

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE**

**LEASEHOLD VALUATION TRIBUNAL**

**DECISION**

**Commonhold and Leasehold Reform Act 2002  
Section 168(4)**

**Applicant:** Fee Simple Investments Ltd

**Respondent:** Castlegreen Estates Limited

**Property:** 6 Ripon Street, Liverpool, Merseyside L4 5UQ

**Tribunal:** Laurence Bennett (Chair)  
Alan Robertson

**Date:** 20 July 2007

**Application**

Fee Simple Investments Ltd apply under Section 168(4) of the Commonhold and Leasehold Reform Act 2002 (the Act) for a determination that there has been breach of a covenant in the lease held by the Respondent dated 25 February 1988 made between Suburban Homes Ltd of the one part and Michael Francis Saul and Patricia Anne Saul of the other part relating to 6 Ripon Street, Liverpool, Merseyside L4 5UQ for a term of 999 years from 25 February 1980 (the Lease).

**Further application**

Fee Simple Investments Ltd apply under paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002 for an order for costs against Castlegreen Estates Ltd.

**Background**

- A. The application for a determination under Section 168(4) of the Act was made on 24 May 2006. The statement accompanying the application detailed a history of County Court proceedings between the Applicant and the Respondent and the basis upon which the determination was sought.
- B. On 6 September 2006 directions were issued which stated that the matter was considered appropriate for determination upon the documentary and other written evidence and submissions without a hearing but which gave opportunity for either party to request an oral hearing.
- C. In the light of the representations of the parties a hearing was arranged. This took place on 23 November 2006 in Liverpool attended by representatives of both parties. Following agreements reached between them at the hearing and upon their application, the hearing was adjourned initially until 14 January 2007 to allow the Applicants inspection of the premises and consideration of its position.

D. By letter dated 9 February 2007 the Applicants applied to amend the application to take into account the results of the inspection. On 17 April 2007 the parties were notified that leave had been given to amend the application and directions were made for a hearing.

E. In a letter dated 10 May 2007 the Respondent's solicitors advised that the Respondent had completed the sale of the Property on 19 March 2007 and no longer held an interest in the Lease.

F. In a letter dated 19 June 2007 following refusal of the tribunal to substitute the new owner for the Respondent and the Applicant's subsequent withdrawal of the substantive application, the Applicant's solicitors requested an order for costs against the Respondent in the following terms: "It is clear that the Respondent knew that they were selling the property during the course of these proceedings. However, our clients knew nothing of it until the sale had been completed and having after incurred considerable costs. If they had known sooner the Respondent was selling the property, they might very well not have incurred costs that they otherwise did. That conduct is unacceptable. We therefore ask that the tribunal considers this request on the basis that the costs which our clients have incurred well exceeds the limit of the costs the tribunal can order a party to pay (£500)." A schedule of costs subsequently supplied for the period 24 May 2006 until 19 June 2007 totals £1,809.12.

G. The Respondent's solicitors commented by letter dated 13 July 2007. They referred to expenditure of £9,000 by the Respondent "In dealing with this attempt by Freeholders to try and create a forfeiture of the Lease to acquire a property at nil costs." They submitted that the Freeholders had decided it was cost effective to incur their costs and that: "It is denied by our client that this is a situation that should have been avoided and could have been avoided had the Claimants had the Landlord's accepted the proposal put forward by our clients some considerable time ago of the payment of £2,000 to purchase their Freehold Reversion which they rejected in an attempt to force through the forfeiture of the Lease which they were unsuccessful."

## **The Law**

Paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act states that

"(1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).

(2) The circumstances are where –

(a) He has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or

(b) He has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.

(3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed –

(a) £500, or

(b) Such other amount as may be specified in procedure regulations.

(4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.

## **The Tribunal's Conclusions**

1. We note that the substantive application is part of a long running of dispute between the parties relating to the Property. This has included proceedings at the County Court and solicitors were engaged by both parties prior to the application.

2. It is clear that the application has led to progress in that the parties reached some agreement on the original issue at the hearing and access was given for inspection. We do not find either parties had at that point acted in connection with the proceedings in the circumstances giving rise to an order for costs under paragraph 10(2)(b) of the Act.

3. It is not clear when the Respondent formed the intention to sell or contracted to sell its leasehold interest in the Property. This may have been before the application was amended to relate to the tenant's obligation to repair. Whether or not this is so we consider that a respondent has little option but to resist the application or if minded, concede. From the information provided the Respondent has an arguable case and cannot be criticised to the extent envisaged in paragraph 10(2)(b) for exercising its right to resist the application.

4. The Lease does not require prior notification or licence to assign. We do not consider the existence of these proceedings imposes such requirement. The leaseholder is free to dispose of its interest as it chooses. The Applicant suggests that it might not have proceeded if it had known. This is speculative and it is not reasonable for the Respondent to have acted on that basis. The Respondent advised when the sale had taken place and until then actively defended the proceedings. We do not find the Respondent misled either the Applicant or the tribunal once its interest had ended. We do not find circumstances within paragraph 10(2) which would lead to an order for costs.

5. We observe that the schedule provided by the Applicant includes items that may be relevant to a future application; the Lease and Property remain.

### **Order**

Fee Simple Investments Ltd's application for costs is dismissed.

**Date:**

**31 July 2007**

**Signed:**



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**Chairman:**

**Laurence Bennett**