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ENFRANCHISEMENT CASE LAW

Natasha Rees looks at recent developments from the Courts

THE ON-GOING PROBLEM OF WHAT CONSTITUTES A HOUSE under the 1967 Act is keeping the courts busy. Practitioners await the Supreme Court's decision in Hosebay v Day; Lexgorge v Howard de Walden this year when it is hoped the Supreme Court will give a definitive ruling.

Although a number of house claims are on hold pending the Hosebay outcome, one recently slipped through. In that case, HHJ Hazel Marshal QC decided a purpose built mansion block containing eight self contained flats and three lock up shops could not reasonably be called a house because a building could not be a block of flats and a house at the same time. The tenants are appealing.

In an appeal, Calladine-Smith v Saveorder Ltd 2011, the Court considered the service of notices under the 1993 Act, which itself is governed by the Interpretation Act 1978. The tenant served notice requesting an extended lease and proposing a premium. Although the landlord's solicitor posted the counter-notice to the tenant it was accepted by the Court it had never been received. The tenant claimed the notice had not been served and asked the Court for an order that the lease be granted at the premium in his notice. On appeal, the Judge decided the Interpretation Act meant that even if the counter-notice had been correctly posted, if the tenant was able to prove it had not arrived, there would be no deemed service. This case suggests it is best to serve a counter-notice by hand. Even a recorded delivery may be returned marked undelivered.

In the Court of Appeal decision of Smith and anor v Jafton Properties the meaning of "qualifying tenant" under the 1993 Act was considered. The facts were complex. Essentially the Court decided that where a head lease of a building is assigned in part to two different tenants, each tenant can be a "qualifying tenant" of their part alone. They do not remain joint tenants and therefore qualifying tenants of both parts together. Consequently, where a tenant owns a lease of a whole building that can be assigned in part it may be possible to enfranchise the building.

Finally, in Hertsmere Borough Council v Caroline Anne Lovat, the Court of Appeal considered country houses and an obscure point under the 1967 Act. If a house is situated in a designated rural area and the freehold and adjoining land is owned by the same landlord the tenancy will be excluded from the right to enfranchise. Here, Mrs Lovat was the leasehold owner of a country house surrounded by a garden and then by Shenley Park. The issue was whether the adjoining land had to adjoin the "house" or the "house and garden". The Court decided it should adjoin the "house and garden" and that Mrs Lovat's tenancy was an "excluded tenancy" so she was unable to enfranchise.

> "HHJ Hazel Marshal QC decided a purpose built mansion block containing eight self contained flats and three lock up shops could not reasonably be called a house because a building could not be a block of flats and a house at the same time"

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