FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**MAN/00BY/OAO/2024/0001**
Property	:	**Queensland Place, 2 Chatham Place, Liverpool, L7 3AA**
Applicants	:	**(1)SWIFT 937 LIMITED** **(2)MARK HOWARD MADDOCK** **(3)PETER JOHN DRUMMOND MICHAEL** **(4)GREIG DAVID MORRISH**
Respondent	:	**SCHLOSS ROXBURGHE HOLDINGS LTD**
Type of Application	:	**S13 Landlord & Tenant Act 1987**
Tribunal Members	:	**Mr John Murray LLB** **Mr Hefin Lewis FRICS**
Date of Decision	:	**11 February 2025**

ORDER

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ORDER

The Tribunal orders that:

1.1. The transfer of the freehold of the property at Queensland Place, 2 Chatham Place, Liverpool, Merseyside L7 3AA (registered at HM Land Registry under title number MS447299 "**the Freehold**") by 1Dom Limited ("**1Dom**") to the Respondent on 16 December 2021 was a 'relevant disposal' for the purposes of section 11 of the LTA 1987.

1.2. The Respondent do pay costs of £15,594.80 pursuant to Rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

THE APPLICATION

1. The Applicants applied under section 13(1)(a) of the Landlord and Tenant Act 1987 (the "Act") for the determination of a question arising in relation to matters specified in a notice dated 31 October 2023 under section 12B of the Act (the "Section 12B Notice"). The Section 12B Notice relates to the property known as Queensland Place, 2 Chatham Place, Liverpool, L7 3AA (the "Property").

2. At a hearing on the 7 January 2025 following very late submission of evidence the Tribunal ordered that the application, including the Respondent's application to strike out be adjourned to the first available date after 3 February, and that:

    a. The Applicant do have permission to file and serve witness evidence in response to the witness evidence of Katie Edwards by no later than 4pm on Tuesday 21st January 2025

    b. The parties are invited to submit skeleton arguments and submissions by no later than 4pm on Tuesday 28th January 2025 in relation to the following points which are hereby recorded as the only live points for determination by the Tribunal before making a decision in this application:

        i. Whether the Applicant had the requisite majority of qualifying tenants for the purposes of the application.

        ii. Whether the Respondent was an associated company with 1Dom

        iii. Whether the Tribunal should make an order for costs against the Respondent in light of their conduct.

BACKGROUND

3. The property at Queensland Place, 2 Chatham Place, Liverpool, Merseyside L7 3AA ("**the Property**"), is described a 5-storey residential block of student accommodation.

4. It comprises numerous units (self-contained studios and clusters of bedsit style accommodation with a bedroom and ensuite bathrooms) which are held under various 250-year leases (the "**Leases**"). There are 399 Leases.

5. The registered proprietor of the Freehold in 2016, 2017, and 2018, when the Leases were granted, through to early 2019, was Queensland Place Limited; Queensland Place Limited transferred the Freehold to its parent company, 1Dom on 7 January 2019. The price stated to have been paid on that date was £598,500.

6. 1Dom subsequently, on 16 December 2021, transferred the Freehold to the Respondent, a company registered in the Isle of Man. Its registered name at the time of the Transfer was Collateral Investments Limited; it has since changed its registered name to Schloss Roxburghe Holdings Ltd.

THE APPLICANT'S STATEMENT OF CASE

7. The Applicant filed a statement of case signed by Mr. Greig Morrish dated 18 October 2024.

8. The statement confirmed the background to the transfers of the Property.

9. The statement stated that 1Dom Limited could not be an associated company of the Respondent; According to records published by Companies House, the sole or majority shareholder of 1Dom had been, at all times since 28 February 2017 to the date of this statement of case, an individual named Mr Elliot Philip Lawless. If the Respondent asserts that it was the sole shareholder of 1Dom on 16 December 2021 or at any time, it was required to prove the same.

10. The Applicant also filed a statement by Mr. Greig David Morrish one of the Applicants who set out his analysis of the administration of 1Dom's predecessor in title and of public records at Companies House. Elliot Lawless, by his statement of truth dated 19 April 2024 confirmed that the Respondent (referred to by its former name of Collateral Investments Limited) is a creditor of 1Dom in the amount of £2.8m and that he was the sole shareholder of 1Dom, holding 101 ordinary shares . There was no reference to the Respondent being a shareholder of 1Dom. The number of shares (101) mentioned in the sworn statement of affairs is exactly consistent with the shareholding Elliot Lawless had in 1Dom as at 27 February 2019 (as referred to in 1Dom's annual confirmation statement filed at Companies House, a copy of which was produced in evidence.

THE RESPONDENT'S STATEMENT OF CASE

11. The Respondent's first statement of case was submitted on the 22nd November 2024 with a statement from their solicitor. The statement was ostensibly in support of a strike out application.

12. The Respondent confirmed that the Respondent acquired the freehold title to the Property on 16 December 2021, and it was registered at HM Land Registry under title number MS447299 on 2 February 2022.

13. The Respondent asserted that whilst they had received the section 12B notice dated 31 October 2023, they were not served with notice under Section 11A of the Act. They averred the Tribunal's jurisdiction was invoked by a notice under section 12B of the Act having been served, and the section 12B notice could be valid only if a section 11A notice had been served upon the Respondent within six months prior to the service of the section 12B notice. The Respondent denied receipt of the section 11A notice.

14. Additionally and in the alternative, if the Tribunal found against the Respondent's position on service of the Section 11A notice, then the Applicant had failed to serve notice within six months of service of the section 11A notice.

15. This statement of case had made no reference to the issue of Associated Companies or the definition of dwellings as a barrier to the application which had been the subject of correspondence.

THE APPLICANT'S REPLY

16. In accordance with the directions, the Applicant submitted their reply on the 6th December 2024 supported by a witness statement from their solicitor Mr. Iain George Macfarlane of the same date. This went into detail as to the issues contested by the Respondent, of service of the S11A Notice and the limitation points made about service of the S12B Notice.

THE RESPONDENT'S FURTHER STATEMENT OF CASE

17. Not in accordance with the directions, the Respondent submitted a further statement of case on the 2nd January 2025. They stated that having seen evidence of service of the section 11A Notice in the Applicant's Reply dated 6 December 2024, they accepted that Notice had been served. However, they maintained that the Tribunal continued to lack the necessary jurisdiction.

18. They went on to state that the Section 11A Notice was sent on behalf of 103 alleged qualifying tenants. The Respondent confirmed that the persons listed on the Section 11A Notice were not qualifying tenants. Section 11A(1) states: "The requisite majority of qualifying tenants of the constituent flats may serve a notice

on the purchaser". There were 399 units at the Property. They stated that only nine named persons who were part of the schedule to the Section 11A notice could be considered to be qualifying tenants and therefore the notice remained invalid.

19. The Section 12B Notice had a different schedule of persons – less people, and some additional leaseholders who had not formed part of the Section 11A Notice. The Respondent considered that the Act was not intended to have a Section 12B Notice served by vastly different parties to a Section 11A Notice. The Section 12B Notice had been sent on behalf of different leaseholders in respect of "different flats".

20. The service of the Section 12B Notice was contingent upon complying with Section 12B(3): "Any such notice must be served before the end of the period of six months beginning…"

THE RESPONDENT'S ADDITIONAL WITNESS EVIDENCE

21. Again, not in accordance with the directions of the Tribunal, the Respondent filed yet a further witness statement by their solicitor at 7.02pm on the 6th January 2025. This witness statement introduced a totally new argument – that owing to the accommodation types, the Applicant did not have the requisite majority of qualifying tenants. This late evidence/submission resulted in the hearing being adjourned and directions made for the parties to address the new issues introduced.

THE APPLICANT'S SKELETON ARGUMENT FOR THIS HEARING

22. The Applicant filed a skeleton argument dated 29th January 2025:

23. The skeleton argument addressed the three issues the Tribunal identified as remaining live in the proceedings for determination at the hearing, under three headings.

    a. Whether the Applicant had the requisite majority of qualifying tenants for the purposes of the application ("**the Majority Issue**");

    b. Whether the Respondent was an associated company with 1Dom ("**the Association Issue**"); and

    c. Whether the Tribunal should make an order for costs against the Respondent in light of their conduct ("**the Costs Issue**").

24. The Applicant acknowledged (and had conceded at the hearing on the 7th January) that the original s11A Notice was not valid, as it was not sent by a requisite majority of qualifying tenants (as required by s11A(1)). The Applicants

had understood from the service of the s166 Demands by the Respondent in July 2022 that the leases of separate cluster rooms were treated by the Respondent as flats for the purposes of the Landlord and Tenant Act 1987.

25. On 7 June 2023, JB Leitch wrote to Temple Bright on behalf of the Respondent. The letter was said to be "*further to your correspondence received*", and expressly observed that "*We note that you have served Notice under section 11A Landlord and Tenant Act 1987…*". By that letter, JB Leitch denied that the Transfer was a 'relevant disposal' on the basis that it was an "*intra group transfer*" and therefore an excepted disposal pursuant to section 4(2)(l) of the LTA 1987.

26. On 15 June 2023, Temple Bright (on behalf of the relevant leaseholders) replied, identifying, *inter alia*, the deficiencies in the Respondent's interpretation and rejecting the assertion that the Transfer satisfied the requirements of section 4(2)(l) of the LTA 1987.

27. No further response was received from the Respondent.

28. On 31 October 2023, Temple Bright (on behalf of a different composition of leaseholders) sent a notice pursuant to section 12B of the LTA 1987 to the Respondent and to its solicitors, nominating the Applicants as the purchasers.

29. On 27 November 2023, JB Leitch (on behalf of the Respondent) responded, denying that the Transfer was a relevant disposal for the purposes of the LTA 1987. No further reasons were given for that assertion, although the letter also asserted for the first time that no notice had been sent to the Respondent under section 11A of the LTA 1987.

REQUISITE MAJORITY

30. The Applicant submitted that the evidence showed that a requisite majority of the qualifying tenants did participate in the s12B Notice, and that the Respondent was not an associated company of 1Dom on 16 December 2021 for the purposes of the LTA 1987. Further, a costs order should be made against the Respondent in view of its conduct in the proceedings.

THE RESPONDENT'S SKELETON ARGUMENT FOR THIS HEARING

31. The Respondent filed their skeleton argument dated 29th January 2025 which set out the following:

32. The Respondent maintained the procedure under the 1987 Act had not been triggered as the Respondent has been an associated company of 1Dom Limited for the purposes of section 4(1)(b) and 4(2)(l) 1987 Act.

33. Notwithstanding the Respondent's aforementioned position, and for the reasons set out in the Respondent's Further Statement of Case dated 2 January 2025 (Respondent's Further Statement of Case") and the witness statement of Katie Edwards dated 06 January 2025 (Miss Edward's witness statement") the Respondent contends that the Section 11A and Section 12B notices were invalid in that the Applicants had failed to show 'the requisite majority of qualifying tenants of the constituent flats' have exercised their rights under the 1987 Act.

34. The Applicants served a section 12B Notice on or around 31 October 2023. The Respondent accepted it had received the section 12B Notice.

REQUSITE MAJORITY

35. The Respondent asserted that the Applicant had not satisfied the requirements of the Act to have the necessary requisite majority of qualifying tenants. They maintained that in this instance, the relevant date for determining the 'available votes' in respect of the section 11A Notice *and* the section 12B Notice is the date of service of the section 11A Notice (section 18A(2)(b) 1987 Act) i.e. 23 January 2023.

36. Miss Edwards in her statement had described there being four types of leases held by the leaseholders at the Building, which did not appear to be disputed by the Applicants; those being:

37. Type 1 Lease: A lease of an ensuite room that is fully furnished with study desk and chair, three quarter bed, large wardrobe and ensuite that has a right to use specific communal kitchen and dining facilities and communal hallway that are not demised but within the cluster unit.

38. Type 1A Leases: Type 1 Leases all in the same cluster unit and all owned by the same person.

39. Type 2 Lease: A lease of a cluster unit.

40. Type 3 Lease: A lease of a studio room that contains an additional living area and a small kitchen area, including hob, microwave, sink and fridge, but is not part of a cluster unit.

41. Both parties accepted the units demised by way of a type 1 lease cannot be considered a 'flat' for the purposes of section 60(1) 1987 Act.

42. The Applicants asserted only type 3 leases could constitute a flat for the purposes of the 1987 Act (paragraph 28 of Mr Morrish's second witness statement). The Applicants disputed type 2 leases and type 1A leases constitute a flat in essence citing the case of ***Q Studios (Stoke) RTM Co Ltd v Premier Grounds Rents No.6 Ltd and another [2020] ALL ER (D) 25 (Jul)*** ("Q Studios").

43. Q Studios made it clear that the test regarding whether a separate set of premises is constructed or adapted for use as a dwelling, and therefore a flat is '…an objective test' and consider the physical characteristics.

44. Dwellings are given a wider interpretation, and it has been held that premises may be a dwelling or used for the purposes of a dwelling even though they lack cooking facilities (***Uratemp Ventures v Collins [2001] UKHL 43***).

45. The Respondent accepted a type 3 lease should be included in the calculation. However, whilst initially accepting there were 25 studios the Applicant disputed all were held by a 'qualifying tenant' for the purposes of the 1987 Act and assert only 22 type 3 leases are held by a 'qualifying tenant' relying upon section 3(2) of the 1987 Act in respect of the 3 studios held by Marek and Bozena Lewandowski.

46. It was accepted Marek and Bozena Lewandowski cannot be a 'qualifying tenant'.

47. It is noted that the Applicants in the RTM application maintained there were 26 studios, not 25. The Respondent asserted that there were 26 studios which was stated in paragraph 6 of the Applicants' skeleton provided for the RTM application. The Applicant provided in (late evidence) the title register for the missing studio, on the transfer document attached to Miss Edward's witness statement, that being studio 9 (352). A copy of the lease was provided.

48. Accordingly, when determining the applicable 'qualifying tenant' with regards type 3 leases there would be 23.

49. The Respondent accepted there were 14 type 2 leases.

50. The Respondent maintained there were 7 type 1A leases.

51. The Respondent asserts there were 44 'qualifying tenants'.

52. In relation to the section 12B Notice, even if it is accepted, as asserted by the Applicants, the Applicants have 21 'qualifying tenants', it being noted the leasehold owners of Studio 23 (Flat 397) in the Section 12B Notice are no longer the registered proprietors and Niall Maguire Limited would count as one 'qualifying tenant', the Applicants would require 23 'qualifying tenants' as a minimum in the Section 12B Notice and therefore do not meet the 'requisite majority' required.

53. It was noted the Applicants have pleaded in alternative, 'if the Tribunal determine all Type 1A and Type 2 leases constitute flats, the Applicant asserts the total number of 'qualifying tenants" is 41; that being '5 x Type 1A; 14 x Type 2 and 22 x Type 3'. On that basis the Applicant asserted there were 21 'qualifying tenants' in the Section 12B Notice amounting to a 'requisite majority''. It was said this could not be right as the Applicants had not included the 26th studio which they accepted in the RTM application was a studio. Therefore, even on the

Applicants' calculations the total number of 'qualifying tenants' would be 42 and not 41 and therefore the Applicants would need 22 'qualifying tenants' in the section 12B Notice to meet the 'requisite' number.

54. Similarly, if the Applicants are correct and only type 3 leases amount to 'flats', noting the leasehold owners of Studio 23 (Flat 397) in the Section 12B Notice are no longer the registered proprietors and Niall Maguire Limited count as one 'qualifying tenant', the total number of 'qualifying tenants' would be 9 in the Section 12B Notice which falls below the 'requisite' number.

55. In the circumstances the Applicants have not obtained the requisite majority of qualifying tenants to be serve either s11A or s12B notice such that the Tribunal does not have jurisdiction to consider the Application as the section 12B Notice should have been withdrawn in accordance with section 14(2) 1987 Act.

ASSOCIATED COMPANIES

56. The Respondent asserted that the Applicants had failed to provide a positive case or sufficient evidence for the Tribunal to properly consider and determine the Application in their favour. The Respondent reiterated the matters set out in Miss Edwards' witness statement.

57. The Respondent had sought to introduce even later evidence, a matter of days before the hearing, a Stock Transfer form dating from 2019, signed by Mr. Elliott Lawless, as evidence the Respondent was an associated company of 1 Dom.

RULE 13 COSTS

58. The Respondent stated that the Applicant had not set out the basis upon which Rule 13 costs are sought, whether relating to the adjourned hearing or the Application as a whole or provided a cost schedule. The Respondent reserved its position to comment further at the hearing once the Applicants have set out their position in full. They submitted that the Applicants should not be awarded their costs in these circumstances. Miss Edwards explained in the Respondent's Further Statement of Case the reason why the Respondent no longer pursued the non-service of the section 11A Notice which negated the need for the Applicants to set this issue out in detail in their skeleton. It is respectfully submitted that the issue concerning the 'requisite majority' was raised in the Respondent's Further Statement of Case. If the Tribunal believe the Respondent's stance with regards the Application was unfounded it is respectfully submitted that this would not be grounds in itself for a finding of unreasonable conduct. It is respectfully submitted that the issue as to whether the Applicants had a 'requisite majority of qualifying tenants' in the Section 11A and Section 12B Notices is a matter that the Tribunal would need to be satisfied of irrespective of whether it was raised by the Respondent. It is noted that the Applicants accept they did not have the 'requisite majority' in respect of the Section 11A Notice.

59. If a Rule 13 cost order was granted the Respondent submitted the costs should be limited to those wasted costs incurred in connection with adjourned hearing which would be Counsel's fee.

THE HEARING

60. At the hearing the Applicants were represented by Thomas Cockburn of Counsel accompanied by his instructing solicitor Iain McFarlaine. The Respondent was represented by Gary Donaldson of Counsel.

THE STRIKE OUT APPLICATION

61. The Respondent's solicitors were no longer pursuing strike out owing to the s11A(1) notice not having been served ; this was conceded at the hearing on the 7th January.

62. Likewise the Respondent was no longer maintaining their position on limitation under s12(B)(3) of the Act.

63. The strike out application was therefore restricted to the issues that the Tribunal had made the subject of this hearing, that of requisite majority of leaseholders of qualifying flats, and that of Associated Companies.

REQUISITE MAJORITY

64. The Tribunal asked the parties to set out their respective position in relation to the flat numbers, classification and number of participants.

65. Both parties agreed that Type 1 properties were not Flats so they were not relevant to the application.

66. The Applicant asserted that Types 1A and 2 leases were not flats, citing Q Studios (Stoke) RTM Co Ltd v Premier Grounds Rents No.6 Ltd and another [2020] ALL ER (D). The Respondent asserted that Q Studios had not considered flats of these types, and they argued that these were flats, following the objective test; because the lessees had the benefit of specific communal kitchen and dining facilities and communal hallway. The Tribunal would need to determine this point. There were 5 Type 1A flats in the Applicant's submissions; the Respondent asserted 7, but no participants. Both parties agreed there were 14 Type 2 flats. There were 8 participants.

67. Both parties agreed that Type 3 properties were Flats. There was a dispute as to how many flats there were, and how many qualifying leaseholders were included on the notice. The Applicant had stated in evidence that there were 25, which was the Respondent's position. The witness statement of Katie Edwards dated 6th

January had stated 25. The skeleton argument for the Respondent suggested that there were 26, but no other admissible evidence had been provided by the Respondent until a lease was attached to Counsel's skeleton argument (with no accompanying application or explanation to introduce it as late evidence).

68. The Applicant stated they had 13 qualifying leaseholders of the 25. The Respondent asserted there was only 9, as the leasehold owners of Studio 23 (Flat 397) in the Section 12B Notice were no longer the registered proprietors and Niall Maguire Limited counted as one 'qualifying tenant', the Applicants require 23 'qualifying tenants' as a minimum in the Section 12B Notice and therefore would not meet the 'requisite majority' required.

ASSOCIATED COMPANIES

69. The Respondent sought to introduce a stock transfer form, signed by Mr. Lawless in 2019, as evidence that the Respondent was an Associated Company of 1 Dom.

70. Mr. Cockburn pointed out that, aside from the document being produced as an extremely late submission, with no explanation as to why it was not provided earlier it offended the principles in Denton. There was no supporting evidence from Mr. Lawless or anybody else as to its provenance, it was not stamped and consequently inadmissible as evidence to the Tribunal. Until stamp duty was paid, it is not possible to produce a document in evidence by virtue of the Stamp Act 1891

71. Mr. Donaldson candidly stated that he had no instructions as to why it was not provided earlier; the application would stand and fall on the Denton and that the Tribunal should allow it to be in the evidence and then decide on its merits. He said it was not suggested that the transfer happened on the date of the document. Mr. Lawless is not here on trial for his record keeping. The Respondent had had the benefit of two firms of solicitors, and had legal advice; so it was unlikely that the fact would have been overlooked.

72. Mr. Cockburn pointed out that in their two statements of case, the Respondent had not addressed that question at all. The first time any assertion had been made was the evidence of Ms. Edwards which was a hearsay statement of what she said Hill Dickinson the Respondent's other firm of solicitors had apparently told her.

73. There was a chance of very real prejudice – in the absence of evidence in writing – the Applicants would not put any questions to someone to cross examine them. Why was the document not referred to in these proceedings earlier, why was it not stamped as it should be? What was the consideration. Where is the evidence it resulted in the transfer of the shares? Why had Mr. Lawless told the liquidator last year that he was the sole shareholder? The Liquidator appears to be unaware of any contradictory information. There was no evidence of legal ownership having transferred at Companies House.

74. There was vague, hearsay evidence of associated companies; the default in late disclosure was serious and significant, with no attempt to explain it.

75. The Tribunal had already made a decision at the last hearing that the FTT could not expand on what it was to look at. Only the Applicant had asked for an opportunity to reply, and the Respondent should have no benefit from their own delay.

RULE 13 COSTS

76. The Applicant submitted that the Respondent's conduct had been unreasonable, not just that it had been unsuccessful. The application was made on the basis that the Respondent's conduct is below that expected.

77. There had been a "litany of instances of unreasonable conduct". The Respondent had changed its case entirely at the last hearing, abandoning all issues and advancing a totally new argument; the position of service was conceded, limitation was abandoned, a position which had been maintained right up until the point of the hearing.

78. Ms. Ackerley had candidly accepted there was no good reason for the delay with the Respondent's late submissions and evidence, which had necessitated an adjournment. It was appropriate for a costs order for the costs thrown away by that conduct.

79. It was relevant to consider the extent of the default. The evidence was filed literally the on the morning of the hearing. The effect of the concessions was to negate the need for the extensive skeleton argument and there was a cost to that.

80. The Applicant maintained that there should be an order for all costs between the statement of case until the hearing itself on an indemnity basis. This was analogous to the decision in Lea and Others v GP Infracombe Management Co Ltd [2024] EWCA Civ 1241; a hopeless claim and abuse of process, where the Respondent must have known their position to be hopeless.

81. In terms of the unit types, the Respondent was flip flopping from their previous position. Even now, the Respondent was seeking to go behind what was expressly acknowledged in witness statement.

82. In relation to Associated companies, the Respondent was clearly best placed to give evidence on the relationship. If the Respondent had evidence available, it could have produced this earlier, but instead it had done everything it could to ignore the issue, and has tried to put a document before the Tribunal, and no attempt to put right the issue, and if R not able to evidence this, it has not attempted to get a witness statement from someone it must have been aware from the outset that it could not do so. R could not have held a reasonable belief in its defence.

83. All the costs unnecessarily incurred, and appropriate to make a costs order. The proceedings were necessary due to their conduct. Did not even deal with request for information.

84. Mr. Cockburn pointed out that in the Right to Manage proceedings the Respondent had behaved in a similar fashion, producing late evidence, and changing their position, without explanation.

85. Mr. Donaldson for the Respondent stated that his client needed to ensure that there was entitlement; both parties had faltered on correct constitution for notices as was noted with the concession of the S11 Notice by the Applicant.

86. An application made to adduce the stock transfer form. The application engaged the Denton principles and is engaged on this basis.

87. The Respondent's conduct in other sets of proceedings was not relevant, only their behaviour in these proceedings. What went on prior to these proceedings is of little relevance. He would amplify what was said by Ms. Ackerley; that costs orders in Tribunal proceedings are rare; indemnity costs orders rarer still.

88. The numbers of units were difficult to calculate and that was apparent in the Applicant's own evidence. The position was fairly argued either way, and did not render argument hopeless, and that in itself meant any costs order was not worthy of an indemnity basis.

89. No costs had been incurred that would not have been incurred. If the Tribunal was against him then costs should be limited to the previous hearing that was adjourned due to the late disclosure. There was not much more than could be said as to the reasons for the delay.

90. Mr. Cockburn responded that there was not just case management failure here, the Respondent's behaviour was obstructive and designed to frustrate. It did nothing to help the Tribunal.

91. The Applicant had filed a costs schedule. In relation not the costs schedule and amount, the Respondent pointed out that the Applicant had claimed an hourly rate for Grade B £375; Liverpool where the property was based would justify an hourly rate for Grade B of £240, which had increased on the 1st January. Most of the work had been carried out before. Then. This was not heavy commercial corporate work, and there was no justification for £375 an hour.

92. He pointed out the difference between the first costs schedule (£15,500) and second costs schedule (£23,347). The second costs schedule was for work completed just over the last month, as opposed to the first, which was for the lifetime of the application.

93. Mr. Cockburn responded that Mr. Morrish's second statement was much more involved and detailed. There had been a lot of work to prepare that. The late evidence had resulted in further work, again. A further skeleton argument was necessary, company law review and research, review leases etc. The Applicant was having to constantly prepare new lines of argument for new objections made.

94. In terms of hourly rates, the Applicants are the nominated purchaser and they are investors. Their lead, Mr. Morrish is based in Surrey. Temple Bright are based in central London. Instructions needed to be taken when further information came through. Counsel's fees are a composite. Also had to deal with costs. No duplication on work of review by solicitors of skeleton arguments.

DETERMINATION

95. The question for the Tribunal to determine was whether the transfer of the freehold of the property at Queensland Place, 2 Chatham Place, Liverpool, Merseyside L7 3AA (registered at HM Land Registry under title number MS447299 "**the Freehold**") by 1Dom Limited ("**1Dom**") to the Respondent on 16 December 2021 was a 'relevant disposal' for the purposes of section 11 of the LTA 1987.

REQUISITE MAJORITY

96. In order to do that, the Tribunal would need to determine whether the Applicant had the requisite majority of qualifying tenants included in the Section 12 B Notice for the purposes of the application; and whether or not the transfer was excluded from the definition of a relevant disposal by section 4(2)(l) of the Act on the basis that the Respondent was an Associated Company of 1 Dom.

97. The Tribunal having considered the evidence provided by the parties determined that Type 1 and 1A units would not qualify as flats for the purposes of the Act. Type 1A are more or less similar to Type 1 leases.

98. The Tribunal determined that Type 2 units be treated as flats; they are more comparable to Type 3 leases. The parties agreed there were 14 Units.

99. Both parties agreed that Type 3 units be treated as flats and the Tribunal agrees with that interpretation. The Tribunal determined on the evidence before it that there were 26 Type 3 Units; because of the Applicant's position in the RTM proceedings, and the statement of Katie Edwards with the evidence of the 26th flat attached. Of these, only 23 were held by qualifying tenants, because the Lewandowskis held three leases so were precluded from being qualifying tenants by s3(2) of the Act.

100. Niall Maguire Limited was said to be the owner of two flats, one type 2 and one type 3. They would still have a vote as a qualifying tenant for each flat, for the qualifying tenant; they had not been double counted.

101. In terms of qualifying tenants, the Tribunal notes that the relevant date for determination is the date of the s12B Notice (31 October 2023) in accordance with section 18A(2)(c) of the Act. There was no evidence before the Tribunal that the owners of Flat 397 were not owners at that date, or indeed that the nominated person had become aware of the same at any time.

102. Consequently the Tribunal determines that for the purposes of the application the flats and qualifying tenants are as follows:

    d. Type 2 Units: 14 with 8 qualifying tenants
    e. Type 3 Units : 23 with 13 qualifying tenants

103. 21 qualifying tenants were included in the section 12B notice, which is 56% of the 37 flats. On this basis, the section 12B notice is valid.

ASSOCIATED COMPANIES

104. The Respondent's skeleton argument on this point stated that the Applicants had failed to provide a positive case or sufficient evidence for the Tribunal to properly consider and determine the Application in their favour. The Respondent reiterates the matters set out in Miss Edwards' witness statement.

105. The Applicant having satisfied the Tribunal that the Notice under s12B was properly served, the burden of proof falls to the Respondent to support their argument that the transaction is exempted because the Respondent and their predecessor are associated companies. If the Respondent asserts this, they must prove it, and inevitably they are best placed to do so.

106. The Tribunal will not admit the Stock Transfer adduced late in evidence purportedly from 2019 with no corroboration behind it Even were it to do so, it would raise more questions than it answers. There is no supporting statement explaining where it has come from, when it was produced, and why it was provided so late. No evidence was offered as to the contradiction between the document and the Liquidation report, or records at Companies House. No explanation could be provided as to why the central figure in this matter, Mr. Elliott Lawless, has taken no active part in these proceedings.

107. Accordingly, the Tribunal determines that the Respondent was not an Associated Company of 1Dom.

108. The Tribunal further determines that the transfer of the freehold of the Property by 1Dom to the Respondent on 16 December 2021 was a 'relevant disposal' for the purposes of section 11 of the LTA 1987.

COSTS

109. By virtue of Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal has power to award costs against a person found to have acted unreasonably in bringing, defending or conducting proceedings .

110. In Willow Court Management Company (1985) Ltd and Others v Alexander and Others [2016] UKUT the Upper Tribunal laid down a three stage test:

(iii) Whether, objectively, the person has acted unreasonably?;

(iii) unreasonable conduct is found, whether, applying it's discretion and taking into account all relevant factors, it is appropriate to make an order for costs or not;

(iii) If the order for costs is to be made, the terms of such order, the form and quantum of the costs aware.

111. The Tribunal found that overall, the conduct of the Defendant was such that the proceedings were delayed, confused and the Applicant put to further expense.

112. The Respondent maintained until the 11th hour their defence that the s11B Notice had not been served; despite having expressly acknowledged receipt through in their solicitors' letter of receiving the Notice under s11 dated 7 June 2023. This argument was hopeless and destined to fail, but they continued to put the Applicant to proof of service. Having said that, the s11B Notice was not relied upon in the end.

113. The Associated Companies defence was made without any direct evidence and was bound to fail.

114. The Respondent withheld evidence/submissions until long after directions had closed with no explanation as to why it had not been provided/put forward previously, both in respect of the unit types, and the stock transfer form. The Applicants were given no useful notice of intention to rely on further documents; there was a very short period between statement of case and witness evidence provided on 6 January 2025. Without proper explanation, it appeared as if the Respondent's game plan in the litigation was to deliberately withhold information, and then release it at the last possible opportunity which had a disruptive effect on the proceedings and put the Applicant to further expense.

115. Countering this, the Tribunal notes that the points the Respondent made in respect of the requisite majority were arguable, and valid to raise. The Applicant was not successful on all points, and indeed reliance upon the Section 11 Notice was subsequently abandoned.

116. The Upper Tribunal in Willow Court noted that unreasonable conduct is a pre-condition of the FTT's power to order the payment of costs by a party.

117. In considering the proper interpretation of Rule 13(1)(b) and particularly the scope of the term "*unreasonable*" the Upper Tribunal indicated that the "*conduct includes conduct which is vexatious, and designed to harass the other side rather than advance the resolution of the case. It is not enough that the conduct leads in the event to an unsuccessful outcome*".

118. Whilst the Upper Tribunal declined to give examples of conduct that might be caught in the basket of unreasonable conduct, it stated the test was what would a reasonable person in the position of the party would have conducted themselves in the manner complained of.

119. The Tribunal finds that the Respondent acted unreasonably by filing late submissions and evidence, and effectively derailing the hearing on the 7th January. That was not the only example of late submissions and evidence on the part of the Respondent. No explanation at all, let alone a reasonable explanation, was put forward for this.

120. The Tribunal determines that an Order for costs should be made, due to the nature, seriousness and effect of the unreasonable conduct. The proceedings were unnecessarily delayed, and hopeless argument pursued.

121. The Tribunal finds that not all of the costs were unreasonably incurred, but the Respondent putting the Applicant to proof of matters unnecessary to raise, delaying, obfuscating the application, attempting to introduce late submissions of evidence even at this adjourned hearing, and changing arguments as to the numbers of qualifying tenants from that contained in Ms. Edward witness statement of 7th January, determines that it is reasonable to make an order on a "broad brush" basis, that the Respondent should pay 40% of the total costs (£38,987) of the Respondent, being the sum of £15,594.80.

J N Murray
Judge

11 February 2025