



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL
PROPERTY)**

Case reference : **LON/00BK/LSC/2017/0130**

Property : **Aldford House, Park Lane, London W1K
7LG**

Applicant : **K Group Holdings Inc (1)
Aldford House (Park Lane)
Maintenance Trustee Limited (2)
Park Lane Holdings Inc (3)**

Representative : **Mr Michael Walsh of Counsel instructed
by Stephenson Harwood LLP**

Respondent : **Oung Lin Chaun-Hui and others**

Representative : **Mr Jonathan Upton of Counsel
instructed by Forsters LLP**

Type of application : **Application pursuant to section 20C of
the Landlord and Tenant Act 1985**

Tribunal members : **Judge N Hawkes
Mr C Gowman MCIEH MCMI BSc
Mr O N Miller BSc**

**Date and venue of
hearing** : **1 April 2019 at 10 Alfred Place, London
WC1E 7LR**

Date of order : **26 April 2019**

DECISION

The background and submissions

1. A hearing took place on 1 April 2019 at which three matters were before the Tribunal:
 - a. an application on the part of the Applicants for a determination of the sums payable pursuant to the Tribunal's decision of 1 November 2018 (the Tribunal's decision in the main proceedings);
 - b. an application on the part of the Second Applicant (case reference LON/00BK/LSC/2017/0130) for dispensation from the consultation requirements provided for by section 20 of the Landlord and Tenant Act 1985; and
 - c. an application on the part of the Respondents for an order under section 20C of the Landlord and Tenant Act 1985 ("section 20C") in respect of the Applicants' application for a determination of the sums payable pursuant to the Tribunal's decision of 1 November 2018.
2. The Tribunal approved consent orders disposing of applications (a) and (b) and gave its consent to the withdrawal of application (c) at the hearing. During the course of the hearing, the Respondents made an oral application, of which the Applicants had received no prior notice, for an order under section 20C in respect of the main proceedings.
3. At paragraph (3) of its decision dated 1 November 2018, the Tribunal had stated:

"The Tribunal directs that any application for an order under section 20C of the Landlord and Tenant Act 1985 should be made within 14 days of the date of this Decision and that the applicants should file and serve any response within 14 days thereafter."
4. By letter dated 8 November 2018, the Respondents requested an extension of this deadline:

"to within 14 days of the date of determination of the application for permission to appeal by the Tribunal, or Upper Tribunal if an application to the Upper Tribunal is made. Should the application be successful, we would ask that the deadline is extended until within 14 days of the determination of the appeal."
5. By a letter dated 20 November 2018, the Tribunal extended time to:

"14 days following the date of the determination of any application for permission to appeal by the Tribunal or by the Upper Tribunal, if an application to the Upper Tribunal is made."
6. The Tribunal did not grant an extension of time until 14 days after the determination of any appeal. By a decision dated 22 February 2019, the Upper Tribunal granted permission to appeal in respect of Ground 1 of the Respondents' application for permission to appeal.

7. Mr Upton explained that no application under section 20C was made in respect of the main proceedings prior to 1 April 2019 because the Respondents' solicitor had misread the Tribunal's direction of 20 November 2018. It had become apparent the week before the hearing that a section 20C application needed to be made and it was thought that this could be dealt with in a consent order or by way an application made at the hearing.
8. Mr Upton submitted that section 20C contained no time limit and that the Respondents' application was therefore not out of time. In the alternative, he sought an extension of time in order to enable an oral section 20C application to be made at the hearing.
9. Mr Upton made it clear from the outset that the proposed application under section 20C was not one which he considered had any reasonable prospect of success. He stated that, if the extension of time were to be granted (or if the Tribunal found that no extension of time was required), he would advance no submissions in support of the proposed application. The purpose of the proposed application is to preserve the Respondents' position pending the outcome of the appeal.
10. The ground of appeal in respect of which the Upper Tribunal has granted permission to appeal concerns approximately 40% of the sums which the Tribunal has found to be payable (approximately £400,000). Mr Upton submitted that the prospects of success of the proposed section 20C application would potentially increase if the appeal were to be successful.
11. Both the Applicants and the Respondents are of the view that there is no mechanism for a section 20C application to be commenced in the Upper Tribunal following the conclusion of a successful appeal.
12. Both the Applicants and the Respondents agreed with a preliminary view expressed by the Tribunal that it would be preferable to conclude the role of the first-tier tribunal before the appeal is heard, at a time at when the details of this complex litigation are relatively fresh in the Tribunal's mind.
13. No party has reached a concluded view as to whether the Respondents will have to apply for permission to appeal any decision made by the Tribunal under section 20C in order to potentially bring the matter before the Upper Tribunal or whether, if the Respondents' appeal is successful, the Tribunal's section 20C decision will automatically fall to be revisited by the Upper Tribunal.
14. Mr Upton submitted, without prejudice to his contention that there is no time limit for making a section 20C application, that it would be in the interests of justice applying the Tribunal's overriding objective for the Respondents' application an extension of time to be granted.
15. He stated that no prejudice has been caused to the Applicants by the delay but that the Respondents would suffer very significant prejudice if the Tribunal were to refuse their application because they may be deprived of the possibility of making a section 20C application. Further, as noted by the Tribunal, the Tribunal's direction of 20 November 2018 had no sanction attached to it.

16. Mr Walsh submitted that:
 - a. To raise matters orally which have not been canvassed prior to a hearing is characteristic of the way in which the Respondents have conducted this litigation throughout.
 - b. The Tribunal having expressly directed that an application must be made by a certain time, the Respondents are now clearly out of time. The Tribunal's letter of 1 November 2018 gave an explicit and clear direction to the Respondents, who are legally represented, to do something which has not been done.
 - c. No application has been made in writing with evidence in support setting out why the Tribunal's direction has not been complied with. The Respondents' last-minute application is wholly unsupported by evidence.
 - d. A significant period of time has now elapsed since the deadline for making the application.
 - e. The Tribunal should not indulge the Respondents thereby enabling them to again ambush the Applicants. Parties should not be forced to adopt a position at short notice; legal representatives need time to think about the potential consequences of an application and to consult with and take instructions from their clients.
 - f. It is relevant that the Respondents are not lessees of modest means but rather they are wealthy individuals who have instructed extremely competent solicitors and counsel to represent them in complex litigation.
 - g. If the Tribunal does not demonstrate its disapproval by refusing the application, litigants (and these Respondents in particular) will consider that they can simply disregard directions of the Tribunal. Compliance with the rules is a matter of general importance and the Tribunal is a tribunal of law and not the "Wild West".
17. Mr Walsh accepted that, by rule 6(3)(a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal can extend time but he stressed that the Tribunal's discretion must be exercised judicially, with reference to evidence and for good reason.
18. He stated that justification through Counsel, which is not evidence, that the solicitors have misunderstood the position is not good enough. Whilst in another case it might be appropriate to extend time, in the present case it is not.
19. In support of his submissions, Mr Wash relied upon the procedural background, in particular, findings in the Tribunal's determination of 1 November 2018 that issues were raised at the hearing which had not been clearly pleaded.
20. Further, he stressed that at no time before the oral submissions which were made at during the course of hearing were the issues which now fall to be determined ventilated. This is notwithstanding that there have been

discussions and correspondence concerning the hearing. He stated that one would have expected the Respondents' solicitor to have written to the Applicants stating that there had been some confusion but that they never did and instead raised the matter orally through Counsel again.

21. As regards the grant of permission to appeal by the Upper Tribunal, Mr Walsh observed that the Upper Tribunal has stated that Ground 1 of the Respondents' application for permission to appeal raises a point of general significance and he submitted that it would not be safe for this Tribunal to assume that the appeal will be allowed.
22. On being asked by the Tribunal whether his clients had considered applying for a debarring order, Mr Walsh again accepted that the Tribunal has a discretion to extend time and stressed that any decision to extend time must be made on a reasoned basis, supported by evidence. He stated that, if the matter had been raised in a letter two weeks before the hearing, the Applicants would not be in such a strong position and he drew a parallel with very late disclosure.
23. On the Respondents' solicitor expressing a willingness to provide the Tribunal with evidence concerning her misunderstanding, either in the witness box or in a witness statement, it was agreed (without prejudice to Mr Walsh's contention that no new evidence should be admitted at this very late stage) that the account given through Counsel of the solicitor's misunderstanding is to be treated as unchallenged evidence by the Tribunal.
24. Counsel for both parties made clear their clients' intention to seek permission to appeal the Tribunal's decision concerning the Respondents' application for an extension of time, if their submissions proved to be unsuccessful.

The Tribunal's determination

25. The Tribunal accepts Mr Walsh's submission that, the Tribunal having made an express direction, the time limit set out in that direction applies unless time is extended.
26. The Tribunal notes that no sanction was attached to the Tribunal's direction of 20 November 2018 and that no application was subsequently made for a debarring order (whilst accepting that it must, of course, exercise its discretion to extend time judicially).
27. In considering whether or not to exercise its discretion to extend time, the Tribunal has had regard to the overriding objective and has taken into account

all of the circumstances of the case and the submissions made on behalf of the parties.

28. The Tribunal's overriding objective at rule 3 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 rules includes provision that:

(1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.

(2) Dealing with a case fairly and justly includes—

(a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal;

(b) avoiding unnecessary formality and seeking flexibility in the proceedings;

(c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;

(d) using any special expertise of the Tribunal effectively; and

(e) avoiding delay, so far as compatible with proper consideration of the issues.

(3) The Tribunal must seek to give effect to the overriding objective when it—

(a) exercises any power under these Rules; or

(b) interprets any rule or practice direction.

29. In considering the issue of proportionality, the Tribunal notes that the costs of the main proceedings are likely to be high.

30. The Tribunal accepts Mr Upton's submission that the potential prejudice to the Respondents if the Tribunal were to refuse the application far outweighs and the potential prejudice to the Applicants if the Tribunal were to grant the application.

31. Mr Walsh will not be required to make any submissions in response to the application which Mr Upton accepts must fail. Any detailed submissions will only be made following the determination of the appeal.

32. The Tribunal accepts that there is force in Mr Walsh's submissions and considers that it is unsatisfactory for issues to be raised for the first time during hearings, in particular, when the proceedings are complex and the parties are well represented.

33. However, the Tribunal finds that, having regard to the matters set out above, it is in the interests of justice to admit the unchallenged evidence concerning the solicitor's misunderstanding and (noting that there was no deliberate failure to comply with the Tribunal's direction) to extend the time. Accordingly, the

Tribunal extends time to 1 April 2019 for the making of the Respondents' section 20C application in respect of the main proceedings.

34. Mr Upton having made no submissions in support of the section 20C application, the Tribunal dismisses it.
35. The Tribunal notes that the Applicants' proposed application for permission to appeal this decision may raise a point of general significance concerning the weight which first-tier tribunals should place upon the issues which Mr Walsh has identified.

Name: Judge N Hawkes

Date: 26 April 2019

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).