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ENFRANCHISEMENT WHAT IS A 'HOUSE'?

Anna Favre considers the recent **Hosebay case** and how enfranchisement can be exploited by commercial tenants

HOSEBAY LIMITED v Day (2009) is the latest judicial offering on the thorny issue of what constitutes a house under the Leasehold Reform Act 1967 (the Act), which entitles lessees to acquire freeholds. Until 2002, when the law was amended, enfranchisement was conditional on the claimant satisfying a residence condition. Now, a two year ownership test applies, save in limited cases. Hosebay concerned three buildings on the Day Estate in London. Hosebay acquired the leases to provide short-term accommodation for visitors to London as serviced apartments with catering facilities. Prior to making the claim, Hosebay Ltd granted three underleases to another company. The effect avoided one of the few circumstances when the residence condition still applied. Hosebay then served a freehold

acquisition notice on its landlord. The landlord objected, arguing the property was not a "house" and the underleases were an ineffective sham arrangement. To qualify as a house under the Act, the property must be "designed or adapted for living in" and, if so, amount to "a house reasonably so called". Hosebay argued that the leading cases of *Boss Holdings* and *Prospect* applied; the original design of each building as a house coupled with its permitted use as residential accommodation was determinative. The Day Estate countered that *Boss Holdings* left open whether a building originally designed as a house could lose that quality if converted later. Here, the impermanent nature of the accommodation meant the properties were not adapted for "living in", merely for "staying

in". The Court disagreed and decided the buildings were qualifying houses under the Act. The decision turned on the physical appearance and internal layout of the buildings and not its commercial use. Here, the buildings remained appropriate for living in, despite consisting of several small bedsits. The Court commented that only "exceptional circumstances" would cause buildings not to be "houses reasonably so called". Unlike the property in *Prospect*, here there was no restriction as the permitted use under the leases was for residential accommodation. Also, the Court concluded the business tenancy was not a sham. The grant of the underleases was no doubt artificial and intended to avoid the legislation but was not ineffective. The two companies intended to enter into the

relationship of landlord and tenant and their motivation for doing so was irrelevant. Hosebay was therefore entitled to acquire the freeholds. Hosebay shows an innovative commercial tenant can exploit legislation originally designed to protect long leaseholders facing eviction. The removal of the residence condition has unexpected consequences and attracted into enfranchisement a new genre of claimant - ambitious, commercial organisations intent on pushing the legislative parameters ever further. Whether this was the intention of Parliament remains to be seen.

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