

Residential Landlord & Tenant: Simple Misunderstandings – Long-Term Consequences

The Case of *Chasewood Park Residents Ltd -v- Sabrina Kim & Another* [2013] EWCA Civ 68

The Facts

Chasewood Park comprises around 97 residential flats in Harrow.

The freehold owner granted a head-lease of Chasewood Park for such a long period that it was a '*virtual freehold*'.

On 7 December 1988, a sublease of Flat 26, Chasewood Park was granted for a term of 125 years and in which the subtenant covenanted to pay annual ground rent ('the Sublease').

On 5 October 2001, Mr and Mrs Kim ('the Claimants') purchased the Sublease. At this stage, it is worth noting that the Claimants misunderstood the true freehold / leasehold / sub-leasehold arrangement. The Claimants wrongfully believed it was a more straight-forward freehold / leasehold position.

In 2006, the then head-tenant of Chasewood Park indicated an intention to sell its head-lease. On 24 August 2006, Chasewood Park's Residents' Association sent a letter to all the tenants asking them to confirm whether they would participate in the acquisition of its interest.

Unfortunately, the letter wrongfully referred to the acquisition of the *freehold* interest in Chasewood Park. Furthermore, the letter stated that the benefits of acquiring the freehold interest for participating tenants would be (a) no further liability to pay ground rent and (b) new, 999-year leases (subject to payment of a small legal fee).

This letter contributed to the Claimants' misunderstanding of the true arrangement – the Claimant's believed that the freehold interest would be acquired. The Claimants confirmed that they would like to participate in the acquisition of such an interest.

Chasewood Park Residents Ltd ('the Company') was subsequently incorporated for the purpose of bidding at auction. On 9 February 2007, the Company sent a letter to all the tenants confirming it was progressing the Residents' Association's proposals to acquire the *freehold* interest in Chasewood Park.

The auction took place on 29 March 2007 and the Company successfully acquired Chasewood Park. The Claimants paid their proportion of the acquisition price and they received a share in the Company.

At an EGM of the Company on 26 June 2007, however, the Company advised that it will continue to charge annual ground rent to build up a fund to cover accountancy fees, legal fees, etc. The Claimants refused to pay any ground rent to the Company. Furthermore, the Claimants refused to accept a new 999-year lease because it included a covenant to pay annual ground rent.

In October 2007, the Company issued proceedings against the Claimants for ground rent arrears. The Claimants defended the proceedings by claiming:

1. The representation in the Residents' Associations letter dated 24 August 2006 was a clear statement of intention that existing tenants would have the ground rent payable under their leases extinguished.
2. The Company adopted that representation on 9 February 2007.
3. They relied on those representations which induced them to contribute to the Company's cost of acquiring Chasewood Park.
4. In the circumstances, the Company was prevented from relying on its strict legal rights (promissory estoppel).

Furthermore, the Claimants made a counterclaim for a new 999-year lease with no provision for ground rent (proprietary estoppel).

The Trial Judge held that the Residents' Association's letter dated 24 August 2006 was sufficiently clear to mean the Claimants would have the ground rent payable under their Sublease extinguished and, therefore, it was sufficient to form the basis of an estoppel argument.

However, the Trial Judge went on to find that the Claimants could not be said to have relied upon the representation due to a '*mismatch*' between (a) the Company's intention that the Sublease would continue but it would not enforce the obligation to pay ground rent and (b) the Claimants' misunderstanding that the obligation to pay ground rent would extinguish in any event because their Sublease would merge with the freehold.

The Claimants appealed. Furthermore, the Company cross-appealed the Trial Judge's decision that the representation was sufficiently clear for the Claimants to base an estoppel argument.

The Court of Appeal's Decision

Lord Justice Patten gave the Court of Appeal's decision on 25 February 2013 to which Lord Justices McCombe and Kitchin agreed.

The Court first dealt with the Company's cross-appeal and issue as to whether the letter dated 24 August 2006 made a clear promise to abolish ground rent and sufficient to form the basis of the Claimants' promissory estoppel defence.

Taking into consideration the context of when, and the circumstances in which, the letter was sent, the Court found that:

1. The letter was intended merely to gauge the level of support amongst existing tenants for a possible acquisition of Chasewood Park.
2. It was uncertain whether the acquisition would be affordable.
3. It was uncertain whether the bid would be successful.
4. It was almost certainly not possible for the Residents' Association to predict seven months in advance what financial constraints the Company would face after its acquisition of Chasewood Park.
5. The letter was no more than a summary of the potential benefits which could flow from acquisition rather than an unqualified promise of what the Company would do in the event of a successful acquisition.

The Court then dealt with the issue as to whether the letter dated 24 August 2006 made a clear promise that the new 999-year leases would not contain an obligation to pay ground rent and, therefore, sufficient to form the basis of the Claimants' proprietary estoppel counterclaim.

The Court found that the fact that the Claimants sought to relate the one alleged promise not to pay ground rent to a second promise for new, 999-year leases made the promise even more unclear taking into consideration the long-term implications which would obviously have to be considered by the Company only after it had acquired Chasewood Park.

Although the Court went on to comment on the Trial Judge's decision that the Claimants could not be said to have relied upon the representation due to a '*mismatch*', it was unnecessary for the Court to do so taking into consideration it had already decided that the representation was insufficiently clear to form the basis of the Claimants' promissory estoppel defence and proprietary estoppel counterclaim.

The Message

It is our opinion that, on balance, the Court resolved the dispute correctly.

However, the resolution of the dispute involved the commencement of legal proceedings, a Trial and then an appeal hearing in the Court of Appeal. The resolution of the dispute would have been at great cost to both parties.

Furthermore, the dispute arose simply because (a) the Company was unclear when it was dealing with the tenants and when it was seeking their support for the acquisition of the head-lease and (b) the Claimants misunderstood the true freehold / leasehold / sub-leasehold arrangement.

The message is the same for both parties (and anyone following a course of action that is likely to have long-term property implications) – obtain early legal advice on the proper course of action to be followed and the precise consequences of following such a course of action.

Richard Moss Solicitors

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