CHI/00HN/OLR/2007/0012-0018

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON APPLICATIONS UNDER DECTION 48 OF THE LEASEHOLD REFORM, HOUSING & URBAN DEVELOPMENT ACT 1993, AS AMENDED

Address:	Flats 2-7 & 12, Westbourne Gate, Grosvenor Road, Bournemouth, Dorset, BH4 8BW
Applicants:	The Leaseholders
Respondents:	(1) Drewsons Limited (Freeholder) (2)Westbourne Gate Maintenance Limited (Intermediate Landlord)
Applications:	1 July 2007
Inspection:	5 March 2008
Hearing:	5 March 2008

Appearances:

Tenants

Mr. H. Reed (Solicitor)	Laceys, solicitors for the Applicants
Mr. J. Smith	Laceys
Ms S Hamon	Laceys
Mr. Blakely	Leaseholder (Flat 5)
Mr. Hodjat	Leaseholder (Flats 7)

For the Applicants

Freeholder

Mr. Arnold (Solicitor)	Steele Raymond, solicitors for the First Respondent
Ms. J. Drewitt	Managing Director of the First Respondent
Mr. Drewitt	

Intermediate Landlord

Mr. A. Howard (Solicitor)	Coles Miller, solicitors for the Second Respondent
Mrs. J. Birch	Director of the Second Respondent
Mr. Birch	Shareholder in the Second Respondent

For the Respondents

Members of the Tribunal:	Mr I Mohabir LLB (Hons) Mr J. S. McAllister FRICS Mr P. E. Smith FRICS

IN THE SOUTHERN LEASEHOLD VALUATION TRIBUNAL

CHI/00HN/OLR/2007/0012-0018

IN THE MATTER OF SECTION 48 OF THE LEASEHOLD REFORM, HOUSING & URBAN DEVELOPMENT ACT 1993

AND IN THE MATTER OF FLATS 2-7 & 12, WESTBOURNE GATE, GROSVENOR ROAD, BOURNEMOUTH, DORSET, BH4 8BW

BETWEEN:

THE LEASEHOLDERS

Applicants

-and-

(1) DREWSONS LIMITED
(2) WESTBOURNE GATE MAINTENANCE LIMITED

Respondents

THE TRIBUNAL'S DECISION

Introduction

1. This is a joint application by the leaseholders of Flats 2-7 and 12 of the subject property pursuant to section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 (as amended) ("the Act") for a determination of the terms of the new leases to be granted to them and the premiums to be paid to one or more of the Respondents in respect of the new grant.

2. By section 42 notices variously dated and served on the First Respondent, each of the Applicants exercised the right under the Act for the grant of a new lease in relation to their respective flats. For reasons that will become apparent below, it is not necessary to set out either the proposed premiums or amended terms on which the new grant was sought.

3. By section 45 counter notices, all dated 11 May 2007, the First Respondent admitted the Applicants right to acquire a new lease of their respective flats, but counter proposed varying premiums to be paid and amended terms on which the new leases would be granted. Again, for the same reasons, it is not necessary to set out either the premiums or the amended terms counter proposed in the section 45 notices.

4. On 1 November 2007, the Applicants jointly applied for a determination to be made by the Tribunal pursuant to section 48.

5. By the Tribunal's Direction's dated 23 November 2007 and amended on 7 December 2007, the parties were informed that the application was to be heard on 5 March 2008.

6. On 27 February 2008, the Tribunal received a letter from the Applicants solicitors, Laceys, informing it that the Applicants and the First Respondent had agreed the premiums to be paid to the latter and the terms of the new leases to be granted. Annexed to that letter was a draft specimen lease, which was to be granted in the same terms to each of the Applicants. The premium to be paid in respect of Flats 2 and 3 was £15,500 each and £16,500 each for the remaining participating flats. In the same letter, it was also stated that the only outstanding issue was the Second Respondent's agreement to the form of the new leases. It seems that the Second Respondent had only recently instructed a firm of solicitors who were in the process of checking the papers. It was hoped that all the terms could be agreed between the three parties in the near future. In the event that the Second Respondent was unable to agree the terms for the hearing, it was proposed that the matter proceed by way of a paper determination and that the hearing date should be vacated.

7. Also on the 27 February 2008, the Tribunal received a letter from Colcs Miller, solicitors, instructed on behalf of the Second Respondent. The letter requested a short adjournment of the hearing on the basis that they had only been instructed late in the afternoon of the previous day and they were not in a position to properly advise their client. The letter stated that the only

outstanding issues appeared to relate to the terms of the new leases to be granted to the Applicants and a suggested Deed of Variation of the head lease owned by the Second Respondent. A short adjournment would give the parties the opportunity to reach agreement, thereby saving them both costs and time. The letter also raised a jurisdictional point, namely, the suggested Deed of Variation of the Second Respondent's head lease did not form within the statutory provisions of the Act under which this application would be determined and, therefore, the Tribunal could not in any event make a determination on this matter.

8. By a letter dated 28 February 2008, the Tribunal refused the applications to adjourn the hearing date. The reason given, in terms, was that the Applicants had not formally withdrawn the application and there did not appear to be agreement on the outstanding issues.

9. By a letter dated 29 February 2008, the Second Respondent's solicitors repeated the requested for adjournment of the basis that:

(a) service did not appear to have been effected on the Second Respondent at its registered office.
(b) they had seen no evidence of the purported agreement of the premiums to be paid.
(c) no valuation evidence had been served on the Second Respondent.
(d) that the proposed downward variation of the ground rent payable by the Second Respondent to the First Respondent was outside the provisions of paragraph 10(1) of Part II of Schedule 11 of the Act, which provided that the re-grant should be on the same terms as the intermediate lease, including the rent.

Annexed to the letter was a copy of a letter of even date sent to the First Respondent's solicitors were points (b) and (d) above were repeated. Materially, it was admitted that the Second Respondent had not served Notice to Act independently pursuant to paragraph 7(1) of Part II of Schedule 11 of the Act. In so doing, it was accepted that the First Respondent was the

competent landlord within the meaning of section 40(2) of the Act and it that conduct in these proceedings on its behalf. Again, the Tribunal refused the request to adjourn the hearing.

Inspection

10. On 5 March 2008, the Tribunal externally inspected the subject property and internally inspected Flats 3 and 5. Given that the Tribunal was not required to substantively determine the application at the hearing, it is not necessary to set out here either a description of the subject property or those matters noted on inspection.

Hearing

11. The hearing in this matter also took place on 5 March 2008. The Applicants were represented by Mr. Reed, a solicitor from Laceys. The First Respondent was represented by Mr. Arnold, a solicitor from Steele Raymond. The Second Respondent was represented by Mr. Howard, a solicitor from Coles Miller.

12. At the commencement of the hearing, both Mr. Reed and Mr. Arnold handed up to the Tribunal a statement dated 4 March 2008 and signed by the respective expert valuers instructed by the Applicants and the First Respondent setting out the premiums and lease terms agreed. It was submitted by Mr. Reed that because agreement had now been reached on all the outstanding issues, it was no necessary for the Tribunal to make a determination in the application.

13. Mr. Arnold told the Tribunal that the Second Respondent was not going to receive any proportion of the premiums to be paid because, in reality, it was a shell management company. When asked by the Tribunal, he said that the matter of the First Respondent's section 60 costs had not been agreed as yet, but it was hoped that the parties would be able to agree these in the event that they were sought by the First Respondent.

14. Mr. Howard, on behalf of the Second Respondent, made a further application to adjourn the hearing. When asked by the Tribunal as to whether or not he

had *locus standi* to make such application, he said that notice of separate representation pursuant to paragraph 7(1) of Part II of Schedule 11 had been served on the other parties the preceding day. He said that he was instructed by Mrs. Birch, a Director of the Second Respondent company, who was not a participating tenant in the application. His application to adjourn was made for two primary reasons. These were:

(a) that the First Respondent had conduct in these proceedings on behalf of the Second Respondent pursuant to section 40(2) of the Act and it had not made clear that the Second Respondent was not going to receive a share of the premiums paid. The Second Respondent had, in effect, been ambushed by the First Respondent in this regard. To fail to allow the Second Respondent an opportunity to consider its position and to negotiate with the other parties would be a breach of the rules of natural justice and its "human rights".

(b) that the agreed reduction in the ground rent payable under the sub-leases granted to the Applicants and the head lease owned by the Second Respondent was, in any event, outside the jurisdiction of the Tribunal because this was not in accordance with the statutory terms.

15. Both the Applicants and the First Respondent's representatives indicated that they opposed the application to adjourn the hearing. However, the Tribunal did not find it necessary to hear submissions from either of them.

16. The Tribunal refused the Second Respondent's application to adjourn the hearing for the following reasons. As to the first submission made above, the Tribunal said in the letter from Coles Miller to Steele Raymond dated 29 February 2008, it was conceded on behalf of the Second Respondent that it had failed to serve a notice to act independently pursuant to paragraph 7(1) of Part II of Schedule 11 and, accordingly, the First Respondent was to be regarded as being the competent landlord with conduct in these proceedings on its behalf within the meaning of section 40(2) of the Act. This section has to be read together with paragraph 6(1) of Part II of Schedule 11, which

provides the competent landlord within express statutory authority to, *inter alia*, reach any agreement between the landlord (including intermediate landlords so bound) and the tenant and also in the determination of any proceedings before the Tribunal were full agreement between the parties has not been reached on one or more of the issues. Paragraph 6(1) expressly provides that the acts of the competent landlord shall be binding on the other landlords. At the relevant time, the Second Respondent was not acting independently within the meaning of paragraph 7 of Part II of Schedule 11, as it had not served a notice to do so on the other parties. It was, therefore, bound by the agreement reached by the First Respondent acting under the statutory authority granted to it under paragraph 6(1).

17. To grant an adjournment to allow the Second Respondent to consider its position and to negotiate with the other parties was irrelevant. If it was the Second Respondent's case that it had been prejudiced by one or more terms of the agreement reached, then that was a separate matter altogether and one upon which the Tribunal did not have jurisdiction to determine in this application. Paragraph 6(4) of Part II of Schedule 11 appears to impose a duty of care on the competent landlord to act in good faith and with a reasonable care and diligence on behalf of other landlords. The Second Respondent's remedy, if any, will lie elsewhere in a separate claim and the Tribunal did not have to concern itself with this matter.

18. The issue of the Second Respondent's "human rights" did not arise because any such rights can only attach to an individual and not a company. It was perhaps, therefore, a surprising submission made on behalf of the Second Respondent.

19. The Tribunal also did not accept the second submission made on behalf of the Second Respondent that the agreement reached had to be within the relevant statutory provisions of the Act that applied in this instance. That submission appeared to ignore the meaning and effect of section 57(6) of the Act, which allows the competent landlord and the tenant to negotiate the terms of the new

lease with or without regard to the terms of the existing lease[1]. This submission would only be correct, as a matter of law, where there was an absence of agreement between the parties. In such a case, only such modifications set out in section 57(1) of the Act would be allowed. However, this section did not have any application in this instance because the Applicants and First Respondent had reached full agreement on all matters.

20. Accordingly, the Tribunal determined that the application had been compromised on the terms agreed by the Applicants and the First Respondent and that the Second Respondent was bound by the terms of the agreement. At the conclusion of the hearing the Tribunal directed the Applicants and the First Respondent to file within 14 days a Consent Agreement setting out all of the terms agreed. It further directed that the agreement shall contain a provision adjourning the determination of the First Respondent's section 60 costs generally with permission to restore within 3 months, in default, the claim for costs be dismissed by consent.

Dated the 7 day of March 2008

CHAIRMAN.....

Mr I Mohabir LLB (Hons)

[1] see Hague 32-02 p.513