claimant  
**MAX THOROWGOOD** (instructed by **Blacks Legal**) for the Defendant

**Nicholas Caddick K.C. (Deputy High Court Judge):**

1. This judgment relates to two issues that have arisen with regard to the form of the Order that needs to be made in order to reflect the findings set out in my judgment at [2024] EWHC 534 (Ch).
2. The first issue relates to paragraph 3(a) of the draft Order. The issue is whether the land demised by the Frimpong Lease (title BGL19306) included the attic space that (prior to the extension works carried out in 2001/2002) was over the bathroom on the half-landing between the first and second floors of the Property.
3. Before considering the terms of the Frimpong Lease, I should refer first to the terms of the Claimant's Lease (title NGL515428). In my judgment, this attic space was not part of the area demised under the Claimant's Lease. The Claimant's Lease was of "*ALL THAT flat ... situate on the second floor and including the ceilings and floors of the said flat and .... half the width of the joists or beams to which the ceilings are attached...*". Although the words refer to the second floor, it is common ground that the demise included the stairs from the first floor and the half-landing between the first and second floors and, in my judgment, as the bathroom on the half-landing had a ceiling (which would have been attached to joists/beams), the area above that (i.e. the attic) was excluded from the demise. It is true that the area was only accessible from the second floor flat – but so too (on my findings) was the roof and the space above the roof (which were also excluded from the demise).
4. Assuming the attic space was not included in the demise under the Claimant's Lease, there is a separate issue as to whether it was included in the demise under the Frimpong Lease. In my judgment, it was. That lease was in respect of "*ALL THAT area ... situate above the second floor ... and including the ceilings and floors of the proposed flat and the joists and beams on which the floors are laid....*" In my judgment, the attic was "above the second floor" (which, as mentioned above, was understood as including the stairs from the first floor and the half-landing between the first and second floors) and it is clear from the 1982 plans that this space was intended to be incorporated as part of the area of the "proposed flat" which (as set out in my main judgment) was the subject matter of the Frimpong Lease.
5. For these reasons, I prefer Mr Thorowgood's proposed wording of paragraph 3(a) of the Order, slightly amended, so as to declare that the premises demised under the Frimpong Lease (title No. BGL19306) included:

"The demise of a parcel upwards from half the width of the joists or beams to which the ceiling of the flat comprising the Claimant's lease is attached, to half

the width of the joists or beams to the ceiling of the mansard accommodation above such flat, including the internal and external walls thereof (but not the roof) and including (to the rear) the roof terrace and the room directly below the roof terrace, of such dimensions (if any) as are shown on the plan appended hereto.”

6. Of course, although the former attic area was part of the demise under the Frimpong Lease, it is also part of the area of which the Claimant has been in adverse possession and in respect of which the Defendant is estopped from claiming possession as against the Claimant (see paragraphs 4 and 5 of the draft Order).
7. The second issue relates to paragraph 5 of the draft Order. The issue is whether (as Mr Thorowgood suggests) the words shown underlined and emboldened below should be included:

“The Defendant is estopped from denying that all such parts of the Property as are referred to in paragraph 3(a) above form part of, or are an accretion to, the demise by the Claimant’s Lease for the term of such lease and any extension thereto or continuation or statutory tenancy pursuant to Part 1 of the Landlord and Tenant Act 1954, unless and until the Claimant’s Lease and any extension thereof comes to an end, whether by surrender, forfeiture or effluxion of time, and **until then** it would be unconscionable for the Defendant to seek to dispossess the Claimant thereof.”

8. It seems to me that it was in the Claimant’s and her husband’s character as tenant under the Claimant’s Lease that they undertook the works to create the third floor and went into possession of the land. Whilst they remain in that character, on the facts that I have found, the Defendant is estopped from challenging their possession. However, it seems to me that that estoppel and unconscionability ceases to apply when the Claimant’s lease (including any extension thereto) comes to an end. In my judgment, Mr Thorowgood’s proposed wording reflects that.
9. I must, however, repeat the point that I made during the form of order hearing. The trial was only concerned with the position as between the Claimant (as proprietor of the Claimant’s Lease) and the Defendant (as proprietor of the Frimpong Lease). The freeholder of the Property was not a party to the action and I have made no findings as regards its rights and, in particular, as to whether on the findings that I have made, the rights of the Defendant as lessee under the Frimpong Lease were extinguished altogether on the basis that the Claimant’s possession is treated as being the possession of the freeholder. Accordingly, nothing in paragraph 5 of the Order should be taken as suggesting that the Defendant would have a right to possession (whether against the Claimant or anyone else) of the premises demised under the Frimpong Lease after the end of the Claimant’s leasehold rights.

10. Save as set out above, the terms of the Order (including those relating to costs) will remain as set out in the draft.