

Y TRIBIWNLYS EIDDO PRESWYL

LEASEHOLD VALUATION TRIBUNAL (WALES)

LEASEHOLD REFORM HOUSING AND URBAN DEVELOPMENT ACT 1993-S.24(1)

Reference: LVT/0036/10/18
Property: 15-24 Vanewood Court, Plunch Lane, Limeslade, Swansea, SA3 4JY
APPLICANTS: Mrs Lynda Ann Lawrence & Mr George Lawrence
RESPONDENT: Egancrest Limited

DECISION ON THE PRELIMINARY ISSUE AS TO WHETHER OR NOT THE APPLICATION TO THE TRIBUNAL WAS MADE ON TIME

The Tribunal finds that the Applicants' Application was not made within the requisite time limits as provided for under Section 24(2) of the Leasehold Reform Housing and Urban Development Act 1993 and the Application is dismissed.

REASONS FOR THE TRIBUNAL'S DECISION

Background

1. The Applicants are one of a number of tenants who occupy flats 15-24 within the property known as Vanewood Court, Plunch Lane, Limeslade, Swansea. By way of an initial Notice dated the 3rd January 2018 the Applicants together with other tenants served a Notice under Section 13 of the Leasehold Reform Housing and Urban Development Act 1993 ("LRHUDA 1993") of their proposal to acquire the freehold. That Notice was served on their behalf by Beor Wilson & Lloyd Solicitors under cover of a letter dated the 3rd January 2018. The covering letter indicates the Notice was sent by registered post with the matter being dealt with by a Mr David Jones of that respective firm.
2. The Respondent served a Counter-Notice dated the 25th January 2018. The Counter-Notice was sent by Harris Arnold Solicitors on behalf of the Respondent together with a covering letter of even date. A Mr Sims from Harris Arnold Solicitors was dealing with the matter on behalf of the Respondent. The covering letter does not indicate if the Counter-Notice was sent by registered post, but did require the Applicants solicitors to acknowledge safe receipt. The Counter-Notice itself also indicated that the Respondent in its capacity as reversioner admitted that the participating tenants were entitled to exercise the right to collective enfranchisement, and made it clear by virtue of paragraph 3 that a number of proposals were not agreed including the proposed purchase price. The Counter-Notice also required the provision of a plan which was referred to within the initial Notice, but apparently not enclosed with the same.

3. Thereafter by way of a letter dated 26th January 2018 David Jones of Beor Wilson & Lloyd Solicitors responded to the Counter-Notice served on behalf of the Respondent confirming receipt of the same and enclosed a coloured photocopy plan.
4. As a consequence a further supplemental Counter-Notice dated the 1st March 2018 was forwarded to Beor Wilson & Lloyd Solicitors together with a covering letter by Mr Sims. That further supplemental Counter-Notice dealt with the issues and questions that required a provision of a plan.
5. The Applicants applied to this Tribunal by way of an Application dated the 24th October 2018 received as is indicated by the date stamp from the Tribunal office on the 25th October 2018. In the application form under the heading "Additional Information" the Applicants seek determination of the amount payable for the freehold in relation to the flats.
6. Following service of a copy of the application upon the then named representative for the Respondent being a Mr R P W Morse of Leeder Property Management the Tribunal received a letter from Mr Sims of Harris Arnold Solicitors for the Respondent dated the 6th November 2018. That letter stated that they believe the application had been issued out of time setting out the chronology as follows:
 - (1) Service of the initial Notice under cover of a letter dated 3rd January 2018.
 - (2) Service of an initial Counter-Notice under cover of a letter dated 25th January 2018 which raised an issue about the absence of a plan and also made it clear the price offered was not acceptable, and an alternative counter-offer was made.
 - (3) Confirmation of receipt of the Counter-Notice by Beor Wilson & Lloyd Solicitors for the Applicants together with provision of a plan under cover of a letter dated 26th January 2018.
 - (4) Supplemental Counter-Notice sent out by the Respondent's solicitors under cover of a letter dated 1st March 2018. The same letter goes on to indicate that negotiations then took place between the parties' respective surveyors but no agreement was reached.
7. The Applicants' own application states:

"We have asked our solicitor to apply to the LVT on several occasions but he has not done so. This has forced us into applying ourselves because we are aware as nominee purchasers of the trust put in us by the other flat owners. We have lost faith in both our solicitor and our surveyor".
8. As a result of the comments made by the Respondent's solicitors, the Tribunal President by letter of 7th November 2018 directed that:
 - (1) Harris Arnold file at the Tribunal and serve upon the Applicant by 12 noon on Friday 16th November 2018 copies of the initial Notice and covering letter dated 3rd January 2018, Counter-Notice and letter in reply of the 25th January 2018,

letter in response from Messrs Beor Wilson & Lloyd of the 26th January 2018 and the letter of the 1st March and supplemental Counter-Notice dated 1st March 2018.

- (2) The Applicants to file at the Tribunal and serve upon Harris Arnold by 12 noon on Friday 23rd November 2018 any submissions in response to the contention that the application was served out of time, and any submissions upon whether the Tribunal has jurisdiction to hear this case.
 - (3) Harris Arnold to be at liberty to file at the Tribunal and serve upon Mr & Mrs Lawrence by 12 noon on Friday the 23rd November 2018 any further submissions in response.
 - (4) The parties are by no later than 12 noon on Friday the 30th November 2018 to indicate if they wish to have this preliminary issue determined at an oral hearing or on the papers.
9. Those directions have been complied with.
10. The Applicants by way of further submissions as provided for by the directions wrote under cover of a letter dated the 15th November 2018. That letter repeated the contents of the matters set out to a great extent in the additional information as referred to above in relation to making the application themselves having requested that their solicitor did so. The same letter also indicated a willingness for the preliminary issue to be dealt with on the papers.
11. Harris Arnold Solicitors for the Respondent also replied by way of a letter dated 20th November 2018 indicating they had no submissions to make in response to those contained within the Applicant's letter of the 15th November 2018 and also confirmed that the Respondent was content for the preliminary issue to be determined on the papers.
12. As a result the Residential Property Tribunal President by way of a letter dated 22nd November 2018 wrote to the parties confirming that in accordance with Regulation 13 of the Leasehold Valuation Tribunals (Procedure) (Wales) Regulations 2004 it is proposed to deal with the matter without an oral hearing.

Decision

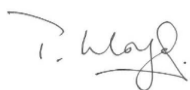
13. Section 24 of the Leasehold Reform, Housing and Urban Development Act 1993 deals with and provides the framework for applications where the terms are in dispute or there is a failure to enter into a contract. Of relevance in relation to this matter are the following provisions:

24 - Applications where terms in dispute or failure to enter into a contract.

- (1) **Where the reversioner in respect of this specified premises has given the nominee purchaser [RTE Company] -**

- (a) a Counter-Notice under section 21 complying with the requirements set out in Sub-Section (2)(a) of that section, or
 - (b) a further Counter-Notice required by or by virtue of Section 22(3) or Section 23(5) or (6) but any of the terms of acquisition remain in dispute at the end of the period of two months beginning with the date on which the Counter-Notice or further Counter-Notice was so given, (the appropriate Tribunal) may, on the application of either the nominee purchaser [RTE Company] or the reversioner, determine the matter in dispute.
- (2) Any application under Sub-Section (1) must be made not later than the end of the period of six months beginning with the date on which the Counter-Notice or further Counter-Notice was given to the nominee purchaser [RTE Company].
14. Clearly, Section 24(2) by virtue of language used being **must be made not later than the end of the period of six months...** sets an absolute and finite time limit for such applications.
15. Having considered carefully all the information before me it is clear that:
 - (1) The parties had not come to an agreement as there were matters still in dispute including, for example, the proposed purchase price for the freehold.
 - (2) The chronology as set out above clearly indicates that even if the Supplemental Counter-Notice was sent by ordinary first class post it would have been received by the 3rd March 2018. Further, the Applicants in their Application form to the Tribunal confirm having received the Supplemental Counter-Notice dated 1st March 2018.
 - (3) The Applicant's application is dated the 24th October 2018 and received by the Tribunal office on the 25th October 2018 nearly two months after the six month timeframe provided for under the Act for applications in cases where the parties have not come to an agreement.
16. In those circumstances I find as a fact that taking of all the above information into consideration that the Applicants' application is out of time, and as a consequence is dismissed.

Dated this 10th day of January 2019



Trefor Lloyd
Legal Chairman

