Leasehold Reform News

Bishop & Sewell LLP

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***Welcome to the first issue of Leasehold Reform News. This is the first of what we hope will be a fairly regular series of updates on the latest developments in the area of Leasehold Reform. Aimed at both clients and professionals we hope you will find it interesting and informative. For further information or legal advice, please feel free to contact a member of the Landlord and Tenant Team at Bishop & Sewell LLP. As always we welcome your feedback and please do let us have any comments or suggestions for future issues.***

## ***Majorstake Limited v Curtis***

***How much of a property does a landlord have to wish to redevelop in order to defeat the tenant's claim to a new lease under Section 47 of the 1993 Act?***

Readers will probably be familiar with the fact that long leasehold flat owners have the right under the Leasehold Reform Housing and Urban Development Act 1993 ('the 1993 Act') to extend their lease by a term of a 90 years on top of the unexpired term of their existing lease subject to having owned the property for a period of two years and subject to their lease being for a term of 21 years or more as originally granted.

The right is subject to the payment of an appropriate premium calculated in accordance with the provisions of the 1993 Act or determined by the Leasehold Valuation Tribunal in default of agreement.

In Central London where there are numerous short lease properties (where leases were originally granted for terms of 40 or 50 years), it is often the case that a flat owner is looking to extend a lease under the 1993 Act where the expiry of the lease term will be within the next 5 years.

One of the only circumstances in which a landlord can refuse to admit what would be an otherwise valid claim to a new lease under the 1993 Act is on 'redevelopment' grounds under section 47 where the lease is in its last five years.

The landlord can only succeed if he can show that he intends to demolish or reconstruct or carry out substantial works of construction on the "*whole or a substantial part of any premises in which the flat is contained*".

This phrase is at the heart of Majorstake Limited v Curtis [2008] UKHL 10.

In *Majorstake* the tenant served a Notice in circumstances where section 47 could apply (i.e. the lease had less than 5 years remaining). The landlord attempted to deny the tenant's claim on redevelopment grounds.

The landlord in this case owned several other flats in the building and proposed a scheme where the flat in question would be united with the flat immediately below.

The landlord sought a declaration that the tenant was not entitled to a new lease. The Central London County Court refused on the basis that the meaning of *"any premises in which the flat is contained"* in Section 47 (2)(b) would have to refer to the entire block in which the flat was contained or at least a substantial part of it.

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The landlords appealed to the Court of Appeal and succeeded. The tenant then appealed to the House of Lords.

The House of Lords held that the question revolved around the meaning, not only of "premises" but also whether the works related to a "substantial" part of the building as a whole.

The House of Lords held that giving the words in section 47 their natural and ordinary meanings, an intelligent layman reading them would conclude that the reference to the "whole or substantial part of any premises" would have to refer to more than simply the flat and one other flat in the building. This might relate to the block as a whole (although not all of the Judges agreed on this point).

The result; a landlord cannot defeat a tenant's claim to a new lease under Section 47 simply by seeking to unite the flat in question with another flat within the building.

Any intended works of redevelopment must relate to a substantial part of the property containing the flat and if not to the whole, at least to a very significant part of the building containing the flat.

***Comment***

In the decision in *Majorstake* the House of Lords have given a "purposive" interpretation of the objective of the 1993 Act by giving effect to its key objective of allowing long leasehold flat owners to protect the inherent value in the asset that is their flat; thus striking a balance between the relative interests of landlords and tenants.

Any new lease granted under the 1993 Act will also contain a "no fault" right for the landlord to redevelop under Section 61.

This will apply if the landlord can demonstrate to a court that it intends to redevelop either at the end of the old lease term or within five years of the expiry of the new lease term. In such a case the tenant receives compensation under schedule 14 of the 1993 Act which would amount to market value for the flat but not more.

The reasoning behind section 61 being to prevent one or more tenants with extended leases holding a proposed development to ransom simply because they have longer terms than the other flats.

Exactly the same wording appears in Section 61 (1) (a) as within section 47 and the logic must be that the test laid down by the House of Lords would be applied here too. For landlords, the message is clear that any proposed redevelopment, whenever it takes place, will have to be extensive in order to defeat the tenant's claim to a new lease.

The decision in *Majorstake* provides welcome clarity for those dealing with Central London (and other) short lease properties where the prospect of redevelopment could be on the event horizon. The decision will perhaps provide a degree of reassurance to the tenant that any proposed redevelopment scheme will have to be substantial in order to lead to the termination of their new lease.

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