



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

Case reference : **LON/00AK/OCE/2023/0050**

Property : **208 & 210 High Road, London N10 4NP**

Applicant : **Y & E Tescher Freeholds Ltd**

Representative : **Bude Nathan Iwanier LLP**
Ref: Mr S Pariente

Respondent : **D & R Estates Limited**
Ref: Ms S Bone

Representative : **Wallace LLP**

Type of application : **Enfranchisement pursuant to section
24(1) of the Leasehold Reform, Housing
and Urban Development Act 1993**

**Tribunal
member(s)** : **Judge Tagliavini**
Mr A Harris

Venue : **10 Alfred Place, London WC1E 7LR**

Date of hearing : **24 October 2023**
Date of decision : **25 October 2023**

DECISION

The tribunal's decision on a preliminary issue

1. The tribunal finds the parties reached an agreement as to the premium to be paid and the terms of the transfer prior to the final hearing of the application as set out in an email dated 23 October 2023 @ 12.42. Therefore, the tribunal no longer has jurisdiction to determine the application.

Background

2. The applicant sought the tribunal's determination of the premium payable and the terms of transfer in respect of the subject properties at 208 & 210 High Road, London N10 4NP ('the properties'). Before the matter could be heard at a final hearing on 24 October 2023, the tribunal was informed by the applicant the parties had reached an agreement on all matters and therefore, the hearing did not need to be held.
3. The respondent disagreed with the assertion the application had been settled and asserted the determination of the tribunal, as to the premium payable and the terms of transfer was still required, notwithstanding the Beth Din had been asked to arbitrate on this matter.
4. Consequently, the parties attended the tribunal in order for the tribunal to determine the preliminary issue as to whether an agreement had been reached between the parties, thereby ending the tribunal's jurisdiction.

The hearing

5. Mr S Pariente, solicitor attended the hearing accompanied by the applicant's valuer, Mr Berger. Mr Berkowitz attended in person on behalf of the respondent and informed the tribunal he had not requested the respondent's solicitor to attend.
6. Mr Pariente provided the tribunal with a bundle of documents numbering 33 pages. He relied upon these documents to set out the chronological exchange of emails/letters which led to the parties' agreement on Friday 23 October 2023 @ 12.42.
7. The relevant email correspondence established that on Friday 20 October 2020 @ 15.51 Ms Bone wrote to the applicant:

I have now taken instructions and my client will accept your client's offer below with respect to points 1, 2 and 3. For the avoidance of doubt Point 4 is not accepted.

8. On Monday 23 October @ 12.42 the applicant wrote:

Following our exchanges of Friday in particular your email of Friday timed at 15.51, my client agrees to the settlement on terms set out in my email of Friday, timed at 12.54, but excluding number 4 thereof.

9. The email then set out again the same terms that had previously been set out in correspondence omitting only point 4.
10. The respondent asserted no agreement had been reached as the correspondence relied upon was 'without prejudice' and that Ms Bone of Wallace LLP did not have instructions to negotiate an agreement, nor had it been indicated by the respondent that it had unequivocally accepted the applicant's offer initially made on Friday 20 October 2023 @ 12.53. Mr Berkowitz also argued that the use of the word 'will' in this email did not commit the respondent to entering into the agreement.
11. In an email date 23 October 2023 @ 16.47 Ms Bone wrote to the applicant:

All communications concerning the settlement of the case were strictly without prejudice and this is clear from your request to provide an open letter confirming the agreement.

We have not confirmed in open correspondence because the terms are not agreed.

The tribunal's reasons

12. Having considered the relevant correspondence, the tribunal accepts Mr Pariente's submission that once an agreement had been reached the 'without prejudice' label attached to the correspondence was of no effect, in so far as the correspondence was being relied upon to show an agreement had been reached. The tribunal finds the parties did reach a settlement agreement on 23 October 2023 as asserted by the applicant and finds Ms Bone assertion to the contrary in her email is incorrect.
13. The tribunal finds any dispute as to whether Ms Bone followed her client's instructions or not, is unsupported by any evidence and was during the hearing to some extent resiled from by the respondent's later assertions that Ms Bone may possibly have misunderstood her instructions. The tribunal finds the respondent's assertions were unconvincing and that in any event, the issue of whether instructions were followed or not is a matter between the respondent and Ms Bone.

14. In conclusion, the tribunal finds the parties' reached an agreement settling all issues that were before the tribunal and that there are no further matters over which the tribunal has jurisdiction to determine.

Name: Judge Tagliavini

Date: 25 October 2023

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 should be made on Form RP PTA available at <https://www.gov.uk/government/publications/form-rp-pta-application-for-permission-to-appeal-a-decision-to-the-upper-tribunal-lands-chamber>

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).