



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

Case reference : **LON/00AG/OLR/2022/1005**

HMCTS code : **V:Video**

Property : **181 Fordwych Road London NW2
3NG**

Applicants : **Home Investment Limited (181b)
Mr Vishal Bhoyru (181c)**

Representative : **Brightstone Law LLP**

First Respondent : **Ms Christie Omojo Okpe**

Representative : **In person**

Second Respondent : **Ms Grace Martinho**

Representative : **Graham Fear & Co (Mr S Fear)**

Type of application : **Application under s13 Landlord
and Tenant Act 1987 (the '1987
Act') on a question arising in
relation to matters specified under
s12B of the 1987 Act;**

Tribunal members : **Judge Pittaway
Mr Michael Donaldson FRICS**

**Date of hearing and
venue** : **15 November 2023 at
10 Alfred Place, London WC1E 7LR**

Date of decision : **13 December 2023**

DECISION

Summary of the tribunal's decision

- (1) The jurisdiction of the Tribunal is limited to a consideration of the matters specified in the Tenants' Purchase Notice under s12B of the 1987 Act which was served on Ms Martinho and Ms Okpe .
- (2) The Tribunal determines that the consideration paid by the First Respondent in respect of the relevant disposal to her of 33% of the freehold of the Property was £1.
- (3) The Tribunal determines that Ms Okpe should be a party to the transfer, both as a transferor and as a transferee.
- (4) The Tribunal makes no order for costs under rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (the '**Rules**').
- (5) The Tribunal determines that the Second Respondent shall pay the Applicants £300 in respect of the reimbursement of the Tribunal fees paid by the Applicants.

The Issues

1. This is an application made by the Applicants at a hearing on 11 July 2023 under section 13 Landlord and Tenant Act 1987 (the '**1987 Act**') as to matters specified in a notice served under s12B of the 1987 Act, namely the terms on which qualifying tenants may require the current freeholders to dispose of the estate which was the subject matter of the original disposal, specifically the consideration payable.
2. The Applicants seek an order under Rule 13(1)(b) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("**The 2013 Rules**") against the First Respondent.
3. The Second Respondent seeks an order under Rule 13(1)(b) of The Rules 2013 against the First Respondent.
4. The First Respondent applied for the Tribunal to order someone to pay for her costs in connection with any transfer required as a result of the application.

The Background

5. By a transfer dated 21 October 2019 Ms Martinho transferred the freehold of the Property into the joint names of herself and Ms Okpe for a consideration of £1, The freehold was to be held by them as tenants in common in the following shares; Ms Martinho 67% and Ms Okpe 33%.

6. The Applicants served Tenants' Purchase Notice under s12B of the 1987 Act on Ms Martinho and Ms Okpe (the '**Notice**').
7. The Notice was served on Ms Okpe by e mail on 13 August 2022. The Notice served by post on Ms Okpe and Mr Fear as Ms Martinho's solicitor was dated 15 August 2022.
8. The Notice named the qualifying tenants as the Applicants. It gave notice that s11 of the 1987 Act applied to the disposal of the freehold interest on or around 21 October 2019 (the '**Original Disposal**'). For the purposes of s12b(2) of the 1987 Act it nominated Majid Makhmalchi, a director of Home Investment Limited and Vishal Bhoyru as the Nominated Person.
9. The Notice required Ms Martinho and Ms Okpe to dispose of the freehold interest disposed of by the Original Disposal on the terms on which it was made to the Nominated Person (the '**New Disposal**').
10. It stated that the New Disposal was only required to be made in relation to premises to which Part 1 of the 1987 Act applies.
11. It stated that the terms of the New Disposal should be for no consideration and that Ms Okpe joins in the disposal, or as otherwise determined by the Tribunal.
12. On 14 November 2022 Ms Okpe served a notice under s17(3) of the 1987 Act purporting to be from both herself and Ms Martinho. This alleged that there had been
 - No offer to cover the legal fees that would be incurred by the Purchaser.
 - No amendment of the TR1 to correct material discrepancies; and
 - 'No follow-up from the legal representative acting for the tenant since 05/10/2022'
13. On 15 November 2022 the Applicants wrote to Mr Fear setting out their understanding that Ms Martinho was agreeable to the transfer of the freehold to the Nominated Person. They challenged the validity of Ms Okpe's s17(3) notice on the basis that it had not been executed by Ms Martinho and had not been served on Mr Bhoyru.
14. The application under s48 under the Leasehold Reform Housing and Urban Development Act 1993 (the '**1993 Act**') which was also before the Tribunal at the hearing on 11 July was withdrawn on 31 July 2023.
15. Directions issued after the hearing on 11 July 2023 joined Ms Martinho as the Second Respondent.

The hearing

16. The hearing was a remote video hearing which has not been objected to by the parties. The form of remote hearing was V:VHSREMOTE.

A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

17. At the hearing the Applicants were represented by Mr Gibbs-Ripley, solicitor-advocate. Ms Okpe appeared in person. Mr Fear, solicitor, represented Ms Martinho. Ms Gandesha, a solicitor from Brightstone Law attended the hearing and gave evidence. Mr Makmalchi, a director of Home Investment Limited attended the hearing. Ms Martinho, joining the hearing from North Carolina, was unable to log on to the hearing video link but attended by telephone.
18. The Tribunal had before it a bundle of 356 pages which contained witness statements by Ms S Gandesha, Ms Okpe and Ms Martinho. The Tribunal heard oral evidence from Ms Gandesha and Ms Okpe. Mr Fear agreed that his client Ms Martinho was not able to give oral evidence as she was outside the United Kingdom. The Tribunal has read and taken into account Ms Martinho's witness statement but has given it less weight because, due to her absence, her evidence could not be tested through cross-examination.
19. The Tribunal heard submissions from Mr Fear, Mr Gibbs-Ripley and Ms Okpe.
20. No party asked the Tribunal to inspect the Property and the Tribunal did not consider it necessary to carry out a physical inspection to make its determination.

The law

21. The relevant provisions of the 1987 Act are

Section 1 Qualifying tenants to have rights of first refusal on disposals by landlord.

(1) A landlord shall not make a relevant disposal affecting any premises to which at the time of the disposal this Part applies unless—

(a) he has in accordance with section 5 previously served a notice under that section with respect to the disposal on the qualifying tenants of the flats contained in those premises (being a notice by virtue of which rights of first refusal are conferred on those tenants); and

(b) the disposal is made in accordance with the requirements of sections 6 to 10.

(2) Subject to subsections (3) and (4), this Part applies to premises if—

(a) they consist of the whole or part of a building; and

(b) they contain two or more flats held by qualifying tenants; and

(c)the number of flats held by such tenants exceeds 50 per cent. of the total number of flats contained in the premises.

Section 3 Qualifying tenants.

(1)Subject to the following provisions of this section, a person is for the purposes of this Part a qualifying tenant of a flat if he is the tenant of the flat under a tenancy other than—

(a)a protected shorthold tenancy as defined in section 52 of the Housing Act 1980;

(b)a tenancy to which Part II of the Landlord and Tenant Act 1954 (business tenancies) applies;

(c)a tenancy terminable on the cessation of his employment

(d)an assured tenancy or assured agricultural occupancy within the meaning of Part I of the Housing Act 1988

(e)an occupation contract that immediately before the appointed day was an assured agricultural occupancy within the meaning of Part 1 of the Housing Act 1988 (c. 50); or

(f)a tenancy—

(i)which is a secure contract, and

(ii)in relation to which, the landlord is not a local authority.

(2)A person is not to be regarded as being a qualifying tenant of any flat contained in any particular premises consisting of the whole or part of a building if by virtue of one or more tenancies none of which falls within paragraphs (a) to (d) of subsection (1), he is the tenant not only of the flat in question but also of at least two other flats contained in those premises.

(3)For the purposes of subsection (2) any tenant of a flat contained in the premises in question who is a body corporate shall be treated as the tenant of any other flat so contained and let to an associated company.

(4)A tenant of a flat whose landlord is a qualifying tenant of that flat is not to be regarded as being a qualifying tenant of that flat.

Section 4 Relevant disposals.

(1)In this Part references to a relevant disposal affecting any premises to which this Part applies are references to the disposal by the landlord of any estate or interest (whether legal or equitable) in any such premises, including the disposal of any such estate or interest in any common parts of any such premises

Section 13 Determination of questions by leasehold valuation tribunal.

(1) The appropriate tribunal has jurisdiction to hear and determine—
(a) any question arising in relation to any matters specified in a notice under section 12A, 12B or 12C, and

(b) any question arising for determination as mentioned in section 8C(4), 12A(5) or 12B(4) (matters left for determination by tribunal).

(2) On an application under this section the interests of the persons by whom the notice was served under section 12A, 12B or 12C shall be represented by the nominated person; and accordingly the parties to any such application shall not include those persons.

Section 12B Right of qualifying tenants to compel sale, &c. by purchaser.

(1) This section applies where—

(a) the original disposal consisted of entering into a contract and no notice has been served under section 12A (right of qualifying tenants to take benefit of contract), or

(b) the original disposal did not consist of entering into a contract.

(2) The requisite majority of qualifying tenants of the constituent flats may serve a notice (a “purchase notice”) on the purchaser requiring him to dispose of the estate or interest that was the subject-matter of the original disposal, on the terms on which it was made (including those relating to the consideration payable), to a person or persons nominated for the purposes of this section by any such majority of qualifying tenants of those flats.

(3) Any such notice must be served before the end of the period of six months beginning—

(a) if a notice was served on the purchaser under section 11A (right to information as to terms of disposal, &c.), with the date on which the purchaser complied with that notice;

(b) in any other case, with the date by which—

(i) notices under section 3A of the Landlord and Tenant Act 1985 (duty of new landlord to inform tenants of rights) relating to the original disposal, or

(ii) where that section does not apply, documents of any other description indicating that the original disposal has taken place, and alerting the tenants to the existence of their rights under this Part and the time within which any such rights must be exercised, have been served on the requisite majority of qualifying tenants of the constituent flats.

22. Rule 13(1) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (the ‘**Rule 13**’) provides that

13.—(1) The Tribunal may make an order in respect of costs only—

(a) (under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;

(b) if a person has acted unreasonably in bringing, defending or conducting proceedings in— (i) an agricultural land and drainage case, (ii) a residential property case, or (iii) a leasehold case;(iv) a tenant fees case;

The tribunal's determination

23. The Tribunal reached its decision after considering the witnesses' oral and written evidence, including documents referred to in that evidence, and taking into account its assessment of the evidence.
24. This determination does not refer to every matter raised by the parties, or every document the Tribunal reviewed or took into account in reaching its decision. However, this doesn't imply that any points raised or documents not specifically mentioned were disregarded. If a point or document was referred to in the evidence or submissions that was relevant to a specific issue, it was considered by the Tribunal.
25. The tribunal has made determinations on the various issues as follows.

The extent of the jurisdiction of the Tribunal

26. The bundle before the Tribunal contained the Tenants' Purchase Notice under s12B of the 1987 Act was served on Ms Martinho and Ms Okpe (the '**Notice**').
27. The bundle before the Tribunal contained a notice served by Ms Okpe under s17(3) of the 1987 Act, the validity of which had been challenged.
28. For the Applicants Mr Gibbs-Ripley submitted that the Tribunal had the ability to order the timing of the execution of any transfer under the case management powers that it has under The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
29. Mr Fear and Mr Gibbs-Ripley asked the Tribunal to make an order for costs against Ms Okpe under Rule 13.
30. Ms Okpe asked the Tribunal to award her costs in connection with the transfer.

The Tribunal's determination

31. The Tribunal has the jurisdiction to determine any question arising in relation to any matters specified in the Notice.
32. The Tribunal does not have jurisdiction to determine the validity of any notice served by Ms Okpe under s17(3) of the 1987 Act. This is a matter for the County Court.
33. The Tribunal does not have jurisdiction to determine the form of any transfer to the nominated person, nor does it have jurisdiction to order the execution of the transfer, nor the timing of such execution. These are matters for the County Court.
34. The Tribunal has jurisdiction to consider the applications for costs orders by the Applicants and the Second Respondent against Ms Okpe under Rule 13 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (**'Rule 13'**).
35. The Tribunal does not have jurisdiction to award Ms Okpe costs in connection with any transfer.

Reasons for the tribunal's determination

36. In this application the jurisdiction of the Tribunal is limited by section 13 of the 1987 Act to hearing and determining any question arising in relation to any matters specified in the notice under section 12B of the 1987 Act. (the **'Notice'**). It has no other jurisdiction under the 1987 Act.
37. By section 12B (3) of the 1987 Act such jurisdiction is in relation to a Notice served within six months of the tenants being alerted to the existence of their rights under the 1987 Act. The Tribunal was informed that the Notice was served within such six month period and this was not challenged by either the First Respondent or the Second Respondent
38. The jurisdiction under the 1987 Act is split between the County Court and this tribunal. The Tribunal cannot use its case management powers to give itself jurisdiction in respect of a matter which is within the jurisdiction of the County Court.
39. The Tribunal's ability to award costs against any party is governed by Rule 13. It is therefore able to consider the applications for Rule 13 costs made by the Applicants and the Second Respondent against the First Respondent. The Tribunal does not have the power to make an

award of the costs incurred by the First Respondent in connection with the transfer.

The matters specified in the Notice

40. The matters specified in the Notice, set out in paragraph 4 of the Notice, are as follows,

‘4.1 That no consideration is payable for the disposal

4.2 That Christie Omojo Okpe agrees or is otherwise ordered to join in the Disposal.’

The Tribunal’s determination

41. The Tribunal determines that the consideration paid by the First Respondent in respect of the disposal to her of 33% of the freehold of the Property was £1
42. The Tribunal cannot order Ms Okpe to join in the disposal but determines that Ms Okpe should be named as a party to the transfer, both as a transferor and as a transferee.

Reasons for the tribunal’s determination

43. Ms Gandesha, a solicitor at Brightstone Law gave evidence, referring the Tribunal to the TR1 dated 21 October 2019, which recites a consideration of £1 paid by Ms Okpe to Ms Martinho for a beneficial interest of 33% of the freehold. In her witness statement she explained that the Second Respondent had not served Section 5 Notice under the 1987 Act but had retained 67% of the beneficial interest in the freehold on the basis that this would subsequently be transferred to the Applicants.
44. Ms Okpe submitted that the consideration in the TR1 should have been £10,000. Ms Okpe gave evidence that she increased her offer for the flat by £10,000 to secure a share of the freehold, and referred the Tribunal to an e mail from Ben Relton of Foxtons of 3 July 2018, which states, ‘*As mentioned on Friday are you able to increase your offer to £430,000 as the client informs me she will also include the share of the freehold when allocated at this price [sic] for no extra cost.*’ When cross examined as to why she did not query the consideration of £1 shown in the TR1 Ms Okpe stated that she did not have the necessary legal knowledge to know that the TR1 should have stated the consideration to be £10,000, if this is what she thought she was paying for her share of the freehold. Ms Okpe did not accept that the e mail from Mr Relton was only an estate agent’s ‘puff’. Ms Okpe also referred

the Tribunal to an earlier e mail from Ben Relton of 20 June in which he stated that the client was still looking for £440,000 ‘*as she will be charging the other flats for a share of the freehold*’ as evidence of Ms Martinho’s intention to charge the Applicants for their respective shares of the freehold.

45. Mr Fear referred the Tribunal to the sale contract between Ms Martinho and Ms Okpe of 12 September 2019, which stated that the Purchase Price was £430,000, with no apportionment between the leasehold and freehold interests that Ms Okpe was acquiring. He submitted that Ms Okpe had been legally represented in her purchase, and that it was logical for the freehold interest only to have a nominal value as at completion the length of the leasehold term of her flat was being extended to 158 years (the lease term already enjoyed by the other two leaseholders) so that the value of the freehold would in any event only be nominal. Mr Fear submitted that there had been various pre-contract negotiations, including in relation to sitting tenants in the flat, the extension of the lease term to 999 years and a lease of the roof space, of which any apportionment of the price was only one. He submitted that it was the sale contract which was determinative of the terms agreed.
46. Mr Gibbs-Ripley submitted that it is the sale contract which reflects the agreement between the parties, and that this contradicts Ms Okpe’s submission that the price paid for the freehold was £10,000. Ms Okpe is relying on the e mails from the estate agents, there is no correspondence from the solicitors to confirm her apportionment. Ms Okpe was legally represented and he would expect her to have been advised on the effect of signing a contract without an apportionment and executing a TR1 in which the stated consideration for one third share of the freehold was £1.
47. The Tribunal appreciates that Ms Okpe genuinely believes that £10,000 was being apportioned to the value of the one third in the freehold that she was receiving. However this is not what either the sale contract or the TR1 says. The sale contract refers to £430,000 with no apportionment of that sum between the interests that she was acquiring, and the TR1 refers to a consideration of £1 for 33% share of the beneficial interest in the freehold.
48. Section 2(1) of Law of Property Act (Miscellaneous Provisions) Act 1989 provides that,

‘(1) A contract for the sale or other disposition of an interest in land can only be made in writing and only by incorporating all the terms which the parties have expressly agreed in one document or, where contracts are exchanged, in each.’

49. The underlining is that of the Tribunal. The Tribunal must look to the terms of the sale contract, which does not apportion the price between the leasehold and freehold interests. The Tribunal cannot take into account negotiations with Ms Martinho's estate agent which are not included in the sale contract.
50. Section 12B (2) of the 1987 Act requires the Tribunal to look at the estate or interest that was the subject-matter of the original disposal, and on the terms on which it was made (including those relating to the consideration payable).
51. The TR1 apportioned £1 to the 33% share of the freehold interest that was transferred to Ms Okpe.
52. The Tribunal therefore determines that the consideration paid by the First Respondent in respect of the relevant disposal to her of 33% of the freehold of the Property was £1.
53. Paragraph 4.2 of the Notice related to whether Ms Okpe should be a party to the Disposal.
54. The circumstances of this application are unusual. On the evidence before it the Tribunal finds that Ms Martinho's intention, evidenced by her witness statement and that she is willing to execute a transfer of the freehold to the Applicants and Ms Okpe jointly as tenants in common in equal shares, confirms the intention is for Ms Okpe to remain a transferee although she is not named as a Nominated Person in the Section 12B notice. The draft TR1 in the bundle also contemplates that Ms Okpe should join in the TR1 as a transferor.
55. In his witness statement of 9 August 2023 Mr Esen of Brightstone Law accepted that the TR1 would need to be signed by the First Respondent, Ms Okpe.
56. The Tribunal therefore determines that paragraph 4.2 of the notice should reflect that Ms Okpe should be named as both a transferor and transferee in the TR1.

Rule 13 Costs Applications

57. Both the Applicants and the Second Respondent have applied for Rule 13 costs against the First Respondent.

The Tribunal's determination

58. The Tribunal makes no order for costs under rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

59. **Reasons for the Tribunal's determination**

60. The Applicants and the Second Respondent sought costs against the First Respondent on the basis that the First Respondent had acted unreasonably in the proceedings, in arguing that the correct value of the transfer to her of one third of the share of the freehold should be £10,000, in claiming costs in connection with her execution of the TR1 and in not executing the TR1.

61. The majority of the matters raised by the Applicants and the Second Respondent go to matters that are outside the jurisdiction of the Tribunal. They are matters for the County Court, as will be the costs in connection with such matters.

62. The Tribunal may only consider awarding costs under Rule 13 of the Rules in relation to the matters in respect of which it has jurisdiction, in this case limited to the matters specified in the notice.

63. The tests to be considered by the tribunal when considering whether a costs order should be made under Rule 13 are set out in the Upper Tribunal decision in *Willow Court Management Company (1985) Ltd v Mrs Ratna Alexander* [2016] UKUT (LC) (**'Willow'**), at Paragraphs 27 and 28 which are set are below.

'27. When considering the rule 13(1)(b) power attention should first focus on the permissive and conditional language in which it is framed: "the Tribunal may make an order in respect of costs only ... if a person has acted unreasonably...." We make two obvious points: first, that unreasonable conduct is an essential pre-condition of the power to order costs under the rule; secondly, once the existence of the power has been established its exercise is a matter for the discretion of the tribunal. With these points in mind we suggest that a systematic or sequential approach to applications made under the rule should be adopted.

28 At the first stage the question is whether a person has acted unreasonably. A decision that the conduct of a party has been unreasonable does not involve an exercise of discretion but rather the application of an objective standard of conduct to the facts of the case. If there is no reasonable explanation for the conduct complained of, the behaviour will properly be adjudged to be unreasonable, and the threshold for the making of an order will have been crossed. A

discretionary power is then engaged and the decision maker moves to a second stage of the inquiry. At that second stage it is essential for the tribunal to consider whether, in the light of the unreasonable conduct it has found to have been demonstrated, it ought to make an order for costs or not; it is only if it decides that it should make an order that a third stage is reached when the question is what the terms of that order should be.'

64. On the facts of this case the Tribunal does not consider that the behaviour of the First Respondent meets the test for unreasonableness required by the first stage of the test set out in *Willow*. On the evidence before it the Tribunal finds that there was a reasonable explanation for the conduct complained of. The First Respondent believed, mistakenly, that the transfer of one third of the freehold to her was at a consideration of £10,000. That the First Respondent persisted in her belief might amount to unreasonable behaviour had the First Respondent been legally represented but the Tribunal finds that in the circumstances of her being unrepresented it did not.
65. In the event that the First Respondent's belief had amounted to unreasonable behaviour the Tribunal, turning to the second stage of the test in *Willow*, in the exercise of its discretionary power, would have found that it ought not to make an order for costs in the circumstances of this case.

As stated in *Willow* at paragraph 62,

'Although in some cases, the fact that a party has been unsuccessful before the Tribunal in a substantive hearing might reinforce a view that there has been unreasonable behaviour, that failure cannot be determinative on its own. The residential property division of the First-tier Tribunal is a costs shifting jurisdiction by exception only and parties must usually expect to bear their own costs....'

66. The Tribunal therefore makes no order for Rule 13 costs.

Fees

The Tribunal's determination

67. The Tribunal determines that the Second Respondent shall pay the Applicants £300 in reimbursement of the Tribunal fees paid by the Applicants

Reason for the Tribunal's determination

68. The application was only necessary because the Second Respondent failed to comply with first refusal requirements of the 1987 Act.

Name: Judge Pittaway

Date: 13 December 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 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).