Neutral Citation Number: [2014] EWCA Civ 1078

Case No: B2/2013/2136

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE CENTRAL LONDON COUNTY COURT
MR RECORDER KENT QC
2CL10527

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Wednesday 30th July 2014

Before :

LORD JUSTICE MOORE-BICK
LADY JUSTICE GLOSTER
and
LORD JUSTICE VOS

- -

Between :

(1) REGENT WEALTH LIMITED **(2) SILVER GARDENS INVESTMENT LIMITED** **(3) GARDEN BAY HOLDINGS LIMITED**	**Defendants / Appellants**
- and -	
NIGEL CHARLES WIGGINS	**Claimant / Respondent**

- -

(Transcript of the Handed Down Judgment of
WordWave International Limited
A Merrill Communications Company
165 Fleet Street, London EC4A 2DY
Tel No: 020 7404 1400, Fax No: 020 7831 8838
Official Shorthand Writers to the Court)

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Mr Jonathan Gaunt QC and Mr Anthony Radevsky (instructed by **Pemberton Greenish LLP**) for the **Appellant**
Mr Stephen Jourdan QC and Mr Thomas Jefferies (instructed by **Withers LLP**) for the **Respondent**

Hearing dates: Monday 10th March 2014

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Judgment

Lady Justice Gloster :

Introduction

1. This is an appeal by the defendants to the action, Regent Wealth Limited ("Regent"), Silver Garden Investment Limited ("Silver") and Garden Bay Holdings Limited ("Garden") (collectively "the Companies"), against the order of Mr Recorder Kent QC ("the judge") sitting in the Central London County Court, dated 16 May 2013, whereby he:

    i) ordered that the claimant, Nigel Charles Wiggins ("Mr Wiggins"), be permitted under paragraph 15 of Schedule 3 to the Leasehold Reform, Housing and Urban Development Act 1993 ("the 1993 Act") to amend an initial notice dated 22 December 2010 ("the Initial Notice"), served pursuant to section 13 of the 1993 Act, claiming collective enfranchisement of 45-47 South Street, London W1 so as to specify as liable to acquisition the additional leasehold interests identified at paragraph 6.10, 6.11 and 6.12 of the draft notice attached to the Claim Form ("the New Leases"); and

    ii) dismissed the Companies' counterclaim seeking a declaration that the Companies as lessees under the New Leases took free from the Initial Notice and the claim made thereby.

    The appeal is brought with the permission of the judge.

2. Save where otherwise mentioned, references to section numbers are references to sections of the 1993 Act.

Background

3. 45-47 South Street, London W1 is a building in Mayfair divided into seven flats (as lettered A to G in the Initial Notice) and a caretaker's flat. The building was originally part of the Grosvenor Estate. For the purposes of this judgment the following is a sufficient (albeit not complete) summary of the chronology and structure of the various leasehold interests.

4. On 1 February 1934, the then freeholders granted a lease of the building for a term of 90 years from 29 September 1933, expiring on 29 September 2023 ("the Management Lease").

5. Each of the flats A-G was the subject of an occupational underlease, granted on various dates between 1962 and 1993, which gave the subtenant the right to immediate possession of the relevant flat for a term expiring on 19 (or in the case of the fifth floor flat, 25) September 2023 (collectively "the Occupational Underleases"). One of them, flat B, was subsequently the subject of the grant of a new lease under Part II of Chapter I of the 1993 Act and that lease therefore expires in 2113.

6. Mr Wiggins, and companies under his control, own the Occupational Underleases of flats A, B, C and D, which comprise the basement, ground, first and second floor flats. The Occupational Underleases of flats E, F and G, which comprise the third and

part fourth, part fourth and fifth floor flats, are owned by Dr John Van Praag, his wife, Laiping Van Praag and their son, Alexander Van Praag, as their London homes.

7. On 26 February 1999, the then freeholder, Grosvenor (Mayfair) Estate granted a lease to Grosvenor West End Properties Limited in reversion on the Management Lease for a term expiring on 24 March 2184.

8. In 2001, 2002 and 2005, Grosvenor West End Properties granted overriding leases (collectively "the Overriding Leases") for terms expiring on 25 September 2122 in respect of each of the flats other than flat B (which had been the subject of the grant of a new lease as set out above), either to the tenant under the relevant Occupational Underlease, or to a company under the control of that tenant. They are as follows:

Flat	**Date**	**Lessee**	**Number***
Front basement	23 August 2001	Farm Street Investments Limited (a company connected with Mr Wiggins)	6.4
First floor	14 November 2002	Langbourn Properties (47 SS) Limited (a company connected with Mr Wiggins)	6.5
Second floor	23 August 2001	Mr Wiggins	6.6
Third floor	31 January 2005	Regent	6.7
Fourth floor	31 January 2005	Silver	6.8
Fifth floor	31 January 2005	Garden	6.9

*As referred to in the Initial Notice.

9. Each of the Companies, namely Regent, Silver and Garden, are Van Praag companies incorporated in the British Virgin Islands and owned and controlled by corporate directors which are, in turn, controlled by trusts in respect of which the Van Praag family, resident in Hong Kong, are the ultimate beneficiaries. The Overriding Leases held by the Companies, numbers 6.7, 6.8 and 6.9, were referred to in argument as "the Old Leases" and I shall likewise so refer to them.

10. It appeared to be common ground that in 2000 and 2004 Mr Wiggins and Dr Van Praag discussed the possibility of a collective claim for leasehold enfranchisement. However no collective claim proceeded at that stage.

11. On 22 August 2001, the day before the first of the Overriding Leases was granted, a lease was granted by Grosvenor West End Properties to another Grosvenor Estate company, Mayfair Leasehold Properties Limited, in reversion on the Management Lease. The purpose of this was to enable the Grosvenor Estate to enforce the covenants in the Management Lease, despite the grant of the overriding leases. In argument this lease was referred to as "the Enforcer Lease".

The service of the Initial Notice

12. On 22 December 2010, Farm Street Investments Limited, Langbourn Properties (47 SS) Limited and Mr Wiggins, as participating qualifying tenants for the purposes of section 13 (collectively "the participating tenants"), served the Initial Notice on the freeholder the Grosvenor (Mayfair) Estate and all other interested parties, including, pursuant to paragraph 12 of Part II of Schedule 3 to the 1993 Act, the Companies as "relevant landlords" of the Old Leases as defined in section 9(2)(b) of the 1993 Act.

The Initial Notice identified the interests intended to be acquired by Mr Wiggins as nominee purchaser for the participating tenants as:

i) the freehold of 45-47 South Street, London W1;

ii) rights over adjacent property;

iii) at paragraph 6.2, the Management Lease dated 26 February 1999;

iv) at paragraphs 6.1 and 6.3, two intermediate Grosvenor Estate leases including the Enforcer Lease;

v) at paragraphs 6.4 to 6.6, the Overriding Leases granted to Mr Wiggins and his companies referred to in the table in paragraph 8 above;

vi) at paragraphs 6.7 to 6.9 the Old Leases granted to Regent, Silver and Garden referred to in the table in paragraph 8 above.

13. In other words, Mr Wiggins, on behalf of the participating tenants, was seeking to acquire all the interests referred to above other than the Occupational Underleases.

Events following the Initial Notice

14. The Initial Notice could have been registered against the titles of the Companies as landlords of the Old Leases pursuant to section 97(1). Such a notice is registrable under the Land Registration Act 2002 as if it were an estate contract. If the Initial Notice had been registered, section 19 of the 1993 Act would have come into play. That would have restricted the ability of the Companies to grant out of their interests in the Old Leases any lease which, if it had been granted before the date on which the Initial Notice had been given, would have been liable on that date to acquisition by virtue of section 2(1)(a) or (b): see section 19(1)(b). Such registration would also have rendered void any transaction which purported to grant any such lease, which, had it been granted "before the relevant date", i.e. the date of service of the Initial Notice, would have been liable on that date to acquisition under section 2. However the Initial Notice was not registered pursuant to section 97(1). I shall have to consider in due course the effect of this omission.

15. A counter notice was served by Boodle Hatfield, solicitors, on behalf of Grosvenor (Mayfair) Estate as freehold reversioner on 5 March 2011. It admitted that the participating tenants were entitled to exercise the right of collective enfranchisement.

16. On 7 April 2011 each of the Companies, as landlords under each of the Old Leases, with the licence of Grosvenor West End Properties as relevant head lessor, granted further long underleases in respect of the three flats, E, F and G respectively, to one of the other Companies for terms expiring on 15 September 2122 ("the New Leases"). The New Leases were registered at H.M. Land Registry on 8 April 2011. They are in the same terms as each other, and broadly follow the form of the Old Leases. Since the Initial Notice had not been registered and section 19 of the 1993 Act therefore did not apply, it was common ground that the New Leases were valid. The Register shows each of the titles free from any notice protecting the Initial Notice.

17. Mr Wiggins was not informed of the grant of the New Leases at this stage.

18. On 2 June 2011, Pemberton Greenish, the Companies' solicitors ("Pembertons"), served notices on behalf of the Companies, in their capacity as other relevant landlords (i.e. as holders of the Old Leases) under paragraph 7 of Schedule 1 to the 1993 Act to the effect that they intended to deal directly with Mr Wiggins in connection with negotiating and agreeing the terms of acquisition and intended to be separately represented in any legal proceedings in which their title to any property came into question, or in relation to the terms of acquisition so far as relating to the acquisition of any interest of theirs.

19. Mr Wiggins, as nominee purchaser, applied to the Leasehold valuation Tribunal ("the LVT") on 7 September 2011 to determine the terms of acquisition.

20. On 14 September 2011, Mr Wiggins' solicitors, Withers, received a letter from Pembertons informing them that, on 7 April 2011, the Companies had granted the New Leases. Pembertons claimed that the New Leases were not liable to acquisition, and that, if Mr Wiggins proceeded with the enfranchisement, he would be required to acquire the Old Leases subject to the New Leases, but to pay a price which disregarded the existence of the New Leases. It was their case that Mr Wiggins should pay nearly £7m for the Old Leases which now only give the right to possession for 10 days in 2122.

21. Withers replied on 4 October 2011 seeking copies of the New Leases, together with evidence of the consideration paid, landlord's consent, and any resolutions authorising the disposals. The letter set out Mr Wiggins's response to Pembertons' contentions, and asked the Companies to agree an amendment to the Initial Notice to include the New Leases. Pembertons replied by letter dated 7 October 2011 refusing to provide any of the documents requested, and refusing to agree an amendment to the Initial Notice. Mr Wiggins subsequently obtained copies of the New Leases from HM Land Registry.

The issue of the current proceedings

22. On 5 April 2012 Mr Wiggins issued the present proceedings in the Central London County Court seeking an order under paragraph 15(2) of Schedule 3 to the 1993 Act for permission to amend the Initial Notice to claim to acquire the New Leases (which had not existed at the date of the Initial Notice).

The LVT hearing

23. The LVT had fixed a hearing starting on 21 May 2012 to determine all matters in dispute. However, following a hearing on 16 May 2012, the LVT directed that the hearing should be limited to considering certain legal issues. The hearing took place on 21 May 2012.

The acquisition of the Grosvenor interests

24. After the LVT hearing, by a transfer made on 26 June 2012, Mr Wiggins completed the acquisition of the Grosvenor interests, i.e. the freehold, the Grosvenor lease referred to in paragraph 7 above and the Enforcer Lease.

25. On 9 July 2012, Mr Wiggins' company, Langbourn Properties (FH4547SS) Limited, was registered as proprietor of the freehold. That company is now the reversioner. On the same date, Mr Wiggins was registered as proprietor of the Grosvenor lease referred to in paragraph 7 above and the Enforcer Lease.

The LVT's decision

26. On 9 July 2012, the LVT issued its determination. It held that it did not have jurisdiction to decide the effect of non-registration under the Land Registration Act 2002, which would have to be determined by the Court: see paragraph 18 of its judgment. The LVT did, however, determine the basis on which the premium should be determined. It accepted Mr Wiggins' submissions that the assumption had to be made that the purchaser acquired the freehold subject to all inferior leases, whether granted before or after the date of the Initial Notice: see paragraphs 35 to 36 of its judgment. Accordingly the Old Leases had to be valued subject to the New Leases. On that basis, the former had no value.

27. The parties were granted permission to appeal against both decisions to the Upper Tribunal. Both parties served statements of case. In his appeal, Mr Wiggins contended that the LVT did have jurisdiction to order the acquisition of the New Leases, even if the Initial Notice had not been amended. In their appeal, the Companies contended that the Old Leases should be valued without regard to the grant of the New Leases.

The hearing of this claim in the County Court

28. This claim was heard on 15 and 16 May 2013. At the conclusion of the oral argument, on the morning of the second day of the hearing, 16 May 2013, the judge adjourned the hearing for a few hours, and then returned to court to deliver his judgment *ex tempore*. He held that as a matter of statutory construction of the 1993 Act he had power to permit the Initial Notice to be amended to include the New Leases, notwithstanding that they were not in existence at the relevant date; he went on to exercise his discretion to allow Mr Wiggins' claim to amend the Initial Notice to include the New Leases, on terms as to acquisition that: (i) the valuation date for the purposes of determining the price payable for the New Leases should be 31 December 2011, and (ii) that the Companies be permitted to respond to the amended notice by giving an amended counter notice complying with section 21(3) of the Act in relation to the New Leases, to be served within 2 months after his order became final. As I have already said, he also dismissed the Companies' counterclaim seeking a declaration that as lessees under the New Leases they took free from the Initial Notice and the claim made thereby.

The withdrawal of the appeals to the Upper Tribunal

29. Since the date of the judgment under appeal, both parties have withdrawn their appeals to the Upper Tribunal. Accordingly the LVT's decision that the Old Leases have to be valued subject to the New Leases and that, without amendment of the Initial Notice, the LVT did not have jurisdiction to order the acquisition of the New Leases, is now binding and conclusive as between the parties to this appeal.

The issues which arise on this appeal

30. The issues which arise on this appeal, and which are necessarily interrelated, can be summarised as follows:

    i) whether the judge had power or jurisdiction under paragraph 15 of Schedule 3 to the 1993 Act to allow the Initial Notice to be amended to claim the acquisition of leases (i.e. the New Leases) which were not in existence at the relevant date as defined in section 1(8), namely 22 December 2010, the date when the Initial Notice was served;

    ii) whether, upon the true construction of Chapter 1, Paragraph 15 of Schedule 3 and Schedule 6 as a whole, participating tenants in a collective enfranchisement claim are only entitled to claim leases falling within section 2 which exist at the relevant date, i.e. at the date when they serve their initial notice;

    iii) whether the Companies, as lessees of the New Leases, took free of the collective enfranchisement claim, because the Initial Notice was not registered under section 97(1) of the 1993 Act against the registered titles in respect of the Old Leases at the time when the New Leases were granted;

    iv) whether, by virtue of section 29 of the Land Registration Act 2002, the New Leases had priority over the claim made by the Initial Notice, which for land registration purposes is treated by virtue of section 97(1) of the 1993 Act as if it were an estate contract.

31. There were no formal grounds of appeal as such contending that the judge had erred as a matter of discretion in permitting amendment of the Initial Notice. However, paragraph 2 of the appellants' original skeleton argument articulated the Companies' case as including the submission in the alternative that the judge "should not have ordered, that the claimant be permitted to amend the Initial Notice". However, at the hearing of the appeal no separate argument was presented by Mr Jonathan Gaunt QC and Mr Anthony Radevsky, respectively leading and junior counsel appearing on behalf of the Companies, to the effect that, even if the judge had been correct as a matter of statutory construction of the 1993 Act, he was wrong to exercise his discretion to permit the amendment of the Initial Notice. Accordingly I do not consider it appropriate to address any separate question of discretion.

32. It was common ground as between the parties that, even if this appeal were to succeed, Mr Wiggins would be able to acquire the New Leases by completing the acquisition of the Old Leases and then serving a fresh initial notice to claim the acquisition of the New Leases. In that event, the New Leases would be valued at the date of the new initial notice, rather than at the date fixed by the judge, i.e. 31 December 2011. Accordingly it would appear that the commercial purpose of this appeal, so far as the Companies are concerned, (other than issues as to costs) is to secure a later valuation date for assessing the value of the New Leases than that fixed by the judge. Mr Wiggins, on the other hand, contends that he should not be required to go through the same process, with the inevitable delay, duplication and waste of time, costs and Tribunal resources.

The relevant statutory provisions

33. It is necessary to set out the principal provisions of the 1993 Act which were relied upon in argument as supporting each side's arguments. For convenience I do so in the appendix attached to this judgment.

The judge's judgment

34. The Judge's reasons for concluding that he had jurisdiction to give permission for the amendment of the Initial Notice are contained in [51]-[54] of his judgment. In essence these were:

    i) that section 2(1)(a) "mandates" the acquisition of all superior leaseholds;

    ii) that there was significance in the distinction between the wording of section 1 and section 2, in that section 2 did not confine the possibility of acquisition to leases which existed at the relevant date;

    iii) that the 1993 Act proceeded on the basis that all superior leases would be cleared out of the way and Parliament must therefore have intended that leases coming into existence after service of an initial notice would be brought into its scope by way of amendment of the notice;

    iv) paragraph 15 of Schedule 3 was widely enough drawn to cover this situation;

    v) that because registration was a right and not an obligation, the 1993 Act should not be read as requiring "the freezing of matters" as at the date in the initial notice in relation to superior leasehold interests; and

    vi) that a section 13 notice does not create a statutory contract and is therefore not caught by section 29 of the Land Registration Act 2002.

35. These reasons largely reflected the arguments put forward both in the court below and in this court by Mr Stephen Jourdan QC and Mr Thomas Jefferies, respectively leading and junior counsel appearing on behalf of Mr Wiggins.

The Companies' submissions

36. Because of the complexity of the arguments, it is necessary to set out them out in some detail.

37. The submissions presented by Mr Gaunt QC and Mr Radevsky on behalf of the Companies can be summarised as follows.

38. Throughout the 1993 Act its provisions made it clear that any interest to be acquired by the Nominee Purchaser (as defined) had to exist at the relevant date, namely the date of service of the initial notice, and that an initial notice could therefore not be "amended" so as to refer and apply to an interest which did not exist at the date when the notice was given.

39. To say that section 2(1)(a) mandated the acquisition of all superior leaseholds begged the question: on the true construction of the 1993 Act, section 2(1)(a) only applied to

superior leaseholds existing at the date of an initial notice. The Act did not proceed on the basis that all superior leases would be "cleared out of the way".

40. There was no significance in the fact that section 2 did not expressly mention "the relevant date". Section 2 was concerned with leasehold interests. It was brought into play by section 1(2)(b) and only applied "where the right to collective enfranchisement is exercised in relation to any premises to which this Chapter applies". As section 1(1) already made clear, such premises were premises to which Chapter 1 applied *on the relevant date*. It was not necessary for "on the relevant date" to be repeated in section 2. The function of that expression was simply to fix the moment at which the conditions in section 3 or section 1(3) had to be fulfilled. The omission of that expression in section 2 did not indicate that some distinction was being drawn by the draftsman between freehold interests and leasehold interests, such that section 2 applied to leases created after the relevant date.

41. The scheme of the 1993 Act made it clear that it was only superior leasehold interests in existence at the relevant date which had to be acquired under section 2(1)(a). For example:

    i) A claim to exercise the right to collective enfranchisement with respect to any premises was made by the giving of a notice of claim under section 13. The particulars which had to be contained in such initial notice were set out in section 13(3). Section 13(3)(c) provided that the notice must "specify any leasehold interest proposed to be acquired under or by virtue of section 2(1)(a) or (b)". Obviously the notice could not specify a leasehold interest which did not yet exist.

    ii) By section 19(1), where an initial notice had been registered in accordance with section 97, then, so long as it continued in force, certain restrictions were imposed, and if transactions were carried out in breach of those restrictions, they were rendered void. By section 19(1)(a), the freeholder may not (i) sever his interest, or (ii) grant a lease under which, *if it had been granted before the relevant date*, would have been liable on that date to acquisition by virtue of section 2(1)(a) or (b). Section 19(1)(b) similarly provided that no other relevant landlord should grant out of his interest in the specified premises any such lease. The italicised words made clear the understanding of the draftsman that, to be liable to acquisition under section 2, a leasehold interest had to have been granted before the relevant date.

    iii) The reversioner in respect of the premises specified in an initial notice was required to give a counter-notice under section 21. If he gave a counter-notice admitting that the participating tenants were on the relevant date entitled to exercise the right to collective enfranchisement, he was obliged to state which of the proposals contained in the initial notice were accepted and specify, in relation to any proposal which was not accepted, his counter-proposal. The object of the counter-notice was to help establish whether the entitlement of the participating tenants was challenged and, if not, what terms of the acquisition were disputed. If those terms remained in dispute after 2 months, a LVT might determine the matters in dispute under section 24. "The terms of acquisition", in relation to a claim made under Chapter 1, meant the terms of the proposed acquisition by the nominee purchaser, whether relating to (a) the

> interest to be acquired or (c) the amounts payable as the purchase price for such interests. If a leasehold interest did not exist at the date of the initial notice, it could not have been specified under section 13, could not have been made the subject of a counter-proposal under section 21 and could not be the subject of a dispute referable to the LVT under section 24 concerning "the terms of acquisition".

42. Paragraph 15 of Schedule 3 was not drawn widely enough to cover the current situation: in particular, the terms of paragraph 15(3) demonstrated that it was intended to apply to interests which existed at the date of the notice.

43. Schedule 6 contains the criteria for determining the purchase price payable by the nominee purchaser. The price payable for intermediate leasehold interests was dealt with in Part III. Paragraph 7 provided that paragraph 3 (which applied to freeholds) was to apply for determining the value of any intermediate leasehold interest with such modifications as were appropriate to relate that paragraph to a sale of the interest in question. Paragraph 3 (duly modified) provides:

> "The value of the intermediate leasehold interest as defined in paragraph 1(1) of Schedule 6 in the specified premises is the amount which at the relevant date that interest might be expected to realise if sold on the open market by a willing seller …"

on various assumptions. Since the New Leases were not in existence at the relevant date they could not have been sold on the open market and would not have been expected to realise any amount. There was no justification in the wording of the Act for an argument that a later created interest was to be valued as if it had been created earlier (when market conditions may have been different).

44. Contrary to the judge's approach, the question was not whether registration of an initial notice was an obligation, but rather as to the effect of non-registration; the plain purpose of section 97 was to produce a situation where, in the absence of registration, a disponee under a registered disposition took free of a claim which could have been, but was not, registered.

45. The judge accepted Mr Wiggins' submission that, because section 13 (unlike section 42) did not bring into being a "statutory contract", there was no interest upon which section 29 of the Land Registration Act 2002 could bite. But the fact that section 13 did not create a "statutory contract" was immaterial. Other statutes made rights registrable as if they were estate contracts with a view to enabling the purchaser to take free if the rights were not registered; see for example the Leasehold Reform Act 1967, section 5(5) and the Landlord and Tenant (Covenants) Act 1995, section 20(6) – request for an overriding lease by tenant who has paid successor's rent.

46. It was clear from the fact that section 97 treated both section 13 and section 42 notices the same, in that they did not create overriding interests but were registrable as estate contracts, that the section was intended to have the same effect in both cases; for an example of the effect of a failure to register a section 42 notice against the then landlord's title, see *Melbury Road Properties 1995 Limited v Kriedi* [1999] 3 EGLR

108; for a case on the Land Registration Act 1967, section 5(5) (which was in very similar terms to section 97(1) of the 1993 Act) where a purchaser was held by the Lands Tribunal to take free of a notice of claim to acquire the freehold, see *Buckley v SRL Investments Limited* (1970) P&CR 756 at pp.767-768.

47. The plain purpose of section 97 was to immunise a purchaser for value from the effect of an unregistered section 13 notice, just as such a purchaser was immunised against the effect of an unregistered 1967 Act notice or section 42 notice. The claimant's case appeared to be that, so far as a section 13 notice was concerned, the only effect of non-registration under section 97 was that section 19 would not operate so as to avoid the transactions prohibited by section 19(1). That could not be right. Take the simple example of a person who took a transfer of the freehold after a section 13 notice had been served on the transferor. If the notice had been registered, the person acquiring the interest was treated as having become its owner before the Initial Notice was given and thus stepping into the shoes of the transferor; see sections 19(2) and (3). But if the notice had not been registered, the transferee was not so treated. That was because he took free by reason of non-registration.

Mr Wiggins' submissions

48. The submissions presented by Mr Jourdan QC and Mr Jefferies on behalf of Mr Wiggins can be summarised as follows.

49. Section 2 did not "freeze" consideration of what leases were to be acquired at the relevant date. Some provisions of the 1993 Act expressly required an assessment of the state of affairs which existed at that date; see for example section 1(1). Others expressly required the taking into account of later events; see for example sections 14, 18, 24(4)(b), Schedule 6, paragraph 4 and Schedule 7, paragraph 3.

50. Some provisions did not spell out whether subsequent events were to be taken into account. One example was Schedule 6 paragraphs 3 and 7. The Companies had argued before the LVT that, under those paragraphs, the freehold and any intermediate leases must be valued at the relevant date, without regard to leases granted after the relevant date. The LVT rightly rejected that argument, and the Companies had abandoned their appeal against its decision.

51. In cases where a provision does not spell out whether subsequent events are to be taken into account, the court must construe the Act "fairly and with a view, if possible, to making it effective to confer on tenants those advantages which Parliament must have intended them to enjoy": see per Millett LJ (as he then was) in *Cadogan v McGirk* [1996] 4 All ER, 643 at 648.

52. In the case of section 2, it was clear that events subsequent to the relevant date should be taken into account. Otherwise, manifest injustice would result. This was illustrated by *Duke of Westminster v Trongate,* an unreported decision of the LVT on 9 January 2012, (ref LON/OOBK/OCE/2011/0058, Mr Andrew Dutton and Mr W Richard Shaw).

53. It was an essential part of the statutory scheme that intermediate leases which exist between the freehold and the lease of a qualifying tenant must be acquired by the nominee purchaser. The requirement to acquire superior leases was there to make the

scheme of the 1993 Act work. As HHJ Mole QC said in *Hemphurst Ltd v Durrels House Ltd* [2011] UKUT 6; [2011] L&TR 16 at [26]: "Clearly every leasehold reversion has to be eliminated in order for the scheme to work. Therefore section 2(1)(a) says that 'every' such leasehold interest must be acquired."

54. Unlike section 1, there was no provision in section 2 that the leases to which it applies were those which satisfied the conditions set out in section 2 on the relevant date. The contrast between sections 1(1) and 1(3), which did refer to the relevant date in relation to freehold interests, and section 1(2)(b) and section 2, which did not refer to the relevant date in relation to leasehold interests, was clear. This difference was because leasehold interests, by their very nature, were far more prone to vary over time than freehold interests.

55. Although the physical extent of the freehold property was, under section 1, to be determined at the relevant date, that did not mean that the extent of any leasehold interest in relation to such property had to be determined at the relevant date. If that had been the intention, it would have been straightforward to have said so in section 2.

56. Accordingly, the LVT in *Trongate*, and the judge in the present case, were correct to hold that section 2 did not freeze consideration of what leasehold interests were to be acquired at the relevant date.

57. The court could amend an initial notice to reflect events that occurred after the notice was served under Schedule 3 paragraph 15(2). Since section 2 imposed an obligation on a nominee purchaser to acquire all leases superior to the lease of a qualifying tenant, it could not be limited to those superior leases which existed at the relevant date. The New Leases were, therefore, liable to acquisition. The wording of Schedule 3 paragraph 15(2)(b) (as compared to the wording of paragraph 15(2)(a)) adopted the present tense, not the past tense. Thus the position was to be judged at the time when the issue arose, not at the date of the Initial Notice. If the Companies' position was correct, both paragraphs (a) and (b) would have been in the past tense.

58. Schedule 3, paragraph 15(2) did not provide for the amendment of the notice where it specified any interest which was liable to acquisition at the date of the notice, but since then had ceased to be so liable, as in *Trongate*. There was no need for an amendment in that case, as the LVT could determine the extent of the interests to be acquired under section 24. However Schedule 3 paragraph 15(2) did provide for the amendment of the notice where it failed to specify any interest which was not liable to acquisition at the date of the notice, but since then had become liable to acquisition.

59. The heading of Schedule 3 paragraph 15 ("Inaccuracies or misdescriptions in initial notice") was no more than a signpost to the general ambit of the paragraph, and could not be used to limit the ambit of Schedule 3 paragraph 15(2)(b).

60. The Act made no provision for the amendment of the landlord's counter-notice consequential on the amendment of the initial notice. But that gave no support for the Companies' argument.

61. The Companies argued that the valuation provisions in Schedule 6 cannot be applied to an interest created after the relevant date, and that shows that section 2 cannot

apply to such an interest. That is the argument that the LVT rejected. The LVT held that Schedule 6, paragraphs 3 and 7 do require the valuation to take account of interests created after the relevant date.

62. Section 29 of the Land Registration Act 2002 did not deprive the court of power to amend an initial notice. Although the Initial Notice could have been registered at the Land Registry, under section 97 there was no obligation to do so. If it had been registered before the grant of the New Leases, the New Leases would have been void under section 19(1), but because the notice was not registered, the New Leases were not void. So Mr Wiggins could not acquire free of the New Leases, but rather must acquire them, under section 2, with the rights, and subject to the obligations that they created, and at a price reflecting their value, and at the valuation date determined by the judge.

63. The Companies argued that section 29(1) of the Land Registration Act 2002 meant that, because they gave each other valuable consideration, they took the New Leases free from any obligations under the 1993 Act. Section 29(1) provided:

> "If a registrable disposition of a registered estate is made for valuable consideration, completion of the disposition by registration has the effect of postponing to the interest under the disposition any interest affecting the estate immediately before the disposition whose priority is not protected at the time of registration."

The Companies asserted that the effect on the failure to register the Initial Notice was that the lessees under the New Leases "took free" of the claims of the participating tenants. That was not what the Land Registration Act 2002 said. The only consequence of registration of a notice under section 32 was to affect the priority of interests affecting registered land: see sections 28, 29, 30 and 32(3). The effect of those sections was that, if there were two interests in land affecting a registered estate, and the question was which had priority, the first to be created normally had priority. However, if a registerable disposition of a registered estate was made for valuable consideration, completion of the disposition by registration had the effect of postponing - to the interest under the disposition - any other interest affecting the estate whose priority was not protected: see *Harpum & Bignell: Registered Land* (2004) paragraphs 9.1-9.9.

64. But section 29(1) of the 1993 Act did not assist the Companies, for three reasons:

i) First, the Companies were "relevant landlords" and so bound by the rights created by service of the initial notice. Here, Grosvenor (Mayfair) Estate. was the reversioner and a relevant landlord at the date of the Initial Notice. Each of the Companies was and is a relevant landlord. Schedule 3 Part II made provision for service of the initial notice on all relevant landlords. Those persons were bound by the statutory rights created by the service of the notice. This was not a case of persons with competing interests in land where the issue was one of priority. The Companies were not third parties, unaffected by the initial notice, who came along and bought an interest in the property. This was a case of existing relevant landlords who were bound by the rights created by the service of the Initial Notice, granting new interests to each other in an

attempt to defeat the collective claim. If a lease held by a relevant landlord ceased to fall within section 2(2), then the landlord no longer had to transfer it. If a lease held by a relevant landlord was not within section 2(2) at the date of the initial notice, but came within it thereafter, the lease had to be transferred. Relevant landlords could not escape from their obligations under the 1993 Act by granting each other new interests.

ii) Section 29 of the Land Registration Act 2002 was not relevant to a section 13 notice. Even if the New Leases had been granted to persons who were not relevant landlords, they would still have been liable to acquisition. This was because:

a) There was a contrast between the treatment contained in Chapter I, in relation to the effect of the service of a notice, and the consequences of non-registration, and that contained in Chapter II, which was concerned with the right of a qualifying tenant of a flat to a new lease of his flat, and that contained in the Leasehold Reform Act 1967, which was concerned with the right of a qualifying tenant of a house to buy the freehold or an extended lease of his house. Both Chapter II of the 1993 Act, and the 1967 Act, provided that the service of the notice of claim created a statutory contract. Neither had any equivalent to section 19(1)-(3) of the 1993 Act. Instead, the consequences of the registration and non-registration of notices under those codes were the same as for any other contract for the purchase of land. Under section 29 of the Land Registration Act 2002, the priority of a contract for the purchase of land would be postponed to any later registrable disposition which was made for valuable consideration if that later disposition was completed by registration.

b) By contrast, neither section 19 nor any other provision in Part I of the 1993 Act gave an initial notice under section 13 the status of a contract for sale. Rather, section 19 itself set out the consequences of registration. The provisions of section 97(1) were very specific. They deemed the section 13 notice to be an estate contract to enable it to be protected by notice, but not for any other purposes. It was not deemed to create a contract, unlike a section 42 notice, and was not deemed to be an interest in land, unlike, for example, a right of pre-emption or a mere equity under section 116 of the Land Registration Act 2002. Section 97 allowed the notice to be protected, but did not provide for the consequences of non-registration.

c) Accordingly, the effect of a failure to register an initial notice was governed exclusively by the provisions of Chapter I of Part I of the 1993 Act, and section 29 of the 2002 Act was not relevant.

d) The Companies' reliance on the County Court decision in *Melbury Road Properties 1995 Ltd v Kreidi* [1999] 3 EGLR 108 (concerning the effect of a failure to protect a section 42 notice by registration) and the decision of the Lands Tribunal in *Buckley v SRL Investments Ltd* (1971) 22 P&CR 756 (which concerned a notice under the 1967 Act,

which created a statutory contract and was therefore irrelevant) was misplaced.

iii) Even if section 29 were relevant, it did not deprive the court of the power to amend. Even if section 29 did have any application, the only “interest” which would be postponed to the New Leases would be the original Initial Notice, which only specified the Old Leases as liable to acquisition. The effect of section 29 would then be that the New Leases would not, without more, be liable to acquisition. However, Schedule 3, paragraph 15 gave rise to a freestanding statutory right to apply to the court to amend the notice. That right was not affected by section 29. There was nothing surprising or unfair in the conclusion that notwithstanding the effect of section 29 of the Land Registration Act, an interest acquired pursuant to a registered disposition may be vulnerable to claims under other statutory provisions.

65. The Companies’ approach resulted in a conclusion whereby the statutory scheme, enacted for the protection of tenants, could be frustrated. Mr Wiggins’ approach, on the other hand, had the result that it could not be frustrated, whilst at the same time ensuring that no injustice was caused, by virtue of the court’s wide power to impose terms on any amendment.

Discussion and determination

66. I start by considering the general scheme of Chapter I of the 1993 Act in relation to the right of collective enfranchisement in case of tenants of flats ("the collective right").

67. In my judgment it is clear from the express provisions of section 1 that the statutory intention was to confer the collective right on "qualifying tenants" in relation to premises which, as at "the relevant date" (defined in section 1(8) as the date on which notice of the claim to exercise the collective right was given in accordance with section 13), satisfied the requirements stipulated in Chapter I.

68. As Mr Gaunt submitted, every element of those requirements has to be tested as at the relevant date. Thus one has to ask whether, as at that date, the premises were self-contained, contained two or more flats held by "qualifying tenants" and whether the total number of flats held by such tenants was not less than two-thirds of the total number of flats contained in the premises; see section 3(1). That necessarily involves identifying who are, and who are not, “qualifying tenants" as at the relevant date and calculating the number and proportion of flats held by such tenants as at that date. As section 5 makes clear, no flat can have more than one qualifying tenant at any one time. Thus in circumstances where a flat is for the time being let under two or more long leases, and there are consequently two or more tenants, an inquiry has to be made as to which, necessarily as at the relevant date, is the superior lease, because the tenant under such a lease is not a qualifying tenant; see section 5 (4).

69. Likewise by reference to the relevant date, an enquiry has to be made as to whether the premises are excluded on the grounds that any part or parts was or were unoccupied; see section 4.

70. The statutory procedural machinery for the exercise of the collective right is also geared to the position as it exists as at the relevant date. The trigger dates and trigger conditions are all linked to the snapshot position as it stands as at the relevant date. Thus section 13(2) requires that the initial notice must be given "by a number of qualifying tenants of flats contained in the premises as at the relevant date which - … is not less than one-half of the total number of flats so contained". Section 13(3) amongst other things requires the initial notice:

i) to specify "the premises of which the freehold is proposed to be acquired by virtue of section 1(1)" (section 13(3)(a)(i)), which necessarily are the specified premises as at the relevant date; and

ii) to contain a statement of the grounds on which it is claimed that the specified premises are, on the relevant date, premises to which this Chapter I applies; (section 13(3)(b)); and

iii) to "specify any leasehold interest proposed to be acquired under or by virtue of section 2(1)(a) or (b)".

As Mr Gaunt submitted, obviously the notice cannot specify a leasehold interest which does not yet exist or specify a proposed purchase price in relation to such interest. Thus the requirements of the section 13 notice are wholly inconsistent in my view with the notion that after-created leasehold interests fall within section 2(2).

71. Section 13(12) defines "the specified premises" by reference to the position as at the relevant date or by reference to a subsequently agreed, or determined, less extensive premises as follows:

> "In this Chapter "the specified premises", in relation to a claim made under this Chapter, means –
>
> (a) the premises specified in the initial notice under subsection (3) (a) (i), or
>
> (b) if it is subsequently agreed or determined under this Chapter that any less extensive premises should be acquired in pursuance of the notice in satisfaction of the claim, those premises;".

72. Similarly section 13(12) goes on to provide in relation to leasehold (and appurtenant and common property) as follows:

> "and similarly references to any property or interest specified in the initial notice under subsection (3)(a)(ii) or (c)(i) shall, if it is subsequently agreed or determined under this Chapter that any less extensive property or interest should be acquired in pursuance of the notice, be read as references to that property or interest."

In other words, the statute is making clear, both in relation to the freehold to be acquired (i.e. "the specified premises") and in relation to leasehold interests to be acquired, that, in relation to claims made under Chapter I (and not merely for the

purposes of the initial notice) the relevant property or interest is that which is specified in the initial notice, necessarily as at the relevant date, or less extensive property or interests, as may be agreed or determined. For present purposes, however, what is important is that there is no suggestion whatsoever that such property or interests can be more extensive than that which is specified in the initial notice, let alone that an existing claim made under Chapter I can subsequently be extended to include additional premises or interests, not in existence as at the relevant date.

73. The statutory procedural machinery relating to the service of notices and counter-notices is also geared to the relevant date. Thus section 13(5) provides that the date specified in the initial notice by which the reversioner has to respond by giving a counter notice under section 21 "must be a date falling not less than two months after the relevant date." Moreover section 13(8) provides that where any premises have been specified in an initial notice, no subsequent notice can be given under section 13, which specifies the whole or part of the premises, so long as the earlier notice continues in force. This provision, together with subsections (10) and (11), is in my judgment hardly consistent with the notion that additional, after-created, leasehold interests in the specified premises (or indeed additional freehold parts of the premises) which were the subject of the original notice, can be added to the initial notice by subsequent amendment.

74. Part II of Schedule 3 to the 1993 Act makes further provision in relation to the giving of notices in a case such as the present where section 9(2) applies; i.e. where, in connection with a claim to exercise the collective right, the participating qualifying tenants propose to acquire leasehold interests. Section 9(2)(b) provides that every person who owns any leasehold interest which is proposed to be acquired under or by virtue of section 2(1)(a) or (b) is a "relevant landlord". Paragraph 12 of Schedule 3 imposes an obligation on the qualifying tenants by whom the initial notice is given to give a copy of the initial notice to "every other person known or believed by them to be relevant landlord of those premises". Again, these strictly prescribed notice provisions clearly envisage that, and can only operate in practice if, the identification of the relevant landlord (if known) is fixed as at the relevant date.

75. By section 19(1), where the initial notice has been registered in accordance with section 97, then so long as it continues in force, certain restrictions are imposed, and if transactions are carried out in breach of those restrictions, they are rendered void. By section 19(1)(a), the freeholder may not (i) sever his interest, or (ii) grant a lease under which, *if it had been granted before the relevant date*, would have been liable on that date to acquisition by virtue of section 2(1)(a) or (b). Section 19(1)(b) provides that no other relevant landlord shall grant out of his interest in the specified premises any such lease. I accept Mr Gaunt's submission that the italicised words make clear the understanding of the draftsman that, to be liable to acquisition under section 2, a leasehold interest has to have been granted before the relevant date.

76. The reversioner in respect of the premises specified in the initial notice is required to give a counter-notice under section 21. Again, the machinery relating to counter notices is inextricably linked to the position as at the relevant date. Thus by section 21(2) a counter notice must comply with one of the following requirements namely:

> "(a) state that the reversioner admits that the participating tenants were on the relevant date entitled to exercise the right to collective enfranchisement in relation to the specified premises;
>
> (b) state that, for such reasons as are specified in the counter-notice, the reversioner does not admit that the participating tenants were so entitled;
>
> (c) contain such a statement as is mentioned in paragraph (a) or (b) above but state that an application for an order under subsection (1) of section 23 is to be made by such appropriate landlord (within the meaning of that section) as is specified in the counter-notice, on the grounds that he intends to redevelop the whole or a substantial part of the specified premises."

Once again, any dispute as to whether the participating tenants were entitled to exercise the collective right is determined by reference to the position as at the relevant date.

77. Thus the whole procedural machinery laid down by the 1993 Act for the exercise of the collective right is geared to the identification of interests existing as at the relevant date. The fact that, as Mr Jourdan submitted, other provisions of the 1993 Act (such as, for example, sections 14, 18, 24(4)(b), Schedule 6, paragraph 4 and Schedule 7, paragraph 3) may entitle or require the taking into account of later events, for example as at the date of settling the conveyance, or as at the date of undertaking the valuation, is wholly explicable in the context of those provisions and does not in my judgment detract from the clear scheme of the Act.

78. Nor does the fact that the Companies have abandoned their appeal against the LVT's decision (rejecting the Companies' submission that the Old Leases must be valued at the relevant date without regard to the New Leases) take the matter any further or support Mr Jourdan's argument. The point of Mr Gaunt's argument before this court in relation to Schedule 6 is not that the existing Old Leases should not have been valued by the LVT taking into account subsequent events, but rather that the New Leases could not have been valued at all by reference to the criteria contained in the Schedule 6 provisions; and that accordingly this supports his construction arguments that valid leases created after the relevant date are not subject to acquisition by means of amendment of the initial notice or otherwise. I accept this submission. Paragraph 3 (duly modified in relation to leasehold interests) provides:

> "The value of the intermediate leasehold interest [as defined in paragraph 1(1) of Schedule 6] in the specified premises is the amount which at the relevant date that interest might be expected to realise if sold on the open market by a willing seller …"

on various assumptions. Since the New Leases were not in existence at the relevant date they could not have been sold on the open market and would not have been expected to realise any amount as at that date. There is nothing in the wording of the provision which suggests or supports the concept that a later created leasehold interest

is to be valued on the artificial, and false, hypothesis that the leasehold interest had been created earlier at some unknown date and was in existence on the relevant date (when market conditions may have been different).

79. When one turns to consider section 2 in this statutory context, it is not surprising that there is no express reference to "the relevant date" in either section 2(1) or section 2(2). There does not need to be. I do not agree with the judge's view that there is any significance in the absence of such words in section 2. In order to identify, as at the date of the exercise of the collective right (viz. the relevant date), "any lease which is superior to the lease held by a qualifying tenant of the flat contained in the relevant premises", one necessarily has to identify the qualifying tenant as at that date and a superior lease in the relevant premises as at that date - since it is the relevant date by reference to which the relevant premises are identified, by reference to which the qualifying tenants are identified, and by reference to which the collective right is exercisable. As Mr Gaunt submitted, the argument that "section 2(1)(a) mandates the acquisition of all superior leaseholds" begs the question at issue in the present case.

80. The scheme of the 1993 Act does not suggest or predicate such a result. In circumstances where the initial notice has been registered in accordance with section 97, section 19(1) of the 1993 Act expressly prevents the grant after the relevant date by any relevant landlord (and the freeholder) of any future leasehold interest out of his interest in the specified premises (which are necessarily defined as at the relevant date). Thus the intention of the 1993 Act appears to be that the leasehold position should indeed be frozen as at the date of the initial notice - the relevant date - provided that proper registration takes place. But in circumstances where no registration has taken place, it is clear that the grant of a leasehold interest by a relevant landlord after the relevant date is valid. Thus the assumption made by the judge that the Act proceeds on the basis that all superior leases will be “cleared out of the way”, even if created after the relevant date, and that section 2 is to be construed as including subsequently created leases, is simply not supported.

81. Nor in my judgment can Mr Wiggins draw any support for his arguments, either as to the construction of section 2, or as to the court's allegedly wide power of amendment, from the wording of paragraph 15 of Schedule 3. Paragraph 15 (1) refers to the initial notice not being "invalidated by any inaccuracy in any of the particulars required by section 13(3) or by any misdescription of any of the property to which the claim extends". It is difficult to see how the omission of any reference to a leasehold interest which was not in existence as at the date of the notice can be described as an "inaccuracy" or "misdescription". There was no inaccuracy or misdescription in the initial notice as at the relevant date.

82. Mr Jourdan placed emphasis on the distinction between the past tense "was" used in the sub-clause "which was not liable to acquisition" in paragraph 15(2)(a), and the present tense "is" used in the sub-clause "which is so liable to acquisition" in paragraph 15(2)(b). He submitted that that showed that, when the court came to consider whether the initial notice should be amended, it had to look at the position as at the date of the proposed amendment to see whether the property was now subject to acquisition, as if theoretically the section 13 process was carried out again as at that date. I reject that submission. First of all, both qualifying conditions in paragraphs 15(2)(a) and (b) are expressed in the present tense; "Where the initial notice - (a) *specifies* any property or interest … (b) *fails* to specify". In those circumstances, in

my view the use of the words in paragraph 15(2)(b) "so liable", in conjunction with the word "is" (which equally must refer to the acquisition of freehold property under section 1, as well as the acquisition of a leasehold interest under section 2), merely indicates that the relevant property or interest was liable to acquisition as at the relevant date and *remains* so liable.

83. Finally, the "treatment" wording of the second part of paragraph 15(3)

> "and, where it is so amended as to include any property or interest, the property or interest shall be treated as if it had been specified under the provision of that section under which it would have fallen to be specified if its acquisition had been proposed at the relevant date."

clearly shows show that it is intended to apply to interests which existed at the date of the initial notice. It is impossible to see how the New Leases could have been specified in any section of the Initial Notice if their acquisition had been proposed at the relevant date, as they were not in existence at that time.

84. Mr Jourdan relied strongly on the unreported decision of the LVT in *Duke of Westminster v Trongate,* dated 9 January 2012. Ironically it was Mr Radevsky who, in that case, was contending that there was a difference between the treatment of the acquisition of the freehold under the section 1 of the 1993 Act, where he submitted the relevant date applied, and the treatment of the acquisition of leasehold interests under section 2, where he submitted it did not. The facts of that case were very different from those of the present case. As at the relevant date, i.e. service of the initial notice, a Mr Eker was the tenant of a ground and first floor flat under a lease which was a superior lease within the meaning of section 5(4), with the result that he did not qualify as a "qualifying tenant" as at that date. However, by the date of the service of the counter notice, the headlease of the flat held by a company, Datewall Limited, which as at the relevant date had been the qualifying tenant, had expired by effluxion of time and Mr Eker's overriding lease had fallen into possession and was no longer within section 2(1)(a). The LVT accepted Mr Radevsky's arguments that the fact that Mr Eker had not been a qualifying tenant as at the relevant date did not prevent him from subsequently asserting that, by the date of the valuation, he was indeed a qualifying tenant and that accordingly what was now his qualifying lease, as opposed to a superior lease, could not be acquired and therefore did not require to be valued. The LVT said:

> "38. We are attracted to Mr Radevsky's arguments. It seems to us that there is a difference between the treatment of the acquisition of the freehold, where the relevant date applies, and the leasehold interests. Indeed in this case if the relevant date were to create such a cut off point it would leave the valuation of the interests of Datewall and Belgravia to be considered, notwithstanding that their interests have expired some considerable time before the date of acquisition. We note that at section 1(4) it is the time of "acquisition" which deals with common parts and common usage, clearly showing in our mind that the "relevant date" is only part of the process. It seems to us that the "relevant date" is intended to start the

> process but it does not mean that there cannot be changes between that date and the date of acquisition which would need to be reflected in the final reckoning. …
>
> 40. The question of the Counter Notice is interesting. The Initial Notice contains proposals and starts the process, giving the relevant date upon which the valuation is to be assessed. However, it is not until the Counter Notice that the nominee purchaser knows firstly whether the claim is even admitted, secondly whether in fact, as in this case there is some objection and thirdly what proposals the freeholder may make. We find it difficult to accept that the "relevant date" has such a binding effect as argued for by Mr Rainey and we come back to the point that in this case two interests have disappeared before the acquisition and that therefore there must be the ability to reflect change in the enfranchisement process."

85. In my judgment, there is a world of difference between the situation in *Duke of Westminster v Trongate,* where all the relevant leasehold interests had existed as at the relevant date, and had subsequently either, in the case of the qualifying lease, expired or, by reason of the expiry of other leases, become qualifying leases and therefore not liable to acquisition, and the situation in the present case, where the New Leases were not in existence at all as at the relevant date. In my view, and with respect to the LVT in that case, for the purposes of the determination of this case, it is not necessary for this court to review the LVT's analysis of certain of the relevant statutory provisions in *Duke of Westminster v Trongate*, a decision which in any event is not binding on us. The outcome of the case was obviously correct since the court or tribunal could, in the circumstances, have simply determined pursuant to section 13(12) of the 1993 Act that Trongate's claim should no longer proceed in relation to the leasehold interests which had expired or which were no longer superior interests, and thereby properly give effect to the change in circumstances since the relevant date.

86. Accordingly in my judgment the following conclusions can be drawn from the relevant statutory provisions and the scheme of the 1993 Act:

i) Although it is not appropriate to say that the leasehold interests subject to acquisition under section 2 are "frozen" as at the relevant date, since there is clearly procedural machinery in the rest of the Act to take account of certain subsequent events, and substantive provisions such as section 13(12) to restrict the claim to less extensive leasehold interests than those specified in the initial notice, again to reflect subsequent changes in circumstances, section 2 does not on its true construction permit a right to collective enfranchisement to be exercised in relation to leasehold interests which are not in existence as at the relevant date.

ii) The power conferred by paragraph 15(2)(b) to amend an initial notice to include a leasehold interest which was not specified in the initial notice does not include a power to amend the notice to specify a leasehold interest which was not in existence at the relevant date.

iii) That conclusion is supported by section 97 of the 1993 Act. If the initial notice is registered, then any subsequent purported grant of a leasehold interest by a relevant landlord is void and no need for amendment of the notice arises. However, in the absence of registration, as here, the consequence is that, pursuant to section 29 of the Land Registration Act 2002 (which determines priority of interests and has the effect of postponing to the interest under the disposition any interest affecting the estate immediately before the disposition), the Companies, as registered disponees for valuable consideration under the New Leases, took free of Mr Wiggins' claim made in the Initial Notice which could have been, but was not, registered against the superior interests. That consequence, necessarily envisaged by section 97, is wholly inconsistent with the notion that, in circumstances where the nominee purchaser has failed to register its initial notice, the initial notice can somehow subsequently be amended pursuant to paragraph 15 of Schedule 3 to rectify his failure to register and thereby, as it were by the back door, subject the registered disponees' interests to the claim made by the initial notice.

87. It follows that, in reaching the conclusion set out in paragraph 86(iii) above, I accept Mr Gaunt's submissions in relation to the consequences of failure to register the initial notice. I agree that the judge was wrong to address the question on the basis that what mattered was whether Mr Wiggins, as nominee purchaser, had any obligation to register the initial notice. What mattered was the consequence of non-registration. As to this, section 97(1) of the 1993 Act makes it clear that any right of a tenant arising from a notice given under section 13 of the 1993 Act is not capable of being an interest of a person in actual occupation so as to be an overriding interest within paragraph 2 of Schedule 1 or 3 to the Land Registration Act 2002. Section 97(1) then provides that:

"A notice given under section 13 or 42 shall be registrable under the Land Charges Act 1972 or may be the subject of a notice under the Land Registration Act 2002, as if it were an estate contract."

Section 32A of the Land Registration Act 2002 defines a notice as an entry in the register in respect of the burden of an interest affecting a registered estate. It follows that for land registration purposes the rights arising from service of a section 13 notice are to be regarded as such an interest for the purposes of determining priority under section 29 of the Land Registration Act 2002. In my judgment, as the New Leases were registrable dispositions, and were granted for valuable consideration, the failure to register the Initial Notice against the superior interests meant that the Companies as lessees under the New Leases took free from the claim of Mr Wiggins and the other participating tenants. The fact that the Companies had actual notice in their different capacities as relevant landlords under the Old Leases was clearly irrelevant. In the absence of registration a disponee takes free of an unregistered interest, irrespective of his actual notice: see *Midland Bank Trust Co Limited v Green* [1981] AC 573.

88. The judge accepted the submission that, because section 13 (unlike section 42) does not bring into being a "statutory contract", there was no interest upon which section 29 of the Land Registration Act 2002 could "bite". In my judgment that was a wrong approach. The clear intention of section 97 was to make both section 13 and section 42 rights registrable as if they were estate contracts with a view to enabling the

purchaser to take free if those rights were not registered. It is clear from the fact that section 97 treats both section 13 and section 42 notices in an identical manner (i.e. that they do not create overriding interests but are registrable as estate contracts), that the section is intended to have the same effect in both cases. Moreover as Mr Gaunt pointed out, other statutes similarly make rights registrable as if they were estate contracts with similar consequences; see for example the Leasehold Reform Act 1967, section 5(5); and the Landlord and Tenant (Covenants) Act 1995, section 20(6).

89. We were referred by Mr Gaunt to a number of decisions in this area. Thus for example in *Melbury Road Properties 1995 Limited v Kriedi* [1999] 3 EGLR 108, His Honour Judge Cowell concluded that the failure to register a section 42 notice against the then landlord's title, resulted in the section 42 notice not being binding as against the applicant landlord. To similar effect is the decision of the Lands Tribunal in *Buckley v SRL Investments Limited* (1970) P&CR 756 at pp.767-768. This was a decision under section 5(5) of the Leasehold Reform Act 1967, (which is in very similar terms to section 97(1) of the 1993 Act), where a purchaser was held by the Lands Tribunal to take free of an unregistered notice of claim to acquire the freehold. Whilst these decisions are not binding on this court, they nonetheless provide some support for what I consider must be the correct approach, namely that the plain purpose of section 97 is to immunise a purchaser for value from the effect of an unregistered section 13 notice, just as such a purchaser is immunised against the effect of an unregistered 1967 Act notice or section 42 notice. For the above reasons I reject Mr Jourdan's argument that, so far as a section 13 notice is concerned, the only effect of non-registration under section 97 is that section 19 will not operate so as to avoid the transactions prohibited by section 19(1). As I have already said, the consequences of failure to register an initial notice pursuant to section 97, clearly support the conclusion that, in circumstances where there has been no registration of the initial notice, there is no power to amend an initial notice pursuant to paragraph 15(2) of Schedule 3 to include a leasehold interest that was not in existence as at the relevant date.

90. That conclusion appears to me to accord with commercial reality. As Mr Gaunt submitted, there is something inherently surprising about the notion that a notice having such serious statutory consequences can be amended retrospectively, not to correct it to include what it could, and should, have stated at the relevant date (but did not state as a result of a mistake), but rather in order to make the notice state what it could not possibly have stated at the relevant date and with a view to having different consequences from those apparently provided for in the 1993 Act. I do not consider that the construction of section 2, paragraph 15(2) of Schedule 3 or any of the other provisions of the 1993 Act requires that result.

Disposition

91. Accordingly I would allow this appeal. I would set aside the judge's order that Mr Wiggins be permitted to amend the Initial Notice so as to specify the New Leases as liable to acquisition under that notice and make a declaration on the Companies' counterclaim that the Companies as lessees under the New Leases took free from the Initial Notice and the claim made thereby.

Lord Justice Vos:

92. I am grateful to Gloster LJ for her careful exposition of the facts and the law. I agree with her judgment and adopt the abbreviations she has used. I wish to add a few words of my own only because we are differing from the judge and because the decision is, I feel, of some potential importance to landlords and tenants alike.

93. It seems to me that our decision turns primarily on the following three issues:-

i) Whether sections 1 and 2 of the 1993 Act are to be construed as applying only to superior leases as at the relevant date?

ii) Whether there is jurisdiction under paragraph 15 of schedule 3 to the 1993 Act to allow the court to amend an initial notice under section 13 of the 1993 Act so as to apply to intermediate leases granted after the relevant date?

iii) Whether section 29 of the Land Registration Act 2002 (the "LRA 2002") ought to have led the judge to the conclusion that the lessees under the New Leases took free of the collective enfranchisement claim?

The legislative background

94. Mr Jourdan QC for Mr Wiggins placed a great deal of emphasis on two aspects of the 1993 Act that he relied upon in aid of his construction. First, he pointed to the fact that Chapter I of the 1993 Act relating to collective enfranchisement claims provided only for enforcement by way of a vesting order in section 24(4), whereas claims for new leases under Chapter II of the 1993 Act, and claims for extended leases and enfranchisement under the Leasehold Reform Act 1967 (the "LRA 1967"), could be enforced as if they were rights and obligations under a contract for a sale or for a lease (see section 43(1) of the 1993 Act and section 5(1) of the LRA 1967). Secondly, Mr Jourdan argued that schedule 6 to the 1993 Act made it clear that valuations of the interests to be acquired in a collective enfranchisement claim were to be undertaken on the basis of the leases existing at the time of the conveyance, so it was illogical to construe sections 1 and 2 as excluding intermediate leases created after an initial notice.

95. As to the first point, I do not think that the absence of a statutory deemed contract in Chapter I of the 1993 Act is properly to be regarded as a reason for thinking that the schemes of Chapters I and II, and of the LRA 1967 are to be regarded wholly differently. A deemed contract would be very cumbersome if applied to the typical collective enfranchisement claim, where there are often intermediate landlords as well as a freeholder, and a number of qualifying tenants and non-participating tenants. It may have been this factual distinction that led Parliament to considering it was sufficient to enforce the provisions of Chapter 1 by the vesting orders referred to in section 24(4) (similar to those in section 48(3) in Chapter II of the 1993 Act, and section 5(5) of the LRA 1967).

96. In relation to schedule 6 to the 1993 Act, it is clear that the valuation of the interests to be bought out was intended to take into account events that occurred after the initial notice. This makes perfect sense, since otherwise there would be a danger of great injustice to one or more of the parties.

97. Paragraph 3(1) of schedule 6 makes clear that the valuation of the freeholder's interest in the specified premises is the amount which "at the relevant date that interest" might raise if sold on the open market, but subject to certain assumptions. Foremost amongst those assumptions are that the vendor is selling the freehold "(i) subject to any leases subject to which the freeholder's interests in the premises **is to be acquired by** the nominee purchaser" and "(ii) subject also to any intermediate or other leasehold interests in the premises **which are to be acquired by** the nominee purchaser" (emphasis added). The assumption in paragraph 3(1)(a)(i) directs the valuer's attention to leases to which the freehold has become subject or will become subject after the initial notice and before completion. The assumption in paragraph 3(1)(a)(ii) directs the valuer's attention to all intermediate leases which the nominee purchaser will actually acquire at the time of completion even if they were not included in the initial notice. As the LVT decided in this case (and was not ultimately challenged on appeal), the valuation has to be undertaken by reference to what is actually being acquired, regardless of what interests were specified in the initial notice. That much was common ground between the parties by the time of the appeal to this court, and was, in my judgment, justified by the wording of schedule 6.

Sections 1 and 2 of the 1993 Act

98. The key to the proper understanding of sections 1 and 2 of the 1993 Act is to understand that the "right to collective enfranchisement" (the "RCE") is defined in section 1(1). That sub-section describes the RCE as "conferring on qualifying tenants of flats contained in premises to which this Chapter applies **on the relevant date** the right … to have the freehold …" (emphasis added). Section 2(1) then refers to the acquisition of leasehold interests, but explains at the outset that it applies "[w]here **the [RCE]** is exercised in relation to any premises to which this Chapter applies" (emphasis added). The RCE is that defined in section 1(1) as that arising on the relevant date. Thus, there can have been no statutory intention to exclude the reference to the relevant date in the provisions of section 2.

99. Mr Jourdan pointed to the adverse consequences of this construction by reference to the case of *Duke of Westminster v. Trongate* (unreported) in the Leasehold Valuation Tribunal. In that case, an intermediate landlord served an initial notice under section 13 immediately after the expiry of the occupational tenant's lease, but before the term of his overriding lease would have fallen into possession 2 days later. The LVT held that the changes between the date of the initial notice and the date of acquisition could be taken into account, so that the original (and subsequent) occupational tenant's interest could not be acquired by the holder of the intermediate tenancy. Mr Gaunt QC did not have any immediate answer to the injustice that would follow if the interests to be acquired could only be considered as at the date of the initial notice as suggested by the construction of sections 1 and 2 that I prefer. As it seems to me, however, once the parties to these transactions become aware that the interests to be acquired must subsist at the date of the initial interest, there are steps that can be taken to ameliorate the apparent injustice that would have been caused in *Trongate*. First, the occupational tenant could have sought to extend or enfranchise his tenancy prior to its expiry. Secondly, the complex web of overriding and enforcer leases that have been commonly granted by landlords in London by agreement with occupational tenants seeking to enfranchise may fall out of favour. I would not want to comment on the correctness of the actual decision in *Trongate*, but it seems to me that there

may be a relevant distinction between the position where an intermediate lease falls into possession after the service of an initial notice and the position in this case where leases are deliberately created after the service of the initial notice.

Paragraph 15 of schedule 3 to the 1993 Act

100. Mr Jourdan's main argument here was to point to the discrepancy in the tenses between paragraphs 15(2)(a) and 15(2)(b) allowing amendment where the initial notice "(a) specifies any property or interest which was not liable to acquisition" and "(b) fails to specify any property or interest which is so liable to acquisition". This difference in tense can have no significance. The inclusion of an interest which "is so liable to acquisition" is not drawing the reader's attention to interests created after the initial notice, but is simply natural language to refer to interests that are liable to acquisition but which, though they existed at the time of the initial notice, were omitted from it. The past tense in paragraph 15(2)(a) refers to something that was included in the initial notice but should not have been.

Land registration

101. I can see no good reason why section 97 should have made the right of a tenant under the initial notice registrable as a notice under the LRA 2002 as if it were an estate contract, if Parliament did not intend the consequences of non-registration to follow under the full rigours of that legislation. If it had intended section 19 of the 1993 Act to be the only consequence of non-registration, it could easily have said so.

Disposal

102. For these reasons as well as those given by Gloster LJ, I would allow this appeal, and hold that there was no jurisdiction to allow the court to amend the initial notice to include the New Leases that were created after service of the initial notice.

Moore-Bick LJ:

103. I agree that the appeal should be allowed for the reasons given by Gloster LJ.

Appendix

The principal provisions of the 1993 Act (in force at the relevant time) which were relied upon in argument as supporting each side's arguments.

"Chapter I

Collective enfranchisement in case of tenants of flats

1. The right to collective enfranchisement

(1) This Chapter has effect for the purpose of conferring on qualifying tenants of flats contained in premises to which this Chapter applies on the relevant date the right, exercisable

subject to and in accordance with this Chapter, to have the freehold of those premises acquired on their behalf-

(a) by a person or persons appointed by them for the purpose, and

(b) at a price determined in accordance with this Chapter;

and that right is referred to in this Chapter as "the right to collective enfranchisement".

(2) Where the right to collective enfranchisement is exercised in relation to any such premises ("the relevant premises")-

(a) the qualifying tenants by whom the right is exercised shall be entitled, subject to and in accordance with this Chapter, to have acquired, in like manner, the freehold of any property which is not comprised in the relevant premises but to which this paragraph applies by virtue of subsection (3); and

(b) section 2 has effect with respect to the acquisition of leasehold interests to which paragraph (a) or (b) of subsection (1) of that section applies.

(3) Subsection (2)(a) applies to any property if at the relevant date either-

(a) it is appurtenant property which is demised by the lease held by a qualifying tenant of a flat contained in the relevant premises; or

(b) it is property which any such tenant is entitled under the terms of the lease of his flat to use in common with the occupiers of other premises (whether those premises are contained in the relevant premises or not).

(7) In this section-

"appurtenant property", in relation to a flat, means any garage, outhouse, garden, yard or appurtenances belonging to, or usually enjoyed with, the flat;

"the relevant premises" means any such premises as are referred to in subsection (2).

(8) In this Chapter "the relevant date", in relation to any claim to exercise the right to collective enfranchisement, means the date on which notice of the claim is given under section 13.

2. Acquisition of leasehold interests

(1) Where the right to collective enfranchisement is exercised in relation to any premises to which this Chapter applies ("the relevant premises"), then, subject to and in accordance with this Chapter-

(a) there shall be acquired on behalf of the qualifying tenants by whom the right is exercised every interest to which tills paragraph applies by virtue of subsection (2); and

(b) those tenants shall be entitled to have acquired on their behalf any interest to which this paragraph applies by virtue of subsection (3);

and any interest so acquired on behalf of those tenants shall be acquired in the manner mentioned in paragraphs (a) and (b) of section 1 (1).

(2) Paragraph (a) of subsection (1) above applies to the interest of the tenant under any lease which is superior to the lease held by a qualifying tenant of a flat contained in the relevant premises.

(3) Paragraph (b) of subsection (1) above applies to the interest of the tenant under any lease (not falling within subsection (2) above) under which the demised premises consist of or include-

(a) any common parts of the relevant premises, or

(b) any property falling within section 1 (2)(a) which is to be acquired by virtue of that provision,

where the acquisition of that interest is reasonably necessary for the proper management or maintenance of those common parts, or (as the case may be) that property, on behalf of the tenants by whom the right to collective enfranchisement is exercised.

(4) Where the demised premises under any lease falling within subsection (2) or (3) include any premises other than-

(a) a flat contained in the relevant premises which is held by a qualifying tenant,

(b) any common parts of those premises, or

(c) any such property as is mentioned in subsection (3)(b),

the obligation or (as the case maybe) right under subsection (1) above to acquire the interest of the tenant under the lease shall not extend to his interest under the lease in any such other premises.

(7) In this section "the relevant premises" means any such premises as are referred to in subsection (1).

3. Premises to which this Chapter applies

(1) Subject to section 4, this Chapter applies to any premises if -

(a) they consist of a self-contained building or part of a building;

(b) they contain two or more flats held by qualifying tenants; and

(c) the total number of flats held by such tenants is not less than two-thirds of the total number of flats contained in the premises.

…….

5. Qualifying tenants

(1) Subject to the following provisions of this section, a person is a qualifying tenant of a flat for the purposes of this Chapter if he is tenant of the flat under a long lease....

(2) Subsection (1) does not apply where—

(a) the lease is a business lease; or

(b) the immediate landlord under the lease is a charitable housing trust and the flat forms part of the housing accommodation provided by it in the pursuit of its charitable purposes; or

(c) the lease was granted by sub-demise out of a superior lease other than a long lease..., the grant was made in breach of the terms of the superior lease, and there has been no waiver of the breach by the superior landlord;

and in paragraph (b) “charitable housing trust” means a housing trust within the meaning of the Housing Act 1985 which is a charity within the meaning of the Charities Act 1993.

(3) No flat shall have more than one qualifying tenant at any one time.

(4) Accordingly—

(a) where a flat is for the time being let under two or more leases to which subsection (1) applies, any tenant under any of those leases which is superior to that held by any other such

tenant shall not be a qualifying tenant of the flat for the purposes of this Chapter; and

(b)…..

(5)……..

9. The reversioner and other relevant landlords for the purposes of this Chapter.

(1) Where, in connection with any claim to exercise the right to collective enfranchisement in relation to any premises the freehold of the whole of which is owned by the same person, it is not proposed to acquire any interests other than—

(a) the freehold of the premises, or

(b) any other interests of the person who owns the freehold of the premises,

that person shall be the reversioner in respect of the premises for the purposes of this Chapter.

(2) Where, in connection with any such claim as is mentioned in subsection (1), it is proposed to acquire interests of persons other than the person who owns the freehold of the premises to which the claim relates, then—

(a) the reversioner in respect of the premises shall for the purposes of this Chapter be the person identified as such by Part I of Schedule 1 to this Act; and

(b) the person who owns the freehold of the premises every person who owns any freehold interest which it is proposed to acquire by virtue of section 1(2)(a), and every person who owns any leasehold interest which it is proposed to acquire under or by virtue of section 2(1)(a) or (b), shall be a relevant landlord for those purposes.

….

(3) Subject to the provisions of Part II of Schedule 1, the reversioner in respect of any premises shall, in a case to which subsection (2) … applies, conduct on behalf of all the relevant landlords all proceedings arising out of any notice given with respect to the premises under section 13 (whether the proceedings are for resisting or giving effect to the claim in question).

(4) Schedule 2 (which makes provision with respect to certain special categories of landlords) has effect for the purposes of this Chapter.

13. Notice by qualifying tenants of claim to exercise right

(1) A claim to exercise the right to collective enfranchisement with respect to any premises is made by the giving of notice of the claim under this section.

(2) A notice given under this section ("the initial notice") -

(a) must

(i) in a case to which section 9(2) applies,] be given to the reversioner in respect of those premises and

(ii) in a case to which section 9(2A) applies, be given to the person specified in the notice as the recipient]; and

(b) must be given by a number of qualifying tenants of flats contained

in the premises as at the relevant date which-

(i) …

(ii) is not less than one-half of the total number of flats so contained;

(3) The initial notice must-

(a) specify and be accompanied by a plan showing-

(i) the premises of which the freehold is proposed to be acquired by virtue of section 1 (1),

(ii) any property of which the freehold is proposed to be acquired by virtue of section 1(2)(a), and

(iii) any property ... over which it is proposed that rights (specified in the notice) should be granted ... in connection with the acquisition of the freehold of the specified premises or of any such property so far as falling within section 1(3)(a);

(b) contain a statement of the grounds on which it is claimed that the specified premises are, on the relevant date, premises to which this Chapter applies;

(c) specify-

(i) any leasehold interest proposed to be acquired under or by virtue of section 2(1)(a) or (b), and

(ii) any flats or other units contained in the specified premises in relation to which it is considered that any of the requirements in Part II of Schedule 9 to this Act are applicable;

(d) specify the proposed purchase price for each of the following, namely-

(i) the freehold interest in the specified premises or, if the freehold of the whole of the specified premises is not owned by the same person, each of the freehold interests in those premises],

(ii) the freehold interest in any property specified under paragraph (a)(ii), and

(iii) any leasehold interest specified under paragraph (c) (i);

(e) state the full names of all the qualifying tenants of flats contained in the specified premises and the addresses of their flats, and contain ...

in relation to each of those tenants, ... -

(i) such particulars of his lease as are sufficient to identify it, including the date on which the lease was entered into, the term for which it was granted and the date of the commencement of the term,

(ii) , (iii) ...

(f) state the full name or names of the person or persons appointed as the nominee purchaser for the purposes of section 15, and an address in England and Wales at which notices may be given to that person or those persons under this Chapter; and

(g) specify the date by which the reversioner must respond to the notice by giving a counter-notice under section 21.

(4) …

(5) The date specified in the initial notice in pursuance of subsection (3)(g) must be a date falling not less than two months after the relevant date.

(6), (7) …

(8) Where any premises have been specified in a notice under this section, no subsequent notice which specifies the whole or

part of those premises may be given under this section so long as the earlier notice continues in force.

(9) Where any premises have been specified in a notice under this section and-

(a) that notice has been withdrawn, or is deemed to have been withdrawn, under or by virtue of any provision of this Chapter or under section 74(3), or

(b) in response to that notice, an order has been applied for and obtained under section 23(1),

no subsequent notice which specifies the whole or part of those premises may be given under this section within the period of twelve months beginning with the date of the withdrawal or deemed withdrawal of the earlier notice or with the time when the order under section 23(1) becomes final (as the case may be).

(10) In subsections (8) and (9) any reference to a notice which specifies the whole or part of any premises includes a reference to a notice which specifies any premises which contain the whole or part of those premises; and in those subsections and this "specifies" means specifies under subsection (3) (a)(i).

(11) Where a notice is given in accordance with this section, then for the purposes of this Chapter the notice continues in force as from the relevant date-

(a) until a binding contract is entered into in pursuance of the notice,

or an order is made under section 24(4)(a) or (b) or 2S(6)(a) or (b) providing for the vesting of interests in the nominee purchaser,

(b) if the notice is withdrawn or deemed to have been withdrawn under or by virtue of any provision of this Chapter or under section 74(3), until the date of the withdrawal or deemed withdrawal, or

(c) until such other time as the notice ceases to have effect by virtue of any provision of this Chapter.

(12) In this Chapter "the specified premises", in relation to a claim made under this Chapter, means-

(a) the premises specified in the initial notice under subsection (3) (a) (i), or

(b) if it is subsequently agreed or determined under this Chapter that any less extensive premises should be acquired in pursuance of the notice in satisfaction of the claim, those premises;

and similarly references to any property or interest specified in the initial notice under subsection (3) (a) (ii) or (c) (i) shall, if it is subsequently agreed or determined under this Chapter that any less extensive property or interest should be acquired in pursuance of the notice, be read as references to that property or interest.

(13) Schedule 3 to this Act (which contains restrictions on participating in the exercise of the right to collective enfranchisement, and makes further provision in connection with the giving of notices under this section) shall have effect.

19. Effect of initial notice as respects subsequent transactions by freeholder etc

(1) Where the initial notice has been registered in accordance with section 97(1), then so long as it continues in force-

(a) any person who owns the freehold of the whole or any part of the specified premises or the freehold of any property specified in the notice under section 13(3)(a)(ii)] shall not-

(i) make any disposal severing his interest in those premises or in that property] or

(ii) grant out of that interest any lease under which, if it had been granted before the relevant date, the interest of the tenant would to any extent have been liable on that date to acquisition by virtue of section 2(1)(a) or (b); and

(b) no other relevant landlord shall grant out of his interest in the specified premises or in any property so specified any such lease as is mentioned in paragraph (a) (ii);

and any transaction shall be void to the extent that it purports to effect any such disposal or any such grant of a lease as is mentioned in paragraph (a) or (b).

(2) Where the initial notice has been so registered and at any time when it continues in force-

(a) any person who owns the freehold of the whole or any part of the specified premises or the freehold of any property specified in the notice under section 13(3) (a) (ii) disposes of his interest in those premises or that property,] or

(b) any other relevant landlord disposes of any interest of his specified in the notice under section 13(3) (c) (i) ,

subsection (3) below shall apply in relation to that disposal.

(3) Where this subsection applies in relation to any such disposal as is mentioned in subsection (2)(a) or (b), all parties shall for the purposes of this Chapter be in the same position as if the person acquiring the interest under the disposal-

(a) had become its owner before the initial notice was given (and was accordingly a relevant landlord in place of the person making the disposal), and

(b) had been given any notice or copy of a notice given under this Chapter to that person, and

(c) had taken all steps which that person had taken;

and, if any subsequent disposal of that interest takes place at any time when the initial notice continues in force, this subsection shall apply in relation to that disposal as if any reference to the person making the disposal included any predecessor in title of his.

(4) Where immediately before the relevant date there is in force a binding contract relating to the disposal to any extent-

(a) by any person who owns the freehold of the whole or any part of the specified premises or the freehold of any property specified in the notice under section 13(3)(a)(ii),] or

(b) by any other relevant landlord,

of any interest of his falling within subsection (2)(a) or (b), then, so long as the initial notice continues in force, the operation of the contract shall be suspended so far as it relates to any such disposal.

(5) Where-

(a) the operation of a contract has been suspended under subsection (4) ("the suspended contract"), and

(b) a binding contract is entered into in pursuance of the initial notice,

then (without prejudice to the general law as to the frustration of contracts) the person referred to in paragraph (a) or (b) of that subsection shall, together with all other persons, be discharged from the further performance of the suspended

contract so far as it relates to any such disposal as is mentioned in subsection (4).

(6) In subsections (4) and (5) any reference to a contract (except in the context of such a contract as is mentioned in subsection (5) (b)) includes a contract made in pursuance of an order of any court; but those subsections do not apply to any contract providing for the eventuality of a notice being given under section 13 in relation to the whole or part of the property in which any such interest as is referred to in subsection (4) subsists.

21. Reversioner's counter-notice

(1) The reversioner in respect of the specified premises shall give a counter-notice under this section to the nominee purchaser by the date specified in the initial notice in pursuance of section 13(3)(g).

(2) The counter-notice must comply with one of the following requirements, namely -

(a) state that the reversioner admits that the participating tenants were on the relevant date entitled to exercise the right to collective enfranchisement in relation to the specified premises;

(b) state that, for such reasons as are specified in the counter-notice, the reversioner does not admit that the participating tenants were so entitled;

(c) contain such a statement as is mentioned in paragraph (a) or (b) above but state that an application for an order under subsection (1) of section 23 is to be made by such appropriate landlord (within the meaning of that section) as is specified in the counter-notice, on the grounds that he intends to redevelop the whole or a substantial part of the specified premises.

(3) If the counter-notice complies with the requirement set out in subsection (2) (a), it must in addition-

(a) state which (if any) of the proposals contained in the initial notice are accepted by the reversioner and which (if any) of those proposals are not so accepted, and specify-

(i) in relation to any proposal which is not so accepted, the reversioner's counter-proposal, and

(ii) any additional leaseback proposals by the reversioner;

(b) if (in a case where any property specified in the initial notice under section 13(3)(a)(ii) is property falling within section 1(3)(b)) any such counter-proposal relates to the grant

of rights or the disposal of any freehold interest in pursuance of section 1(4), specify-

(i) the nature of those rights and the property over which it is proposed to grant them, or

(ii) the property in respect of which it is proposed to dispose of any such interest, as the case may be;

(c) state which interests (if any) the nominee purchaser is to be required to acquire in accordance with subsection (4) below;

(d) state which rights (if any) any] relevant landlord, desires to retain-

(i) over any property in which he has any interest which is included in the proposed acquisition by the nominee purchaser,

or

(ii) over any property in which he has any interest which the nominee purchaser is to be required to acquire in accordance with subsection (4) below,

on the grounds that the rights are necessary for the proper management or maintenance of property in which he is to retain a freehold or leasehold interest; and

(e) include a description of any provisions which the reversioner or any other relevant landlord considers should be included in any conveyance to the nominee purchaser in accordance with section 34 and Schedule 7.

(4) The nominee purchaser may be required to acquire 011 behalf of the participating tenants the interest in any property of any] relevant landlord, if the property-

(a) would for all practical purposes cease to be of use and benefit to him, or

(b) would cease to be capable of being reasonably managed or maintained by him,

in the event of his interest in the specified premises or (as the case may be) in any other property being acquired by the nominee purchaser under this Chapter.

(5) Where a counter-notice specifies any interest in pursuance of subsection (3)(c), the nominee purchaser or any person authorised to act on his behalf shall, in the case of any part of the property in which that interest subsists, have a right of access thereto for the purpose of enabling the nominee

purchaser to obtain, in connection with the proposed acquisition by him, a valuation of that interest; and subsection (3) of section 17 shall apply in relation to the exercise of that right as it applies in relation to the exercise of a right of access conferred by that section.

(6) Every counter-notice must specify an address in England and Wales at which notices may be given to the reversioner under this Chapter.

(7) The reference in subsection (3) (a) (ii) to additional leaseback proposals is a reference to proposals which relate to the leasing back, in accordance with section 36 and Schedule 9, of flats or other units contained in the specified premises and which are made either-

(a) in respect of flats or other units in relation to which Part II of that Schedule is applicable but which were not specified in the initial notice under section 13(3) (c) (ii) , or

(b) in respect of flats or other units in relation to which Part III of that Schedule is applicable.

(8) Schedule 4 (which imposes requirements as to the furnishing of information by the reversioner about the exercise of rights under Chapter II with respect to flats contained in the specified premises) shall have effect.

24. Applications where terms in dispute or failure to enter contract

(1) Where the reversioner in respect of the specified premises has given the nominee purchaser-

(a) a counter-notice under section 21 complying with the requirement set out in subsection (2) (a) of that section, or

(b) a further counter-notice required by or by virtue of section 22(3) or section 23(5) or (6),

but any of the terms of acquisition remain in dispute at the end of the period of two months beginning with the date on which the counter-notice or further counter-notice was so given, a leasehold valuation tribunal may, on the application of either the nominee purchaser or the reversioner, determine the matters in dispute.

(2) Any application under subsection (1) must be made not later than the end of the period of six months beginning with the date on which the counter-notice or further counter-notice was given to the nominee purchaser.

(3) Where-

(a) the reversioner has given the nominee purchaser such a counter-notice or further counter-notice as is mentioned in subsection (1) (a) or (b),

and

(b) all of the terms of acquisition have been either agreed between the parties or determined by a leasehold valuation tribunal under subsection (1),

but a binding contract incorporating those terms has not been entered into by the end of the appropriate period specified in subsection (6), the court may, on the application of either the nominee purchaser or the reversioner, make such order under subsection (4) as it thinks fit.

(4) The court may under this subsection make an order-

(a) providing for the interests to be acquired by the nominee purchaser to be vested in him on the terms referred to in subsection (3);

(b) providing for those interests to be vested in him on those terms, but

subject to such modifications as-

(i) may have been determined by a leasehold valuation tribunal, on the application of either the nominee purchaser or the reversioner, to be required by reason of any change in circumstances since the time when the terms were agreed or determined as mentioned in that subsection,

(ii) and are specified in the order; or

(c) providing for the initial notice to be deemed to have been withdrawn at the end of the appropriate period specified in subsection (6);

and Schedule 5 shall have effect in relation to any such order as is mentioned in paragraph (a) or (b) above.

(5) Any application for an order under subsection (4) must be made not later than the end of the period of two months beginning immediately after the end of the appropriate period specified in subsection (6).

(6) For the purposes of this section the appropriate period is-

(a) 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;

(b) where all or any of those terms have been determined by a leasehold valuation tribunal under subsection (1)-

(i) the period of two months beginning with the date when the decision of the tribunal under that subsection becomes final, Or

(ii) such other period as may have been fixed by the tribunal when making its determination.

(7) In this section "the parties" means the nominee purchaser and the reversioner and any relevant landlord who has given to those persons a notice for the purposes of paragraph 7(1)(a) of Schedule 1.

(8) In this Chapter "the terms of acquisition", in relation to a claim made under this Chapter, means the terms of the proposed acquisition by the nominee purchaser, whether relating to-

(a) the interests to be acquired,

(b) the extent of the property to which those interests relate or the rights to be granted over any property,

(c) the amounts payable as the purchase price for such interests,

(d) the apportionment of conditions or other matters in connection with the severance of any reversionary interest, or

(e) the provisions to be contained in any conveyance,

or otherwise, and includes any such terms in respect of any interest to be acquired in pursuance of section 1(4) or 21(4).

97 Registration of notices, applications and orders under Chapters I and II

(1) No lease shall be registrable under the Land Charges Act 1972 or be taken to be an estate contract within the meaning of that Act by reason of any rights or obligations of the tenant or landlord which may arise under Chapter I or II, and any right of a tenant arising from a notice given under section 13 or 42 shall not be capable of falling within paragraph 2 of Schedule 1 or 3 to the Land Registration Act 2002]; but a notice given under section 13 or 42 shall be registrable under the Land Charges Act 1972, or may be the subject of a notice under the Land Registration Act 2002], as if it were an estate contract.

(2) The Land Charges Act 1972 and the Land Registration Act 2002]-

(a) shall apply in relation to an order made under section 26(1) or 50(1) as they apply in relation to an order affecting land which is made by the court for the purpose of enforcing a judgment or recognisance;

and

(b) shall apply in relation to an application for such an order as they apply in relation to other pending land actions.

Schedule 3

The initial notice: supplementary provisions

……..

Part III Other provisions

Inaccuracies or misdescriptions in initial notice

15. (1) The initial notice shall not be invalidated by any inaccuracy in any of the particulars required by section 13(3) or by any misdescription of any of the property to which the claim extends.

(2) Where the initial notice-

(a) specifies any property or interest which was not liable to acquisition under or by virtue of section 1 or 2, or

(b) fails to specify any property or interest which is so liable to acquisition, the notice may, with the leave of the court and on such terms as the court may think fit, be amended so as to exclude or include the property or interest m question.

(3) Where the initial notice is so amended as to exclude any property or interest, references to the property or interests specified in the notice under any provision of section 13(3) shall be construed accordingly; and, where it is so amended as to include any property or interest, the property or interest shall be treated as if it had been specified under the provision of that section under which it would have fallen to be specified if its acquisition had been proposed at the relevant date."