

WHEN ARE ALL THE TERMS AGREED UNDER THE LEASEHOLD REFORM HOUSING AND URBAN DEVELOPMENT ACT 1993?

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Section 24(3)

- Where an initial notice has been served by the nominee purchaser on behalf of the tenants section 24(3) provides that where:-
 - “ the reversioner has given the nominee purchaser such a counter-notice... and
 - all of the terms of acquisition have been either agreed between the parties or determined by a leasehold valuation tribunal...
- but a binding contract incorporating those terms has not been entered into by the end of the *appropriate period*... the court may, on the application of either the nominee purchaser or the reversioner, make such order... as it thinks fit.”

What is the Appropriate Period?

- Section 24(6):-
- “the *appropriate period* is—
 - where all of the *terms of acquisition* have been agreed between the parties, the period of **two months** beginning with the date when those terms were finally so agreed
 - where all or any of those terms have been determined by a leasehold valuation tribunal...
 - the period of **two months** beginning with the date when the decision of the tribunal under that subsection becomes final, or
 - such other period as may have been fixed by the tribunal when making its determination”

What are the *Terms of Acquisition*?

- Section 24(8), the terms of acquisition are :-
 - “the interests to be acquired
 - the extent of the property to which those interests relate or the rights to be granted over any property
 - the amounts payable as the purchase price for such interests,
 - the apportionment of conditions or other matters in connection with the severance of any reversionary interest, or
 - the provisions to be contained in any conveyance... ”

NB Section 33 Costs are not included

County Court Application

- Issue proceedings at County Court, you have 4 months in which to serve them unless other party calls for service

NB Failure to serve proceedings - **Deemed Withdrawal**

- Court may order :-
 - Vesting Order in favour of the tenant
 - Vesting order in favour of tenant and tenants to pay landlord's costs, interest on completion monies, compensation for delay
 - Deemed Withdrawal of claim

Goldeagle Properties Limited v Thornbury Court Limited (2008)

- Initial Notice
 - The tenant of a block of flats known as Thornbury Court made a collective enfranchisement claim and served an initial notice on the landlord
- Counter Notice
 - The landlord's served a counter notice which disputed the price in the usual way and attached to the counter notice the proposed form of transfer

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- Application to the Leasehold Valuation Tribunal
 - The landlord made an application to the LVT within the requisite time period, and the application stated that it was applying to the LVT “to determine the amount payable as the purchase price”

Statements of Case

- The Landlord's:-
 - they had not received any response from the tenants on the terms of the transfer attached to the Counter Notice and
 - they were not asking for a determination as to section 33 costs as the terms of the transfer were yet to be agreed
- The tenants:-
 - they would amend and return the draft transfer attached to the counter notice once the terms of acquisition have been determined by the LVT and
 - they agreed with the landlords as to the section 33 costs

When were the terms of acquisition agreed?

- Price
 - The LVT issued their determination on **14 September 2006**, deciding the price but said nothing about the terms of the transfer or the section 33 costs
- Transfer
 - After the LVT hearing the tenants confirmed in writing to the landlord's solicitors that the terms of the transfer were agreed by way of a letter dated **13 November 2006**.

County Court Application

- The tenants made an application to the county court pursuant to section 24 of the 1993 Act on 9 February 2007, 3 months after their letter confirming that the terms of the transfer were agreed
- The county court made a vesting order in favour of the tenants
- The landlords appealed on the basis that the county court application was not made in time. In their view the *terms of acquisition* for the purpose of section 24 were agreed on 14 September 2006 i.e the date of the LVT determination

Landlord's Submissions

- The landlord said that section 24(1) only contemplates 1 application being made to the LVT
- The parties had proceeded on the basis that the terms of the transfer were agreed
- The price could not have been determined unless it was known on what terms the property are to be conveyed. Therefore the terms of the transfer were therefore implicitly agreed when the LVT fixed the price
- If the tenants could make a further application to the LVT to determine the terms of the transfer there could be a “knock-on” effect on the determined price

Held

- There is nothing in section 24(1) which prohibits the LVT from dealing with the disputed points in stages
- There was no application to the LVT to determine the terms of the transfer, it would require a new application to the LVT if the terms could not be agreed
 - “Once an application is made to the LVT within time, the LVT remains seized of all matter in dispute”

Held

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- In principle, the terms of the transfer should be agreed before the price is fixed but in this case neither party suggested that the terms of the transfer would effect the price
- The LVT proceeded, as they were permitted to, on the basis that the premium would not be affected by the terms of the transfer
- The parties had agreed in their statements of case that the terms of the transfer were not agreed
- Agreement could not be implied by conduct

Conclusion

- Before the price is agreed the parties should check whether any of the proposed terms in the transfer/lease will affect the price
- In any application to the LVT the parties should ask the LVT to determine not only the premium but also the transfer/lease terms
- Ensure holding letter sent to landlord's solicitors on receipt of draft transfer
- Send letter confirming when terms of acquisition agreed