



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

Case Reference : **LON/00AN/HMG/2022/0006**

HMCTS Code : **V: CVPREMOTE**

Property : **Flat 10 Marzall House, 120 North End Road,
London W14 9PP**

Applicants : **Mr. Sotirios-Antonios Antonopoulos
Ms. Olga Fourkioti**

Representative : **Mr Cameron Neilson- Justice for Tenants**

**Respondents
Representative** : **ZO & Sons Limited- First Respondent
Ms. Kai Lai Tracey Tam- Second Respondent
Ms. Maureen Ogbu of Reen Anderson
Solicitors on behalf of the second respondent**

Type of Application : **Application for a Rent Repayment Order
Sections 40, 41, 43 & 44 of the Housing and
Planning Act 2016**

Tribunal Members : **Judge Daley
Mr A. Fonka MCIEH CEnvH M.Sc**

Date of Hearing : **4 October 2022**

Date of Decision : **12 October 2022**

DECISION and Reasons

On an Application to Stay the proceedings, and for an order under

Section 20 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 For the Applicant

And an order to Strike out the Application on behalf of the Respondent

Description of hearing: This has been a remote video hearing which has not been objected to by the parties. The form of remote hearing was V: CPVEREMOTE. A face-to-face hearing was not held because all issues could be determined in a remote hearing.

The Applicants have produced a Bundle of Documents which totals 168 pages. The Respondent had also produced a separate bundle comprising 90 pages. Page references in this decision are to the electronic page number in the Bundles.

Introduction

1. The Tribunal is required to determine this application which has been made under section 41 of the Housing and Planning Act 2016 (“the 2016 Act”) for a rent repayment order (“RRO”) in respect of Flat 10 Marzell House, 120 North End Road, W14 9PP (“the Property”).
2. Prior to the hearing, the Applicants renewed an application for the proceedings to be stayed, and for an order under Section 20 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. The Respondent in their statement of case applied for an order to strike out the Application.
3. The Tribunal considered these applications as preliminary matters.
4. The background to this matter is that the first Respondent granted the tenants an assured shorthold tenancy of the premises on the 21 June 2020 for a period of one year at the rental sum of £1733 PCM. The second Respondent, Ms Tam is the leasehold owner of the premises and brought the subject premises for investment purposes. She lives in Hong Kong. In her Statement of Case, it was stated that -: “Ms Tam had handed over the letting and management of the property to the agents in the UK. The Agents in turn introduced Ms Tam to the rent-to-rent company ZO & Sons Ltd. ZO & Sons Ltd would then lease and manage the property as a serviced apartment for 3 years.”
5. Vanet Property Asset Management managed the premises on her behalf.
6. The first Respondent subsequently let the premises to the Applicants. It was alleged that the premises, which was within a selective license area was unlicensed.
7. The Applicants made an application for a Rent Repayment Order on 20 January 2022. Directions were given on 24 March 2022; further directions were given on 26 July 2022.

Relevant Law

8. Section 41(1) of the Housing and Planning Act 2016 (the 2016 Act) provides:
 - a. (1) A tenant or a local housing authority may apply to the First-tier Tribunal for a
 - b. rent repayment order against a person who has committed an offence to which
 - c. this Chapter applies.
 - d. (2) A tenant may apply for a rent repayment order only if –
 - e. (a) the offence relates to housing that, at the time of the offence, was let to the
 - f. tenant, and
 - g. (b) the offence was committed in the period of 12 months ending with the day on
 - h. which the application is made.

9. Section 72(1) of the 2004 Act provides:
 - a. *‘A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part... but is not licensed.’*

10. The First-tier Tribunal may make a rent repayment order under Section 43 of the 2016 Act or if satisfied, beyond reasonable doubt, that a landlord has committed an offence to which this Chapter applies (whether or not the landlord has been convicted).

11. Tribunal Procedure (First-tier) (Property Chamber) Rules 2013 (“ The Tribunal Procedure Rules”)

Rule 3 of the Tribunal procedure rules

- a. (1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.
- b. (2) Dealing with a case fairly and justly includes—
 - a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal;
 - b) avoiding unnecessary formality and seeking flexibility in the proceedings;
 - c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;(d) using any special expertise of the Tribunal effectively; and(e)avoiding delay, so far as compatible with proper consideration of the issues.
- c. (3) The Tribunal must seek to give effect to the overriding objective when it— (a) exercises any power under these Rules; or
 - (b) interprets any rule or practice direction.

- d. (4) Parties must—
 - (a) help the Tribunal to further the overriding objective; and
 - (b) co-operate with the Tribunal generally.

Rule 6 of the Tribunal procedure rules

- e. (1) Subject to the provisions of the 2007 Act and any other enactment, the Tribunal may regulate its own procedure.
- f. (2) The Tribunal may give a direction in relation to the conduct or disposal of proceedings at any time, including a direction... .
- g. (3) In particular, and without restricting the general powers in paragraphs (1) and (2), the Tribunal may— (m) stay proceedings;

Rule 9 of the Tribunal procedure rules

- h. Section 9 of the (1) The proceedings or case, or the appropriate part of them, will automatically be struck out if the applicant has failed to comply with a direction that stated that failure by the applicant to comply with the direction by a stated date would lead to the striking out of the proceedings or that part of them.
- i. (2) The Tribunal must strike out the whole or a part of the proceedings or case if the Tribunal—(a) does not have jurisdiction in relation to the proceedings or case or that part of them....”

Rule 20 of the Tribunal procedure rules

- j. Rule 20 (1) On the application of a party or on its own initiative, the Tribunal may— (a) by summons require any person to attend as a witness at a hearing at the time and place specified in the summons; or (b) order any person to answer any questions or produce any documents in that person’s possession or control which relate to any issue in the proceedings.
- k. (2) A summons under paragraph (1)(a) must—(a) give the person required to attend not less than 14 days’ notice of the hearing or such shorter period as the Tribunal may direct;

12. The Hearing

- 13. The Applicants, Mr Antonopoulos and Ms Fourkioti attended the hearing and were represented by Mr Cameron Neilson of Justice for Tenants. Maureen Ogbu of Reen Anderson Solicitors represented the second Respondent, Ms Tam who joined the hearing from Hong Kong. The first Respondent did not attend and was not represented. All of the parties attended by Video Link.
- 14. At the start of the hearing, the Tribunal explained that as Ms Tam was residing in Hong Kong, although she could attend the hearing, she would not be permitted to give evidence until the protocol for giving evidence from abroad for Hong Kong had been followed.

15. The Applicants’ Submissions

16. Mr Neilson set out his request for the case to be stayed which was set out in the letter from Justice for Tenants dated 30 September 2022 in which it was stated that-: *“In a letter dated 20 July 2022, Judge Nichol refused the Applicant’s request for a stay (contained in a letter dated 8 July 2022) on the basis that, at the time of the request, there was no indication of when the Supreme Court would give judgement.*
17. *Since this initial request, the Supreme Court has set the date of the appeal hearing for 26 January 2023. As such, there is now an indication of when the Supreme Court will give judgment.*
18. *Furthermore, during this intervening period, the Respondent ZO & Sons Ltd has been dissolved. As such, whether the Tribunal has jurisdiction to make a rent repayment order against the remaining Respondent Ms Ka Lai Tracy Tam is of central importance to this application: it will have a direct bearing on whether the application has a reasonable prospect of success.*
19. *Given the resolution of the Rakusen v Jepsen appeal will determine conclusively whether the Tribunal has jurisdiction to make a rent repayment order against a party such as Ms Ka Lai Tracy Tam, it would be fair and just in the circumstances and thereby in compliance with the overriding objective for the Tribunal to order a stay of proceedings pending the ultimate resolution of the Rakusen v Jepsen appeal.*
20. *Such a stay pending the resolution of the Rakusen v Jepsen appeal would enable the Applicants to determine whether it would be appropriate to proceed with the application or withdraw it.*
21. *In addition, given Ms Ka Lai Tracy Tam is intending to give evidence from abroad in the hearing scheduled 4 October 2022, the requested stay would give the Respondent the opportunity and time to make a formal application to give evidence from abroad.”*
22. In respect of the Applicant’s application for an order under rule 20, Mr Neilson stated that the first Respondent company had dissolved and as such were not participating in this hearing. There was also an issue with the length of the tenancy agreement between the first and second Respondents, as the documentation was for a two- year agreement, and the tenancy agreement signed by ZO & Sons Limited with the Applicants was for 1 year. On the face of it, this agreement was set to expire after the agreement between Ms Tam and ZO & Sons Limited. The Applicant was asking for a Section 20 order to deal with the following matters which were set out in the letter dated 30 September 2022, in which they stated-: **“4. Based on the Respondent's Statement of Case and documents it remains unclear:**
 - a. Whether the fixed term of the headlease was two or three years.
 - b. Whether ZO & Sons Ltd continued to pay rent to Ms Ka Lai Tracy Tam after the expiry of the headlease.
 - c. Whether ZO & Sons Ltd were occupying the property after the expiry of the headlease.
 - d. Whether a new tenancy agreement was entered into between ZO & Sons Ltd and to Ms Ka Lai Tracy Tam after the expiry of the headlease.
 - e. Whether ZO & Sons Ltd has any interest in the subject property when they granted the sublease to the Applicants.”

23. Mr Neilson informed us that the Applicant also wished to cross-examine Ms Tam, and as she was unable to give evidence until permission had been obtained for her to give oral evidence from abroad, this would be prejudicial to the Applicant and would not allow a proper exploration of their case. The Tribunal informed Mr Neilson that the burden of proof was with the Applicant and that there was no automatic right to cross examine the Respondent and given this, the Applicants could not rely upon the evidence of Ms Tam to prove their case beyond a reasonable doubt as she might choose, as was her right, not to give evidence.
24. Mr Neilson set out the law concerning intermediate landlords and why he considered that Ms Tam was the correct landlord in this case. The Tribunal informed Mr Neilson that it was not considering the issue of who was the correct landlord as a preliminary issue at this time. It would decide the application on its merits on the narrow issue of whether to stay the Applicant's application pending the outcome of *Rakusen-v- Jepsen (2021) EWCA CIV 1150*, and whether to make an order under rule 20 of the Tribunal Procedure Rules.

The Respondent's Submissions

25. Ms Ogbu on behalf of the second Respondent set out the second Respondent's opposition to the Application and an order. She also set out that she wished to make her application for the case to be struck out on the grounds that the Tribunal were bound by the applicable law of *Rakusen -v- Jepsen*.
26. In her grounds for opposing the application for a stay she stated that Ms Tam was not the correct Respondent as there was no direct landlord and tenant relationship between the Applicants and Ms Tam, and that the case law only supported a rent repayment order against the existing landlord. She referred to Section 40(2) as setting out the correct legal position. She informed us that the application had caused Ms Tam considerable stress, and that this had affected her in the running of her business in Hong Kong and was causing her financial strain both due to the costs associated with these proceedings and that the stress had inhibited her ability to focus on her business.
27. In the statement of case containing the application to strike out the Application, the second Respondent accepted that the property was unlicensed between the relevant dates, however, the Respondent stated:-
"There has been no evidence provided by the Applicants to show any direct connection to the Superior Landlord- Ms Tam. It is submitted, that the only Respondent and Landlord to be held liable for the RRO in this case is ZO & Sons Ltd who were the "immediate landlord" during the period of the Rent Repayment Order Application. For above reasons, it is submitted that the claim against Ms Tam should be struck out."

Tribunal Decision

28. The Tribunal made the following decisions in this case. The Tribunal refused the second Respondent's application to strike out the application, and decided to grant a stay of the application until 26 April 2023. The Tribunal has decided to make an order under Rule 20 in the terms set out below.

The reason for the decision

29. The Tribunal carefully considered the application for a stay. It noted that of the two named Respondents within these proceedings, the first Respondent ZO & Sons, a company, had been dissolved. This meant that the Applicant's would not be able to recover from them the rent paid by way of a rent repayment order. Of the other Respondent, Ms Tam, the Tribunal accepted the Applicant's submissions that their position in relation to the Applicants was not entirely clear as there was information which had not been disclosed concerning the duration and nature of the tenancy between Ms Tam and ZO & Sons. There was a possibility that for part of the Applicants' occupancy, ZO & Sons were not the Applicants' immediate Landlord.
30. The Tribunal also noted that there were further submissions which the Applicant considered relevant to the issue of the relevant landlord. The Tribunal accepted the Applicant's submissions that the information requested in the Rule 20 notice was relevant to a proper determination of this matter.
31. The Tribunal accept that *Rakusen -v- Jepsen* is the applicable law. This means that an order can only be made against the immediate landlord. However, the Tribunal cannot be satisfied that the first Respondent is the appropriate landlord without the disclosure requested. Accordingly, the Tribunal decided that the answers to the questions set out in the Rule 20 Application were relevant.
32. The Tribunal then considered whether it was appropriate to stay these proceedings.
33. The Tribunal considered Rule 3 of the Tribunal Procedure rules. The Tribunal considered that the outcome was of significant importance to the Applicants given the sum of money involved. The Tribunal considered that Rule 3 required the Tribunal to ensure, so far as practicable, that the parties are able to participate fully in the proceedings; and is required to avoid delaying this "so far as compatible with proper consideration of the issues" (3.d). The Tribunal noted that although it could make an order under Rule 20 and rather than stay the proceedings (Rule 6(j) the Court of Appeal had given a date for the consideration of *Rakusen v Jepsen*, due to be heard in January 2023.
34. The Tribunal noted that if the current position was upheld, and the Respondent provided answers, which confirmed that ZO & Sons Limited were the immediate Landlord this Application would then fall away.
35. Accordingly, the Tribunal considered that although the Respondent would be inconvenienced, and would incur additional costs in answering the questions in the Rule 20 Application, the balance of convenience lay in granting the stay.
36. The Tribunal decided that a stay would allow for the proper consideration of the matter.
37. Accordingly, the Tribunal determined that it was reasonable to grant a stay.

Decision

- (i) The Tribunal order that this matter is stayed.
- (ii) The parties are referred to the directions in this matter.

Right of Appeal

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e., give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

Chair