LRA/77/2005

LANDS TRIBUNAL ACT 1949

LEASEHOLD ENFRANCHISEMENT – collective enfranchisement – preliminary issue – Leasehold Reform Housing and Urban Development Act 1993 Section 24 – Leasehold Valuation Tribunals (Procedure) (England)Regulations 2003 – Application by nominee purchaser under Section 24(1) to Leasehold Valuation Tribunal – Application identifying price and costs as terms in dispute but omitting to identify any other matters as being in dispute – LVT determining purchase price and costs – subsequently nominee purchaser seeking to restore the application before LVT for determination of further matters in dispute (namely the terms of the proposed conveyance including in particular a proposed indemnity clause) – whether LVT has jurisdiction to allow the restoration of the application for this purpose.

IN THE MATTER OF AN APPEAL FROM A DECISION OF THE LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSEMENT PANEL

BETWEEN **(1) SINCLAIR GARDENS INVESTMENTS KENSINGTON LIMITED** **Appellant**

and

EARDLEY CRESCENT No. 75 LIMITED **Respondent**

Re: 75 Eardley Crescent and Warwick Cottage, Earls Court London SW5 9PU

Before: His Honour Judge Huskinson

Sitting at Procession House, 110 New Bridge Street, London EC4V 6JL on 23 May and 6 July 2006

Mr Paul Letman instructed by P Chevalier & Co for the Appellant
No appearance or representation on behalf of the Respondent

The following cases are referred to in this decision:

Penman v Upavon Enterprises Limited [2001] EWCA Civ 956
Troop v Gibson [1986] 1EGLR 1
Re 6 Palmeira Square (LRA/22/2003)
9 Cornwall Crescent London Ltd v K and C RLBC [2006] 1 WLR 1186

DECISION

Introduction

1. The Appellant appeals to the Lands Tribunal, with permission, from a decision of the Leasehold Valuation Tribunal for the London Rent Assessment Panel (hereafter "the LVT") dated 6 June 2005 whereby the LVT decided that it had issued no final decision upon an application made to it by the Respondent under section 24 of the Leasehold Reform Housing and Urban Development Act 1993 and that the LVT therefore was still seized of jurisdiction to determine the question of the terms of the transfer to be made by the Appellant to the Respondent.

2. The Respondent is the nominee purchaser under the 1993 Act for the seven lessees of 75 Eardley Crescent and Warwick Cottage (hereafter "the Premises") all seven such lessees participating in the proposed purchase of the freehold. The Appellant is the freeholder of the Premises. There is also a head lessee who was party to the original decision of the LVT dated 17 August 2004 but who has not participated in the appeal to the Lands Tribunal. Nothing turns on that point.

3. It is convenient to record the following chronology:

- 20 June 2003: initial notice given by the tenants under section 13.
- 4 September 2003: counter notice served by the Appellant under section 21(1)(a) admitting the right to collective enfranchisement.
- 10 February 2004: application by the Respondent to the LVT under section 24(1).
- 10 August 2004: hearing before LVT.
- 17 August 2004: LVT's written decision as to the price and costs to be paid by the Respondent.
- Thereafter: it appears that after the decision of 17 August 2004 there was correspondence (which is not before me nor is there any evidence before me regarding the course of communications between the parties or the conduct of the parties over this subsequent period) which revealed that there still existed a dispute between the Respondent and the Appellant regarding the proposed terms of the conveyance and, in particular, regarding an indemnity provision proposed by the Appellant.
- Unknown date but prior to 17 May 2005: the Respondent sought to restore the application before the LVT so that the LVT could determine the outstanding matters in dispute.
- 17 May 2005: hearing before the LVT at which the Appellant argued the LVT had no jurisdiction.
- 6 June 2005: LVT's decision ruling that it did have jurisdiction.

- 9 November 2005: Lands Tribunal grants permission to Appellant to appeal (permission having been previously refused by the LVT on 20 July 2005).

4. It is not necessary to refer to anything contained within the lessees' initial notice under section 13. The Appellant's counter notice under section 21 included in paragraph 10 a statement regarding the provisions which the Appellant considered should be included in any conveyance to the Respondent in accordance with section 34 and Schedule 7 and this included a proposed indemnity which was to indemnify the Appellant at all times against any liability or expenses arising by reason of any breaches or non observance of certain covenants "whether arising before or after the date hereof".

5. The application to the LVT dated 10 February 2004 was made by the Respondent and contained among other matters the following paragraphs:

> *"2. Statement of the purpose of the application and the relevant statutory provision under Section 24 assessing purchase price and determination of the reversioner's costs under Section 91(2) of the Act*
>
> *11. Any terms which have already been determined or agreed between the parties including a copy of any draft conveyance or lease: No terms have been agreed.*
>
> *12. Any terms which are in dispute: the price and costs."*

Although this formed no part of the Appellant's original Statement of Case to the Lands Tribunal, Mr Letman was able on the adjourned hearing to produce a little further information as to what happened between the making of the application to the LVT by the Respondent on 10 February 2004 and the hearing before the LVT on 17 August 2004. It appears that by some directions issued by the LVT on 8 April 2004 the parties were directed that (among other matters) the Respondent was at least 6 weeks before the hearing to send the Appellant a Statement of Case identifying the issues in dispute (re terms of acquisition, valuation, costs or ancillary matters) and that at least 5 weeks before the hearing the Appellant was to send to the Respondent a statement in reply and that the parties were to agree a bundle of documents relevant to the outstanding issues (it being for the Respondent to prepare the bundle and send it to the LVT) and that the bundle should include a draft of the transfer clearly indicating which clauses were agreed and which were in dispute. I was told that in May 2004 the Respondent's solicitors sent to the Appellant's solicitors what was in effect a bare TR1 form and that on 4 August 2004 the LVT wrote to the Appellant's solicitors asking them to send the draft transfer and on 5 August 2004 the Appellant's solicitors sent on to the LVT the form TR1. I should however note at this point that Mr Letman expressly stated that he did not suggest that there was any agreed form of transfer – indeed he stated that the terms of the transfer were not agreed and that the Appellant was seeking the indemnity clause mentioned above. I was also told that the Respondent on 6 July 2004 submitted a Statement of Case which included the following passage

> *"The Nominee Purchaser is asking the LVT to determine the terms for the purchase of the freehold and the headlease, specifically the freehold and headleasehold cost, the valuation fee and the legal fees and indeed any other fee payable to the reversioner in order to effect the conveyance of the freehold and headlease."*

6. The hearing before the LVT on 10 August 2004 proceeded on the basis that the matters that fell to be considered by the LVT were the premium payable and the question of costs. In the LVT's subsequent decision (being the decision under appeal) dated 6 June 2005 the LVT rehearsed this fact and recorded that:

> *"It seems the parties attempted to agree the terms of the transfer but were unable to do so, in particular the wording of an indemnity covenant"*

7. In its decision dated 6 June 2005 the LVT, having referred to the terms of section 24 and to the Court of Appeal decision in *Penman v Upavon Enterprises Limited* [2001] EWCA Civ 956 and to the Leasehold Valuation Tribunal (Procedure) (England) Regulations 2003, concluded that:

> *"The terms of the transfer were not raised by the parties in the hearing in August 2004 and were not dealt with by that Tribunal. It is unfortunate that the terms were not considered at the time of the original hearing, but they were not. In our finding they remain to be determined. The Decision of 17 August 2004 is not a final decision as all the terms of acquisition "have not been determined".*

The LVT observed that it did not seem that any prejudice was caused to the Appellant by proceeding to determine the terms of the transfer if they cannot be agreed between the parties. The LVT found that no final decision had been issued and that circumstances had not arisen enabling the Respondent to refer the matter to court under section 24(4) and that the LVT was still seized of jurisdiction to determine the question of the terms of the transfer. The LVT gave directions regarding the future conduct of the restored application.

8. At the hearing before the Lands Tribunal there was no appearance by or on behalf of the Respondent. Mr Letman for the Appellant submitted a helpful skeleton argument and bundle. There was insufficient time on 23 May 2006 to conclude argument (this being the second case listed that day and the Tribunal being unable to commence sitting until into the afternoon). On 6 July 2006 Mr Letman was able to attend and conclude his submissions having submitted a further helpful skeleton argument and bundle.

Legislation

9. As section 24 of the 1993 Act is central to the question raised in this appeal it is appropriate to set it out in full:

> *"24. (1) Where the reversioner in respect of the specified premises has given the nominee purchaser –*
>
> *(a) a counter-notice under 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 determine 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, and

(ii) 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)."

10. The provisions of section 29(2) dealing with the deemed withdrawal of a tenant's initial notice should also be set out:

"(2) Where –

(a) in a case to which subsection (1) of section 24 applies, no application under that subsection is made within the period specified in subsection (2) of that section, or

(b) in a case to which subsection (3) of that section applies, no application for an order under subsection (4) of that section is made within the period specified in subsection (5) of that section,

The initial notice shall be deemed to have been withdrawn at the end of the period referred to in paragraph (a) or (b) above (as the case may be).

11. The 2003 Regulations do not prescribe any form for an application to the LVT. The following provisions of Regulation 3(1) and (2) should be noted:

"3(1) The particulars to be included with an application are –

(a) the name and address of the applicant;

(b) the name and address of the respondent;

(c) the name and address of any landlord or tenant of the premises to which the application relates;

(d) the address of the premises to which the application relates;

(e) a statement that the applicant believes that the facts stated in the application are true.

(2) Where an application is of a description specified in paragraph 1 of the Schedule 1 (Enfranchisement and Extended Leases) the particulars and documents listed in paragraph 1 of Schedule 2 shall be included with the application."

An application under section 24 falls within the description of application specified in paragraph 1 of Schedule 1 and accordingly there is a requirement that, so far as presently relevant, the following particulars and documents are to be included with the application (see Schedule 2 paragraph 1):

"1 – (1) a copy of any notice served in relation to the enfranchisement

(2) the name and address of the freeholder and any intermediate landlord

(3) the name and address of any person having a mortgage or other charge over an interest in the premises the subject of the application held by the freeholder or other landlord.

(4) ....

(5) ...."

Appellant's submissions

12. The primary submission advanced by Mr Letman is that the issues to be decided by the LVT on an application under section 24 must be identified in the application which is made. An LVT can only determine the application which is before it. Accordingly the application to the LVT in order to be a valid application under Section 24(1), must effectively plead the points in dispute. Mr Letman accepted that there was nothing in the 2003 Regulations indicating that a pleading of the points in dispute was required, but he submitted that a requirement to plead the points in dispute must be inferred from the wording of section 24(1) itself because the parties must know the ambit of the dispute. He accepted that a brief pleading as in the *Penman* case (ie by including in the paragraph setting out what the LVT was asked to determine the words "the terms of the conveyance") was sufficient but that there must be such a pleading. He submitted that the closing words of section 24(1) namely

"....a leasehold valuation tribunal may .... determine the matters in dispute."

should be read as conferring jurisdiction to determine such matters as had been identified as in dispute by a pleading to that effect in the application. He contrasted the position concerning the lessees' initial notice and the reversioner's counternotice (which were recognised as not having the function of pleadings, see *9 Cornwall Crescent London Ltd v K and C RLBC* [2006] 1 WLR 1186) with the position concerning the application to the LVT which he submitted did require a form of pleading.

13. In the present case Mr Letman submitted that the LVT had only been asked by the Respondent's application to determine the price to be paid and the costs payable. The LVT had done this. It had therefore done all that it was asked to do and had become *functus officio*.

14. Mr Letman particularly drew attention to the fact that, in the earlier LVT decision of 17 August 2004, it was expressly recorded that the matters that fell to be considered were "the

premium payable and the question of costs". No mention was made in the Respondent's application of other terms being in dispute beyond the question of price and costs. In particular no mention of any disputed indemnity clause was raised in the application, nor was it raised before the LVT at the hearing which led to the decision of 17 August 2004. Mr Letman therefore submitted that the LVT has issued a decision which must be taken as a final decision for the purposes of section 101(9). The LVT can do no more and it is now too late to restore the application.

15. Mr Letman contrasted the present case with the situation in *Penman*. In that case the tenant's application to the LVT contained in the opening wording an express statement that the applicant was applying to the LVT for determination of the price to be paid and "the terms of the conveyance". It was stated in *Penman* (see Arden LJ at paragraph 38) that the LVT appeared to have dealt with only one of the issues placed before it and that the matter could return to the LVT on the facts of that case – leading to the conclusion that there had not yet arisen any jurisdiction in the County Court to make a vesting order. However, in the present case, Mr Letman submitted, the question of the other terms of acquisition had not been laid before the LVT and it therefore could not be said that the LVT's decision of 17 August 2004 was in someway incomplete.

16. As regards the fate under section 29 of the tenants' initial notice Mr Letman submitted that this is deemed to be withdrawn under section 29(2)(a). I enquired how this was so bearing in mind that the Respondent did in fact make an application to the LVT under section 24(1) within the time limit under section 24(2). Mr Letman responded that although an application was made under section 24(1) it was not a good enough application (because it did not properly plead the ambit of the dispute) and therefore must for the purposes of section 29(2)(a) be treated as not being an application under section 24(1) at all.

17. Mr Letman accepted that if the omission to specify other terms in dispute had been raised before the LVT at the first hearing, then the LVT could have dealt with this by allowing some amendment to the application. However, he submitted that the LVT cannot amend the application after it has issued a final decision. At the resumed hearing on 6 July Mr Letman raised a further argument which (if correct) would restrict the ability of the LVT to allow an amendment. The argument relates to the position under section 29(2)(a) (see paragraph 16 above) and is this. Mr Letman submitted that if an application under section 24(1) is made within the time limit within section 24(2) but is an insufficiently pleaded application then, on the expiry of the time limit, section 29(2)(a) will apply and the initial notice will be treated as withdrawn. If this is correct it would follow that after that date the LVT cannot save the position by allowing an amendment to the application, because it would be too late and the initial notice would already be deemed to be withdrawn.

18. Mr Letman also advanced the following alternative argument, namely that by going through the hearing before the LVT on the aforesaid basis the Appellant and the Respondent must be deemed to have agreed all the other terms of acquisition such that once the LVT had issued its decision dated 17 August 2004 the circumstances in subsection 24(3)(b) had been reached. On this basis the appropriate period (as defined in section 24(6)(b)) commenced to run when the decision of 17 August 2004 became final (which would have been 21 days, namely the period for applying for permission to appeal, after the date on which the LVT's

decision was sent to the parties). On this analysis therefore the appropriate period ended sometime in September 2004 and the time limit for making an application to the Court was long passed (see section 24(5)). Accordingly, the initial notice is deemed to have been withdrawn and there is no pending matter in relation to which the application to the LVT can be restored. On this point he referred to the Lands Tribunal decision in Re 6 Palmeira Square (LRA/22/2003) in particular at paragraph 28(3) and submitted that what the statute envisages (namely that once the LVT has made a determination under section 24(1) all relevant matters in dispute will have been sufficiently determined for a court to be able to make a vesting order) should be assumed to have in fact happened. In answer to the question of what are the terms of acquisition that must be deemed to be agreed Mr Letman submitted that these would be the bare minimum terms in accordance with the provisions of Schedule 7 – and if Schedule 7 does not sufficiently settle all the other terms then Schedule 5 may assist.

19. Further Mr Letman submitted that the Respondent was estopped by convention from arguing that there existed further matters in dispute which the LVT could be asked to rule upon. He pointed out that both the Respondent and the Appellant had been through a hearing before the LVT on the basis that only the price and costs were disputed. The Respondent was not entitled to resile from that mutually recognised situation. Mr Letman referred again to the decision of the Lands Tribunal in re 6 Palmeira Square LRA/22/2003 and also to *Troop v Gibson* [1986] 1 EGLR1.

Conclusions

20. I am unable to accept Mr Letman's submission. My reasons for so concluding are as follows:

21. There is no prescribed form for an application to the LVT. Further, while the 2003 Regulations make provision regarding the inclusion of certain matters in the application or the submission with the application of certain documents, the Regulations do not indicate a requirement in effect to "plead" precisely what are the matters in dispute at the date of application. Also there is the language of section 24(1) itself. This contemplates that where the terms of acquisition remain in dispute after a certain date then an LVT (if an application is made by the nominee purchaser or the reversioner within the time limit stipulated in section 24(2)) may determine the matters in dispute. The language of section 24(1) indicates that what gives the LVT jurisdiction to determine the matters in dispute is an application to it under section 24(1), not an application which contains a precisely pleaded statement of all the matters in dispute.

22. Further, the jurisdiction of the LVT is to "determine the matters in dispute", which in my view confers jurisdiction on the LVT to determine all the matters in dispute (whether or not specifically identified in the application) rather than merely some of them. I note that in the *Penman* case at paragraph 41 Tuckey LJ stated:

> *"I do not think that the obstacle can be overcome by saying that the Leasehold Valuation Tribunal's decision is final. The Tribunal's decision <u>may</u> be final as to what it decided, but it cannot be final as to what it did not. I can see no reason in*

principle why the Tribunal cannot still decide the outstanding issue. The statute requires it to decide all matters in dispute and it has not yet done so."

I particularly draw attention to the last sentence.

23. There is nothing therefore in section 24 of the Act to require some precise pleading of the matters in dispute. Nor is any such requirement to be found in the 2003 Regulations. Where an application is made under section 24, Regulation 3 of the 2003 Regulations requires the particulars in Regulations 3(1) to be given and the further particulars and documents in Schedule 2 paragraph 1 to be given or provided. None of these provisions require a pleading of the matters in dispute.

24. Further, it is likely that in many if not most cases the identification of what precisely is in dispute at the date of an application made by a nominee purchaser to the LVT may not be entirely easy to perform . This is because the parties are likely to be in a state of negotiation regarding the terms of acquisition, where there would be scope for argument as to whether some or other point had yet been agreed – and it should noted that "agreed" does not mean contractually agreed but means agreed subject to contract, see section 38(4).

25. Also it may be noted that there is in the 2003 Regulations no provision regarding the amending the contents of an application to the LVT. This to my mind serves to reinforce the conclusion that an applicant is not required to identify in the application the matters in dispute. It would be surprising if it were permissible to imply (despite the matters already noted above) a requirement that the application must plead the matters in dispute in circumstances where there are under the Regulations no provisions for amendment.

26. There is no reason in principle why the jurisdiction conferred by section 24(1) on an LVT has to be exercised in a single once and for all decision rather than being dealt with in stages by way of two or more decisions. The *Penman* case expressly recognises that this is so.

27. If at the first hearing before the LVT in the present case the parties (or one of them) had asked the LVT to note that there was or might be disagreement on some of the other terms of acquisition (ie other than price and cost) such that it might be necessary to return to the LVT by way of restoring the application if agreement was not reached on these matter, then there could in my view have been no doubt as to the jurisdiction of the LVT to allow the application to be restored for this purpose. This is effectively what was contemplated in *Penman* as being permissible.

28. In the present case it was reasonably apparent on the face of the application to the LVT (read together with the supporting documents) that the extent of the matters in dispute was wider than merely the price and the costs. See in particular paragraph 11 of the application which expressly states that "no terms have been agreed" and see the terms of the Appellant's counter notice (sent with the application) which set out the Appellant's contention that a particular indemnity clause should be included. However it seems that neither the Respondent nor the Appellant nor the LVT itself addressed their minds to the significance of the foregoing.

Had they done so the further terms in dispute could have been included in the subject matter of the first determination of the LVT, alternatively the parties could have noted that it might be necessary to return to the LVT by way of a restored application.

29. Mr Letman raised the spectre that if his primary submission were found to be wrong then a landlord would be at risk of being greatly inconvenienced by a nominee purchase "pulling a rabbit out of a hat" by belatedly raising some new unagreed point and then contending that the conditions in section 24(3) therefore were not satisfied and that the time limits in sections 24(5) had never therefore become engaged. However it is open to the landlord to be proactive (or merely reactive to directions such as were given here) and to ensure that a draft transfer is laid before the LVT and to ask the LVT to determine all the terms of acquisition save for such terms as were noted on the draft transfer as agreed. I do not accept that the decision I have ultimately reached in this case allows a nominee purchaser to "play fast and loose" (as Mr Letman put it).

30. A further problem regarding Mr Letman's primary submission is this. I am unable to accept his argument as described in paragraph 16 above. In the present case an application under section 24(1) was undoubtedly made to the LVT within the time limit specified in section 24(2). I cannot conclude that this application should be disregarded (by reason of being insufficiently pleaded) for the purposes of section 29(2)(a). However if (as I conclude) one must proceed on the basis that an application under section 24(1) was indeed made within the relevant time period, then the result is that, if Mr Letman's primary argument is right (such that the LVT no longer has jurisdiction to decide the disputed matters which were not dealt with at the first hearing), the lessees' initial notice under section 13 is left in limbo. For this to occur would be contrary to the scheme of the Act which is careful to provide either that the initial notice results in an eventual conveyance/transfer or the initial notice is deemed to have been withdrawn. The reason the initial notice would be in limbo is because section 29(2)(a) does not apply for the reasons mentioned above and section 29(2)(b) would not apply either (unless Mr Letman's second argument is correct – as to which see below) because in the present circumstances there would in fact never have been reached a point at which all the terms of acquisition had either been agreed or determined by the LVT – and the result of this is that section 24(3)(b) has not yet been satisfied such that no "appropriate period" has started to run under section 24(6) and accordingly there has been no failure to make an application under section 24(4) within the time limits in section 24(5). Consequently the tenant's initial notice is not deemed to be withdrawn either within paragraph (a) or (b) of section 29(2) and the notice is indeed in limbo.

31. So far as concerns the alternative argument advanced by Mr Letman to the effect that, bearing in mind that only the question of the price and costs was raised before the LVT, the parties should be assumed to have agreed all other terms on the basis that these would be as suggested in Schedule 7 of the Act, the problem is that this would involve deeming something to have occurred when quite clearly it had not occurred. The application to the LVT made by the Respondent expressly stated that "no terms have been agreed". This passage, coupled with the contents of the documents submitted with the application, including in particular paragraph 10 of the Appellant's counter notice, revealed that there was at least one matter, namely an indemnity clause, which was being argued for by the Appellant and which had not been agreed by the Respondent. I therefore am unable to accept the contention that it must be assumed that

the LVT's decision of 17 August 2004 determined all the outstanding matters in dispute such that the Respondent could have (but did not) make an application under section 24(4) within the time limits in section 24(5). There is the further problem that, if one does deem the other terms of acquisition to be agreed, one does not know what these agreed terms are, because I do not consider that Schedule 7 (with or without Schedule 5) solves this problem.

32. Similarly so far as concerns the argument of estoppel by convention, the parties did not proceed throughout the hearing before the LVT upon an agreed assumption that some given state of facts was accepted by them to be true as contemplated in *Troop v Gibson* [1986] 1EGLR 1 especially at p5-6. In that case Purchas LJ stated:

> *"The crucial requirement for convention estoppel is that both parties should be of like mind"*.

There is no evidence before me as to what was the understanding of the parties beyond what is apparent in the documents. However, from this it appears to me either (a) that the respective parties did not address their minds to whether there was a dispute regarding other terms of acquisition or (b) the Respondent mistakenly thought that the Appellant agreed the other terms which the Respondent had in mind or (c) the Appellant mistakenly thought that the Respondent agreed the other terms which the Appellant had in mind. In none of these circumstances would the parties have been acting on an agreed assumption that a given state of facts was to be accepted by them as true.

33. In summary, what is required in order to give the LVT jurisdiction to do what is contemplated in section 24(1) (namely to determine the matters in dispute, ie all the matters in dispute) is the making of an application to it under section 24(1) within the time limit in section 24(2). This is what occurred. By oversight the parties pursued the application to a hearing before the LVT when the LVT was invited to perform only part of the task which section 24(1) set it. It having subsequently become apparent that the LVT had only performed part of this task I conclude that the LVT was correct in finding that its decision of 17 August 2004 should not be treated as a final decision and in concluding that it retained jurisdiction to complete the performance of the presently uncompleted task set it by section 24(1).

34. In the result therefore I dismiss the Appellant's appeal.

35. No application was made for costs by either side (and as noted the Respondent was neither present nor represented and took no part in the appeal). Further I am of course aware of the limitation on awarding costs set forth in section 175 of the Commonhold and Leasehold Reform Act 2002. I make no order for costs.

Dated 7 July 2006

His Honour Judge Huskinson