

456



**HM Courts  
& Tribunals  
Service**



**Residential  
Property  
TRIBUNAL SERVICE**

**LONDON LEASEHOLD VALUATION TRIBUNAL**

**Case Reference: LON/00BK/LBC/2012/0072**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN  
APPLICATION UNDER SECTION 168(4) OF THE COMMONHOLD AND  
LEASEHOLD REFORM ACT 2002**

**Applicant: Ableside Ltd**

**Respondents: (1) Mr Raheem Choudhary (2) Mr Ahmed Saif (3)  
Santander UK PLC**

**Property: 108 Forset Court, Edgware Road, London, W2 2RD**

**Date of determination: 30 August 2012**

**Leasehold Valuation Tribunal**

**Mr I Mohabir LLB (Hons)**

### ***Introduction***

1. This is an application made by the Applicant under section 168(4) of the Commonhold and Leasehold Reform Act 2002 (as amended) (“the Act”) for a determination that the First and Second Respondents have breached more than one of the covenants and/or conditions in the lease of the property known as 108 Forset Court, Edgware Road, London, W2 2RD (“the property”).
2. The factual background to the application has been helpfully set out in the witness statement of Mr Swimer dated 21 May 2012, the Solicitor with conduct of this matter on behalf of the Applicant. His evidence can be summarised as follows.
3. The Applicant is the long leasehold proprietor of the property. The First and Second Respondents are the tenants of the property pursuant to a lease dated 14 June 1997 made between Farley Securities Ltd and Marwan Abdul Aziz Al Turki (“the lease”).
4. On 3 February 2010, Urbanglaze Ltd, the Applicant’s predecessor in title, granted a licence to Mr Hassan Nagoor, the leaseholder at the time, to assign the leasehold interest to Brite Sun Ltd. Notice was served on the Applicant’s solicitors that the assignment had been completed on 3 February 2010.
5. It seems that the First and Second Respondents became the registered proprietors of the property on 18 March 2010, having paid the sum of £495,000 on 11 September 2009 upon the assignment of the lease. The Third Respondent had advanced the sum of £420,750 to the first and Second Respondents to purchase the leasehold interest in the property.
6. Mr Swimer states, at paragraph 9, that the solicitors acting for Mr Nagoor, have confirmed that their client did not assign the lease to the

First and Second Respondents and assume that a further assignment was made without the Applicant's licence.

7. The Applicant, therefore, submits that the First and Second Respondents have variously breached clauses 5(9), 5(9)(d) and/or 5(8) of the lease and seeks a finding in those terms.
8. The evidence relied on by the Third Respondent is contained in the witness statement of Nina Bowen dated 14 August 2012, the Solicitor with conduct of this matter at Eversheds, who are instructed on its behalf..
9. She states that the First and Second Respondents have defaulted on their mortgage payments to her client and as a consequence it obtained an order for possession on 21 September 2010, although it has not yet taken possession of the property.
10. Further investigation revealed that BM Solicitors, who were instructed on behalf of all of the Respondents when the First and Second Respondents had acquired the leasehold interest, have been the subject matter of an intervention by the Law Society and are no longer trading. The position is the same in relation to PWC Solicitors who had been instructed by Brite Sun Ltd.
11. Ms Bowen submits that the Tribunal should not make any finding of breach of one or more terms of the lease until such time as the relevant files of BM Solicitors and PWC Solicitors have been obtained and examined to ascertain whether licence to assign was sought and given. To do otherwise would result in significant financial prejudice to the Third Respondent.

## ***Decision***

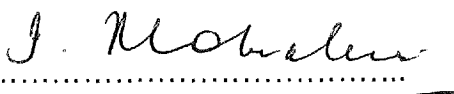
5. The hearing in this matter took place on 30 August 2012 and was based solely on the written submissions and documentary evidence filed by the parties.
  
13. By clause 5(9)(a) of the lease, the lessee covenanted with the lessor:  

*“Not at any time to assign transfer mortgage charge underlet or part with or share the possession or occupation of part only...”*
  
14. By clause 5(9)(d) of the lease, the lessee covenanted with the lessor:  

*“Not at any time to assign transfer...part with or share the possession or occupation of the whole of the demised premises without the previous consent in writing of the Lessors such consent not to be unreasonably withheld...”*
  
15. On the evidence before it, the tribunal found that clause 5(9)(a) had no application in this instance because it was, in effect a non-alienation, clause in relation to part of the property. It is common ground here that the First and Second Respondents had been assigned the entire property.
  
16. The Applicant had also raised the issue of breach of clause 5(8) of the lease. The Tribunal also found that this clause had no application here because it was only concerned with the landlord's costs of forfeiture.
  
17. Therefore, the only relevant clause relied on by the Applicant was clause 5(9)(d) and the Tribunal found that it had been breached by the First and Second Respondents. There was no evidence that Brite Sun Ltd or its solicitors had sought and obtained a licence from the Applicant to assign the leasehold interest to them. No doubt, had such a request been made to the Applicant or its solicitors, there would be some evidence of this. The Applicant's position is clear, there is none.

18. There is no basis upon which the Tribunal could accede to the Third Respondent's request to stay or defer the determination of this application until such time it had been able to obtain and investigate the files of BM Solicitors or PWC Solicitors. Such an investigation would only possibly reveal if the Third Respondent had been the victim of a fraud. Strictly, as a matter of contract, a finding of breach can only be made in relation to the parties who are privy to a lease and the Tribunal's jurisdiction is so limited in this application. The Third Respondent is not a party to the lease. Whilst it may possibly have some other legal or equitable remedy, such relief must be sought in the higher courts in the context of any application for relief from forfeiture.
19. Accordingly, for the reasons set out above, the Tribunal finds that the First and Second Respondents did breach clause 5(9)(d) of the lease without first having obtained a licence from the Applicant to take an assignment.

Dated the 30 day of August 2012

CHAIRMAN.....   
Mr I Mohabir LLB (Hons)