FREEHOLD PROPERTIES 250 LTD v BEVERLEY ANN FIELD & 18 ORS (2020)

[2020] EWHC 792 (Ch)

Ch D (Marcus Smith J) 08/04/2020

LANDLORD AND TENANT

ENFRANCHISEMENT : FREEHOLDS : LONG LEASES : STATUTORY INTERPRETATION : TENANTS

The tenants of an end-of-terrace house, demised under a long lease that excluded certain structural parts, including the roof and the foundations, had no right to acquire the freehold title as they were not "a tenant of a leasehold house" under the Leasehold Reform Act 1967 s.1(1). The phrase "a tenant of a leasehold house" should be read as "a tenant of substantially the whole of a leasehold house"; accordingly, the tenants could not qualify under s.1(1) where the demise did not extend to the roof or the foundations.

The appellant freeholder appealed against a decision of the County Court that 11 of its properties, or the leases of those properties, fell within the scope of the enfranchisement regime under the Leasehold Reform Act 1967.

The respondents were the long leasehold owners of the properties which were terraced or semi-detached houses situated on an estate. They sought declarations as to whether they were entitled to enfranchise under Part I of the Act. The properties were materially identical for the purposes of the points under consideration and therefore only Number 126, leased by the seventh and eighth respondents, was considered by the recorder for the purposes of his decision. Number 126 was an end-of-terrace house, demised by a lease for a term of 99 years from April 1990. The terms of the lease excluded certain structural parts of the property such as load bearing walls, the foundations and the roof. The appellant contended that the respondents had no right to acquire the freeholds, arguing that Number 126 fell outside the scope of s.2(2) of the Act. The recorder held that the properties fell within the scope of the Act and that the respondents were entitled to acquire the freehold title.

HELD: New point of law - The respondents argued that the appellant's grounds of appeal relied on s.1(1), which had not been argued before the recorder, and that the permission to appeal did not give permission in relation to that new point. However, the appellant was simply re-framing the legal issues and not seeking to introduce new evidence. Moreover, it was permitted to pursue a different line of argument as the new point was open to it on the pleadings. Sufficiently wide permission to appeal had been given and the respondents were not taken by surprise as the grounds for appeal dated from August 2019 (see paras 11-12 of judgment).

"Tenants of a leasehold house" - The question was whether the seventh and eighth respondents were "a tenant of a leasehold house" within the meaning of s.1(1). The construction favoured by the appellant, that a tenant did not fall within the enfranchisement regime of the Act unless they were the tenant of substantially the whole of a leasehold house, was correct. The phrase "a tenant of a leasehold house" was ambiguous, until viewed in its full statutory context. The only term in the phrase to receive a statutory definition was the term "house" in s.2. That term was carefully crafted and sought to isolate and define within a single building what may or may not be multiple houses. The distinction between a single building and multiple houses within that building was articulated by reference to its physical characteristics rather than the legal interests in the property. As the Act had defined the "house" to be enfranchised, it would have been curious if, without further statutory articulation, some legal interest less than an interest in substantially the whole of the leasehold sufficed to qualify for enfranchisement. That approach was supported by the following matters:

The text-books Radedevsky and Greenish, Hague on Leasehold Enfranchisement 6th ed and Harrison and Lonsdale, Leasehold Enfranchisement: Law & Practice 1st ed and such authority as there was took the same approach, Baron v Phillips (1979) 38 P. & C.R. 91, [1978] 4 WLUK 138 considered.The consequence of the respondents' contention, that the extent of the demise under the lease made no difference, was that a leaseholder of a material part of a leasehold house, but not substantially the whole of it, was entitled to be enfranchised. Parliament's intended outcome was to enfranchise leaseholders so as to enable a lease to be turned into a freehold. Parliament would have regarded the expansion of a demise so that a lease of part of a house was converted to the freehold of the the whole of it as a

surprising outcome. The respondents' contention that enfranchisement could be limited to the extent of the demise was rejected as that would create flying freeholds, which was not something Parliament could have intended without clearer wording, and the statutory obligation to convey under s.8 was of the "house" and not of that part of the house that was demised.There would be cases where a landlord had quite deliberately reserved part of a "house", and physically limited the extent of the tenant's demise. Whilst that gave rise to a risk of avoidance of the Act, there were instances where the landlord had legitimate reasons for reserving part of the "house" which the respondents' construction overrode.
There was still a risk of avoidance whereby a landlord could avoid enfranchisement under the Act by reserving a "strata" of what would otherwise be a "house". However, the more egregious forms of evasion could be prevented by reading the phrase as meaning "a tenant of substantially the whole of a leasehold house". Moreover, a prospective purchaser of a tenancy, that would otherwise qualify for enfranchisement, would hesitate before investing significant sums on a leasehold estate, the demise of which was artificially constrained (paras 44-47, 62-63).

Avoidance provisions - The provisions of the lease did not fall within the ambit of the anti-avoidance provisions in s.23(1) as it was not wide enough to embrace a limitation on a tenant's demise. Even if s.23(1) did apply, it could not serve to expand the respondents' rights to enable them to qualify for enfranchisement. Section 23(1) caused provisions within its scope to be voided. It did not permit the court to re-write the terms of the lease so that the rights of the seventh and eighth respondents could be expanded to render them tenants of substantially the whole of the leasehold house (paras 64-66).

Appeal allowed

Counsel:
For the appellant: Jonathan Upton
For the respondents: Ewan Paton, Jay Jagasia

Solicitors:
For the appellant: Stevensons Solicitors
For the respondents: Barcan & Kirby LLP

LTL 15/4/2020 : [2020] 4 WLUK 142

Judgment: Official - 25 pages

Document No.: AC5011053