



**FIRST TIER
TRIBUNAL
(RESIDENTIAL
PROPERTY)**

Case reference : **LON/00AA/LVL/2020/0005**

**HMCTS code
(paper, video,
audio)** : **V: FVHREMOTE**

Property : **The Tapestry Building 16 New St London EC2M
4TR**

Applicant : **Mr M Kucharski
Mr M Beeston
Mr P Williamson
Mr J Crawford
Mr J Ward
Mr M Davies**

Representative : **Mr M Kucharski for all Applicants except Mr
Crawford**

Respondents : **Freehold Properties 23 Ltd**

Type of application : **Variation of lease under s35 Landlord and
Tenant Act 1987**

Tribunal : **Judge F J Silverman MA LLM
Mr P Roberts Dip Arch RIBA**

Date of decision : **10 June 2021**

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V:FVHREMOTE . A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents to which the Tribunal was referred are contained in electronic bundles the contents of which are referred to below. The orders made in these proceedings are described below.

DECISION

For the reasons cited below the Tribunal finds it lacks the jurisdiction to determine the Applicants' application which is dismissed.

Reasons

1. The First Applicant , Mr M Kucharski made an application to the Tribunal on 15 December 2020 asking the Tribunal to vary two discrete provisions in the lease of Flat 15 of the building known as the Tapestry Building 16 New St London EC2M 4TR (the property) of which he and his wife are joint tenants holding under a sub-lease dated 24 February 2017 and made between CG Shield House (Jersey) Ltd and C G Shield House (Jersey) 2 Ltd jointly as one party and Julienne Theresa Baron and Michael Kucharski jointly as the second party (the sub-lease) .
2. No other Applicants were named in the Application but the remaining five Applicants were joined to the Application by orders made by the Tribunal (pages 25 – 29).
3. Mr Kucharshki represented himself at the hearing, Mr Crawford was present at the time when the hearing commenced but failed subsequently to join the hearing either by video or telephone. Mr Crawford had not provided either a statement of case or a witness statement in these proceedings. None of the other Applicants were present or separately represented. Mr Stevenson, solicitor, appeared on behalf of the Respondent.
4. Directions were issued by the Tribunal on 17 February 2021 and 29 April 2021 the latter following a remote Case Management Conference held on that day.
5. The Directions dated 29 April 2021 identified jurisdictional issues and directed that these should be determined at a hearing on 07 June 2021 (the present hearing), with discussion of the main issues in the case being deferred.
6. Current restrictions relating to the Covid-19 pandemic prevented the Tribunal from making a physical inspection of the property. The Tribunal understands the property to comprise 14 self-contained flats spread over 5 floors above commercial premises on the ground floor. It is noted that the Land Registry describes the property as Shield House and not as the Tapestry Building.
7. The Tribunal had the benefit of an electronic bundle prepared in pdf format by Mr Kucharski for the jurisdiction hearing. This was the only bundle used by the Tribunal during the hearing. It is understood that other hearing bundles, prepared for the hearing of the substantive issue have also been filed with the Tribunal. Mr

Stevenson's second submissions, filed in accordance with Tribunal directions had not reached the Tribunal members in time for the hearing but he was able to speak to them from a copy in his possession and Mr Kucharski had previously received an electronic copy.

8. The Respondent raised a number of separate jurisdictional issues in relation to the Applicant's application each of which is dealt with in turn below.
9. The Tribunal reminded Mr Kucharski that the hearing would deal only with the jurisdiction issues and that his costs applications (including an application under Rule 13 which Mr Kucharski said he wished to make) would be deferred to any later hearing of the substantive issues.
10. The Respondent's solicitor conceded that he was now satisfied that all interested parties had been notified of the application and therefore their objection on this ground was withdrawn.
11. The Respondent's next objection is that Mr Kucharski has no locus standi to bring the application because he is not the sole beneficial owner of the leasehold interest in flat 15. The sub-lease is held by him and his wife Julienne Theresa Baron as joint tenants (page 278). Mr Kucharski said that his wife Julienne Theresa Baron agreed with the application but did not want to be listed on the application. He did not produce any evidence to show that his wife Julienne Theresa Baron had given her consent to the application.
12. Mr Kucharski argued that s35 Landlord and Tenant Act 1987 referred to: 'any party to a long lease of a flat' and that because the word 'party' had a dictionary definition meaning 'person' (page 203) he, as a person, was entitled to bring an application under s35. He referred to various authorities including *GR property Management v Safdar* [2020] EWCA Civ 1441 to illustrate his point that one joint tenant could act separately from the other joint tenant(s). However, his understanding of the word 'party' and the concept of a joint tenancy in leasehold law appears to be misconceived and the Tribunal prefers the conventional view as expressed by the Respondent and illustrated in *Turley v Panton* [1975] 29 P&CR 397 and *Hammersmith and Fulham LBC v Monk* [1992] 1 AC 487 that joint tenants must act together.
13. The Tribunal agrees with the Respondent's view that a joint tenant can only effectively deal with the property jointly with their co-tenant. They hold in undivided shares and must act together unless there is a statutory exception to that rule which is not the case under s35.
14. The Tribunal therefore finds that Mr Kucharski is unable to bring an application in respect of his flat no 15 because as a joint tenant he is not able to act alone. To hold otherwise would not only be contrary to the accepted law and understanding of a joint tenancy it would produce an absurd effect where one of the joint tenants, but not the other, benefitted from an amendment to the terms of the lease.

15. That leaves in question the status of the other five Applicants. Mr Kucharski confirmed that the application is made under s35 ie to vary an individual lease. The only flat mentioned in the application and the only lease supplied to the Tribunal or mentioned in any of the documents before the Tribunal is Flat 15. None of the Applicants other than Mr Kucharski has taken any active part in the proceedings nor filed a statement of case or witness statement. The Tribunal had no evidence that all the flat leases are identical or confirmation that the other Applicants require the same amendments to each of their leases. On that basis the Tribunal accepts the conclusion proffered by the Respondent that the only flat with which the Tribunal is concerned under the present application is Flat 15. As the other five Applicants are not parties to the lease of Flat 15, they have no locus standi to bring the application in respect of it and their applications are similarly dismissed although they would each be able to make a proper application in respect of their own flats if desired.
16. The application cannot be treated as an application under s37 of the Act because the number of Applicants (6) does not constitute the requisite 75% of the total number of flats (14).
17. The Respondent's final contention, with which the Tribunal agrees, is that the application should include the freeholder as a joined party because the Respondent is an intermediate lessee whose interest expires prior to the term date of the Applicant's lease. Further, the buildings insurance liability and responsibility for the maintenance and repair of the structure and exterior of the property lies with the freeholder and not with the Respondent.
18. In summary, the Tribunal's decision is that it has no jurisdiction to hear this application. The decision does not prevent the Applicant(s) from making a fresh application but it is recommended that they seek professional legal advice on both procedure and the feasibility of their proposals before doing so.
19. Relevant legal provisions are set out in the Appendix to this decision.

Name: Judge F J Silverman

Date: 10 June 2021

Rights of appeal

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rplondon@justice.gov.uk.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Appendix – relevant legislation

Landlord and Tenant Act 1987

Section 35

Application by party to lease for variation of lease.

(1) Any party to a long lease of a flat may make an application to the appropriate tribunal for an order varying the lease in such manner as is specified in the application.

(2) The grounds on which any such application may be made are that the lease fails to make satisfactory provision with respect to one or more of the following matters, namely—

(a) the repair or maintenance of—

(i) the flat in question, or

(ii) the building containing the flat, or

(iii) any land or building which is let to the tenant under the lease or in respect of which rights are conferred on him under it;

(b)the insurance of the building containing the flat or of any such land or building as is mentioned in paragraph (a)(iii);

(c)the repair or maintenance of any installations (whether they are in the same building as the flat or not) which are reasonably necessary to ensure that occupiers of the flat enjoy a reasonable standard of accommodation;

(d)the provision or maintenance of any services which are reasonably necessary to ensure that occupiers of the flat enjoy a reasonable standard of accommodation (whether they are services connected with any such installations or not, and whether they are services provided for the benefit of those occupiers or services provided for the benefit of the occupiers of a number of flats including that flat);

(e)the recovery by one party to the lease from another party to it of expenditure incurred or to be incurred by him, or on his behalf, for the benefit of that other party or of a number of persons who include that other party;

(f)the computation of a service charge payable under the lease.

(g)such other matters as may be prescribed by regulations made by the Secretary of State.

(3)For the purposes of subsection (2)(c) and (d) the factors for determining, in relation to the occupiers of a flat, what is a reasonable standard of accommodation may include—

(a)factors relating to the safety and security of the flat and its occupiers and of any common parts of the building containing the flat; and

(b)other factors relating to the condition of any such common parts.

(3A)For the purposes of subsection (2)(e) the factors for determining, in relation to a service charge payable under a lease, whether the lease makes satisfactory provision include whether it makes provision for an amount to be payable (by way of interest or otherwise) in respect of a failure to pay the service charge by the due date.

(4)For the purposes of subsection (2)(f) a lease fails to make satisfactory provision with respect to the computation of a service charge payable under it if—

(a)it provides for any such charge to be a proportion of expenditure incurred, or to be incurred, by or on behalf of the landlord or a superior landlord; and

(b)other tenants of the landlord are also liable under their leases to pay by way of service charges proportions of any such expenditure; and

(c) the aggregate of the amounts that would, in any particular case, be payable by reference to the proportions referred to in paragraphs (a) and (b) would either exceed or be less than the whole of any such expenditure.

(5) Procedure regulations under Schedule 12 to the Commonhold and Leasehold Reform Act 2002 and Tribunal Procedure Rules shall make provision—

(a) for requiring notice of any application under this Part to be served by the person making the application, and by any respondent to the application, on any person who the applicant, or (as the case may be) the respondent, knows or has reason to believe is likely to be affected by any variation specified in the application, and

(b) for enabling persons served with any such notice to be joined as parties to the proceedings.

(6) For the purposes of this Part a long lease shall not be regarded as a long lease of a flat if—

(a) the demised premises consist of or include three or more flats contained in the same building; or

(b) the lease constitutes a tenancy to which Part II of the Landlord and Tenant Act 1954 applies.

(8) In this section “service charge” has the meaning given by section 18(1) of the 1985 Act.

(9) For the purposes of this section and sections 36 to 39, “appropriate tribunal” means—

(a) if one or more of the long leases concerned relates to property in England, the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal; and

(b) if one or more of the long leases concerned relates to property in Wales, a leasehold valuation tribunal.