

RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
SOUTHERN RENT ASSESSMENT PANEL  
LEASEHOLD VALUATION TRIBUNAL



S.27 Leasehold Reform Housing and Urban Development Act 1993

**DECISION**

Case Number: CHI/21UD/OCE/2009/0003

Property: 11 & 11a Church Road  
St Leonards on Sea  
East Sussex TN37 6EF

Applicants: Patrick Adam Jones and Anthony Webb

Respondent: Richard Anthony Edwards (missing landlord)

Application: 11 November 2008

Directions: 30 January 2009

Hearing: 31 March 2009

Appearances: Mr P A Jones in person

Decision: 17 April 2009

Tribunal Members:  
Ms J A Talbot MA  
Mr B Simms FRICS

**Summary of Decision**

The tribunal has no jurisdiction in this case. This is because the premises are excluded from the right of collective enfranchisement under Section 4(3A) of the 1993 Act.

Case No. CHI/21UD/OCE/2009/0003

11 & 11a Church Road St Leonards on Sea East Sussex TN37 6EF

### Application

1. This was an Application dated 11 November 2008, made by solicitors Mala & Wagland ("MW") on behalf of Patrick Jones and Antony Webb under S.27 of the Leasehold Reform housing and Urban Development Act 1993 ("the 1993 Act"), for a determination as to the terms of acquisition following the making of a Vesting Order under Section 26 of the 1993 Act in St Albans County Court.
2. Directions were issued on 30 January 2009 and provided for the Applicants to supply a valuation report together with any other documents they wished the tribunal to see.

### Relevant Law

3. Section 3(1) of the 1993 Act provides:

Premises to which this Chapter applies

(1) Subject to section 4, this Chapter applies to any premises if –

- (a) They consist of a self-contained building or part of a building ...;
- (b) They contain two or more flats held by qualifying tenants; and
- (c) The total number of flats held by such tenants is not less than two thirds of the total number of flats contained in the premises.

Section 4(3A) provides:

Premises excluded from right

(3A) Where different persons own the freehold of different parts of the premises within subsection (1) of section 3, this Chapter does not apply to the premises if any of those parts is a self-contained part for the purposes of that section.

4. Section 26 of the 1993 Act provides that where the landlord cannot be found, the tenant may apply to the County Court for a vesting order under which the applicant tenants may acquire the freehold. Under Section 27, the terms of the acquisition must be determined by the LVT, including the appropriate sum to be paid into court, and the terms of the conveyance must be approved by the LVT.

### Inspection

5. The tribunal members inspected the property before the hearing. It comprised a three storey semi-detached Victorian villa situated on sloping ground in a residential area of St Leonards, with cement rendered and painted elevations under a pitched slate roof and replacement UPVC windows. There was a single-storey bay to the ground floor with evidence of recent re-roofing and associated disturbance to rendering. Overall the exterior decorations were in poor order.
6. Mr Jones gave the tribunal members access to the ground floor flat, no.11, which he has substantially renovated. Access was via a side path used solely by no.11, and leading to the kitchen which has a new floor and has been fully modernised. A new interior bathroom has been created off the kitchen, leading via a small lobby area to a rear room used as a main bedroom. Stairs lead up to a further bedroom on the first floor which has a door to the rear garden, demised to and

used solely by no.11. To the front of the flat is a large through room used as a living and dining area, separated by folding doors.

7. The tribunal members also internally inspected the first floor flat, No 11a, with the permission of the occupying sub-tenants (Mr Webb did not attend the inspection). Access is via the main front door. The front garden is demised to and used solely by no 11a. The accommodation is arranged over the first and second floors and comprises 5 rooms, kitchen, bathroom and separate WC. The kitchen has been modernised, but the bathroom fittings are dated. There are no common parts and the two flats are completely self-contained.

### Hearing

8. The hearing took place in Hastings on 31 March 2009. It was attended by Mr Jones, one of the joint applicants. Neither the solicitor nor the valuer attended, citing reasons of disproportionately high costs.

### Facts

9. On the basis of its inspection, the documents produced and evidence given at the hearing, the Tribunal found the following facts.

10. The property, 11&11a Church Road, was converted into two flats some years ago. The two flats are held under separate freehold titles and each has a separate lease. The Office Copy Entries obtained on 9 March 2009 give the following information:

1) No 11 freehold	HT 18681	proprietor Mr R A Edwards (10.12.1990)
2) No 11 leasehold	ESX 173731	proprietor Mr P A Adams (22.08.2008)
3) No 11a freehold	HT 18668	proprietor Mr A C Webb (21.04.2008)
4) No 11a leasehold	ESX 179634	proprietor Kathleen Webb (12.08.1991)

11. Mr Adams and Mr Webb are the joint applicants. Mr Adams purchased the leasehold title of no.11 on 1 August 2008, from Mr David Garnet Smalley. According to his witness statement dated 18 August 2008 to St Albans County Court, Mr Smalley purchased the lease of no.11 in September 1996 from the Halifax Building Society, as mortgagee in possession under a mortgage taken out by Richard Anthony Edwards. The lease for no.11 is dated 10 August 1990 and is between Joan Dorothy Beulah Harrow and Richard Anthony Edwards – who is also the respondent. It is therefore clear that between 1990 and 1996 Mr Edwards was both the sole freeholder and sole lessee of no. 11.

12. Mr Webb is currently the freehold owner of no 11a. He became the sole registered freehold proprietor on 21/04/2008. Before that, an OCE obtained on 27/06/2001 shows that he was the joint registered freehold proprietor, along with his mother, Kathleen Webb. According to his witness statement dated 24 March 2009 to the LVT, he is also the current sole lessee, having inherited the flat from Kathleen Webb, who died on 28 or 29 October 2005. He was also previously a joint lessee, under a lease dated 19 July 1991, granted by Kathleen Webb to herself and her son. Presumably, at this point Kathleen Webb must have been the sole freeholder, otherwise she could not have been the grantor of the lease. In his witness statement Mr Webb states that he "cannot recall why this unusual arrangement was entered into". For an unknown reason he did not take steps to register himself as the leasehold proprietor on his mother's death. Be that as it

may, it appears that Mr Webb has at all material times been either the joint or sole freeholder, or the joint or sole lessee, of no.11a.

13. Against this somewhat confusing background, Mr Jones (who was acquainted with Mr Smalley) entered into negotiations to purchase the leasehold of no.11 in late December 2007. He told the tribunal that in order to obtain a mortgage he entered into an agreement to the effect that he would become the freehold owner as well. As he understood it, he would then be in a position along with Mr Webb to merge the two freeholds into one. They would then be able to surrender their existing leases, which they had been advised were defective, and re-grant fresh leases on more satisfactory terms.
14. On 31 July 2008, one day before Mr Jones' purchase, Mr Smalley and Mr Webb applied to St Albans County Court on the basis that Mr Edwards was the missing landlord of no 11 for an order dispensing with service of Notice of Claim to collective enfranchisement (under Section 13 of the 1993 Act) on Mr Edwards, and for a Vesting Order for "the freehold interest in the Building belonging to the Defendant" (i.e. Mr Edwards). The Building was described in the Particulars of Claim as "the premises ... situate and known as 11 and 11A Church Road, St Leonards on Sea".
15. The Particulars of Claim further state that Mr Edwards was the owner of "that part of the Building shown edged red on the title plan of HM Land Registry Title Number HT18681 under which the Defendant is registered as proprietor". This is of course no.11. There was no mention of the separate freehold title to no.11a owned by Mr Webb (even though he was a joint claimant).
16. On 8 September 2008 an order was made substituting Mr Jones as joint claimant in place of Mr Smalley. On 28 October, on reading the papers without a hearing, DJ Field made a Vesting Order in relation to "the Property", defined in the Order as "the property known as 11/11A Church Road. He was satisfied that the Claimants as "tenants of the property ... have the right collective enfranchisements [sic] pursuant to the ... 1993 Act". He further ordered that service of Notice of Claim be dispensed with and that "the question of the amount of compensation to be paid to the Defendant for the transfer to the Claimants of the freehold interest in the Property be referred to the LVT".

### Consideration

17. The tribunal had some concerns about the validity of the Vesting Order and the information available to the County Court and in the application to the tribunal, which was at best incomplete, and at worst, potentially misleading. It would appear that when he made the Vesting Order, DJ Field was unaware that there were two separate freehold flats and no single freehold of the whole property.
18. Only the freehold title to no.11 was disclosed, and not the separate freehold title to no.11a. The Particulars of Claim refer obliquely to "that part of the Building" owned by Mr Edwards. The supporting witness statement of Mr D G Smalley deals only with his unsuccessful attempts to trace Mr Edwards from 1998 onwards. The witness statement of his father Mr B G Smalley also referred only to the freehold title to no.11, and described it as "the property". At first glance, the title plan for the OCE of the freehold title of no.11 suggests that it covers the whole building, but in fact it only makes complete sense when compared to the title plans for the freehold to no.11a and the two leasehold titles.

19. The application to the County Court therefore gave the impression that "the building" contained two flats, 11 and 11a, held on leasehold titles, and that "the property" described in the application was no.11, held on a single freehold title by Mr Edwards, the missing landlord for the whole property. On this basis, it was not unreasonable for DJ Field to conclude that Mr Jones and Mr Webb, as lessees of no.11 and 11a respectively, were qualifying tenants entitled to the collective enfranchisement to the single freehold of the whole property. Some confusion persists in the terminology of the County Court papers, as the Vesting Order purports to vest the freehold of "the Property known as 11/11A" in the Claimants, but despite this, only one freehold title is assumed.
20. When the application was made to the tribunal, its first task was to identify the nature and extent of the freehold interest to be valued. Under Section 27(2) of the 1993 Act, the LVT may determine that the court's Vesting Order may have effect "in relation to interests which are less extensive than those specified in the application on which the order was made". This power arguably includes a discretion to go behind the vesting order made by a County Court and put itself into the shoes of the missing landlord. At this point the question of the two freehold flats arose. In his valuation evidence (consisting at that point of a letter dated 14 May 2007 to Mr Smalley, carried out on a "desktop" basis without an inspection) the valuer Mr Mellor stated "numbers 11 and 11a are held under separate freehold titles ... each freehold has a single lease".
21. The tribunal is of course under no obligation to correspond with the applicant's solicitors before the hearing, and it is a matter for them as to how they wish to present their case. However, the tribunal did write to MW in reply to their letter dated 9 February 2009 indicating that they did not intend to attend the hearing and assuming that the tribunal would have no questions for them or the valuer. This was because, as explained above, the information contained in the application was incomplete and raised potential issues of jurisdiction.
22. In the interests of fairness, the Chairman wrote: "having reviewed the papers provided so far, it would appear that there are various issues which require clarification at the hearing". The letter warned: "if there are separate freeholds, the LVT may not have jurisdiction, as the property may not be premises to which the 1993 Act applies (section 3) or it may be excluded under section 4(3A), because different persons own the freehold of different parts of the premises. Neither the Vesting Order nor the exercise of collective enfranchisement would operate to create a single freehold. If on the other hand there is now only one single freehold of the whole property, the LVT needs to see evidence of this".
23. The question was also raised, as to whether, when Mr Edwards was the registered proprietor of both the freehold and leasehold interests of no.11, the lease would have merged with the freehold by operation of law. It was also pointed out that there was no draft proposed conveyance for the LVT to approve.
24. The letter also drew MW's attention to concerns about the valuation report: "it is not a report to the LVT. It is not verified by an expert statement of truth. There was no inspection, no evidence of market value, no evidence as to improvements, no valuation date, no explanation of apportionment, no opinion or argument as to why the LVT should depart from *Sportelli*, and no evidence to support any of the figures or yields, yet the LVT is being invited to adopt the valuation without scrutiny". Finally the letter stated: "the LVT would expect to see some further detailed submission addressing these points, and/or the attendance of the solicitor and valuer at the hearing on 31 March".

25. The tribunal therefore considers that MW have had ample opportunity to address the points raised, and were clearly on notice of the tribunal's concerns and the possibility that it might decide it had no jurisdiction. However, MW did not send legal submissions, but a series of letters dealing piecemeal with some of those points. MW supplied copies of additional up to date OCEs referred to in para.10 above, Mr B G Smalley's witness statement to the County Court, witness statements of Mr Jones and Mr Webb to the LVT, an expanded and updated valuation report, and extracts from *Woodfall on Landlord and Tenant* and *Hague on Leasehold Enfranchisement*. This would appear to be the first time that evidence of the freehold of no.11a was supplied .
26. MW dealt with the merger point by arguing that although there might be merger at common law, at equity in the absence of any direct evidence of intention, the court would presume that merger was not intended. In their view there was no such evidence of intention and the fact that HM Land Registry has kept alive both the freehold and leasehold titles indicates that no merger has taken place. The tribunal remains unconvinced on the legal merits of the merger point but accepts that the registration is conclusive evidence of title.
27. MW did not specifically deal with the point that the premises might be excluded under S.4(3A), but appeared to rely more generally on comments in *Hague* on amendments made to the 1993 Act by Section 107 of the Housing Act 1996. They appear to have assumed that the problems caused at the property by the two freeholds would be overcome, because S.107 was arguably designed to deal with evasion tactics used by multiple freeholds to frustrate collective enfranchisement rights.
28. However, MW failed to analyse or apply the amendments made by S.107 to the facts of this case. It is difficult to see, though, how the creation of the two freeholds of 11 and 11a could have been an evasion tactic, given that for some years in the 1990's the leasehold and freehold interests in both flats were held by Mr Edwards and Mr & Mrs Webb, who could presumably have created by agreement a single freehold if they had so wished.
29. Although S.107 of the 1996 did indeed amend Section 3(1) of the 1993 Act, by removing the requirement that the freehold of the premises to which the right of collective enfranchisement applied had to be in single ownership, it also added a new provision, Section 4(3A). Section 4 deals with exclusions from collective enfranchisement. As *Hague* points out, this states that where different persons own the freehold of different parts of the premises within Section 3(1), the Act does not apply to the premises if any of those parts is a self-contained part of the building for the purposes of Section 3(1).
30. In the tribunal's view, the subject property is caught by this exclusion. The premises, in this case, is the building containing 11 and 11a. However, it is clear that different persons, namely, Mr Edwards and Mr Webb, own the freehold of different parts of the premises, and each of those parts is a self-contained part of the building, namely flat 11 and flat 11a.
31. In his updated valuation, Mr Mellor valued the freehold reversion of the two flats as if they amounted to a single freehold of the whole property, and then apportioned the resulting purchase price between the missing landlord of no 11, Mr Edwards, and the landlord of no.11a, Mr Webb. He commented: "I understand your solicitor has advised that the best way forward is for the two leaseholders to

exercise their 1993 Act rights in enfranchising the freehold, thereby creating a single freehold title under which the two leases will be subject”.

32. Whilst the approach adopted by Mr Mellor is superficially attractive, it makes the erroneous assumption that a single freehold can be created by attempting to exercise collective enfranchisement. As the tribunal pointed out in its letter to MW, neither this nor the Vesting Order can operate to create a single freehold in place of two separate freehold flats. Neither can the 1993 Act assist Mr Jones in his attempt to acquire the freehold interest in his flat, no 11, as he is not a qualifying tenant for this purpose. Mr Webb is of course already both the freehold and leasehold owner of 11a. In view of the tribunal's findings and conclusions it is not necessary for it to make any further comment on the valuation.
33. The tribunal can see that the outcome is frustrating for the parties, and that it would be preferable from their point of view for there to be a single freehold of the whole property. Doubtless this would make it easier to mortgage and sell their flats. However, for all the reasons explained above, the application to the County Court and the subsequent referral to the tribunal has not achieved this.

#### **Decision**

34. For all the reasons explained above, the premises are excluded from collective enfranchisement under Section 4(3A) of the 1993 Act. As a result the tribunal has no jurisdiction. The matter is therefore referred back to St Albans County Court for the District Judge to take such further action in respect of the Vesting Order as he sees fit.

**Dated 17 April 2009**

**Ms J A Talbot**  
**Chairman and Member of the Southern Rent Assessment Panel & Leasehold Valuation Tribunal**

RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
SOUTHERN RENT ASSESSMENT PANEL  
LEASEHOLD VALUATION TRIBUNAL



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Respondent: Richard Anthony Edwards (missing landlord)

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Hearing: 31 March 2009

Appearances: Mr P A Jones in person

Decision: 17 April 2009

Permission to appeal: 22 May 2009

Tribunal Members:  
Ms J A Talbot MA  
Mr B Simms FRICS



**Case No. CHI/21UD/OCE/2009/0003**

**11 & 11a Church Road St Leonards on Sea East Sussex TN37 6EF**

1. The Applicants have applied for permission to appeal against the Tribunal's decision dated 17 April 2009. They have done so to preserve their rights, having regard to the time limits, pending the outcome of the referral of the case back to St Albans County Court, where the Applicants intend to seek directions, variation or a further order in relation to the purported vesting Order, in the unusual circumstances of this case.
2. The Tribunal considers that it was entitled to reach the decision that it did on the basis of the evidence before it. However, it accepts that there are arguable points of law as set out in the grounds of appeal at paragraph 7 of the Application for Permission to Appeal, namely, in summary: (a) whether the 2 flats in the property are self-contained parts of the building for the purposes of Section 3 of the 1993 Act; and (b) whether the LVT has jurisdiction to determine whether or not the premises are excluded from the right to collective enfranchisement under Section 4(3A) or whether this power lies with the County Court only.
3. Permission to appeal is therefore granted in principle, pending the outcome of the referral back to the County Court.
4. If the outcome is a further referral to the LVT it would assist if the exact nature and scope of the freehold interest required to be valued by the LVT is specified.

**Dated 22 May 2009**



**Ms J A Talbot  
Chairman and Member of the Southern Rent Assessment Panel & Leasehold  
Valuation Tribunal**