

Headlessees Win the Day

Howard de Walden Estates Limited v Aggio and Others

It has been a busy year for the House of Lords in the enfranchisement world. We have had judgments in the case of Boss Holdings Limited v Grosvenor West End Properties Limited, which considered the issue of what constitutes a house under the Leasehold Reform Act 1967, and Majorstake Limited v Curtis, concerning redevelopment rights of a landlord under the Leasehold Reform Housing and Urban Development Act 1993. Now their Lordships have also considered whether a headlessee can be a qualifying tenant for the purposes of a lease extension claim under the 1993 Act and concluded that it can.

For those unfamiliar with the legislation, the Act gives tenants of long leases (more than 21 years) the right to purchase either their freehold, when acting collectively, or if acting independently an extension of 90 years plus the unexpired term of the existing lease. Since the enactment of the Commonhold and Leasehold Reform Act 2002, claimants have not had to satisfy a residence test but have simply had to own the lease for two years. In consequence, enfranchisement rights were granted to among others headlessee companies.

The cases in question were the conjoined appeals of Howard de Walden Estates Limited v Aggio and Others and Earl Cadogan & Ors v 26 Cadogan Square Limited and concerned two Central London properties – one on the Cadogan Estate and the other on the Howard de Walden Estate. In each case the headlessees of the building were seeking to claim statutory lease extensions of flats that they themselves held under their own headlease – in the Cadogan matter the claim was for a single flat and in the Howard de Walden case, it was of two flats under the same headlease.

In each case the landlord took issue with the headlessee's claim on the basis that the headlessee was not a "qualifying tenant" within the meaning of the Act: Cadogan on the basis that the lease contained property other than the flat in question (common parts); and Howard de Walden because the lease comprised not one, but two separate flats. The landlords lost in the county court: the judge followed the precedent set in the case of Maurice v Hollow-Ware Products Limited (2005) where the headlessee successfully claimed lease extensions of 28 flats within a block of flats on the basis of its headlease interest. However, the landlords managed to reverse the decision in the Court of Appeal. Predictably, the headlessees appealed to the House of Lords.

Lord Neuberger gave the leading judgment. The issue concerned the definition of a "tenant of a flat". The legislation (section 39 of the Act) makes it clear that a tenant who owns two or more flats at the same time still qualifies, whether he is a tenant under a single lease or two or more separate leases.

Section 101(3) of the Act refers to demised premises that “consist of or include the flat” and from that Lord Neuberger concluded that a lessee can be a “tenant of a flat” where the lease includes property other than the flat in question. So, provided that the headlease demises “a flat” the headlessee was entitled to claim a new lease of that flat irrespective of whether the lease also comprised other property within the building such as common parts.

The landlords contended that it could not have been Parliament’s intention that a headlessee should have a right to the lease extensions sought. This was owing to the operational difficulties that would arise in dealing with a lease extension of part only of the existing (headlease) interest and the absence of any mechanism within the Act for dealing with these. The headlessees contended that any such issues arising could be dealt with quite effectively by the Leasehold Valuation Tribunal if the parties were unable to reach agreement on the new lease terms, a view with which Lord Neuberger agreed. The fact that substantial alterations would be required to the existing lease did not preclude claims of this nature from the provisions of the Act.

Several other arguments were put forward by the landlords, in particular that as a matter of public policy it could not have been intended that property investors should benefit from the Act. In considering this, Lord Neuberger referred to the judgment of Baroness Hale in *Majorstake* where it was noted that the Act had been passed to rectify the problem of dwindling lease terms which amounted to a wasting asset. The purpose of the Act therefore was to provide long leaseholders with a mechanism for either purchasing the whole of their property or extending their lease, subject to the payment of an agreed price. Parliament’s removal of the residence test opened up this mechanism to a greater number of claimants and there were therefore no good policy reasons for seeking to exclude property investors from the class of qualifying tenants, including headlessees. Taking all of these factors into account, their Lordships concluded the court of Appeal decision must be overturned.

The decision is something of a triumph for headlessees who are now in a position to pursue lease extension claims of flats comprising part of the headlease interest, irrespective of whether their headlease demises property other than the flats. This is particularly important where the headlease term has dropped below 21 years thereby preventing the headlessee from granting a long underlease that would qualify for a lease extension under the 1993 Act.

In consequence of all this, the erstwhile perception of the headlease as a wasting asset, ultimately reverting to the landlord, has been radically altered. The House of Lords decision has brought welcome clarification to an uncertain area of the law and there has therefore never been a more appropriate time for headlessees to seek lease extensions. The enfranchisement world is anticipating a plethora of claims over the forthcoming months.

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