

Qualifying tenants are permitted to acquire various interests in particular premises by means of a collective enfranchisement claim. In *LM Homes Ltd and others v Queen Court Freehold Company Ltd* [2020] EWCA Civ 371, the Court of Appeal was presented with qualifying tenants who wished to acquire a leasehold interest in the common parts of a building that were subject to third-party leases.

Facts

The case relates to a purpose-built block of flats in London. The common parts in question were the airspace above the block, part of the basement and the sub-soil underneath (the “Common Parts”). Leases had been granted to third parties over the Common Parts by a previous landlord. Those third parties had intended to develop their respective leasehold areas.

Decision

Common Parts

First, it had to be established that the relevant areas were indeed the common parts of the building. The landlord argued that, as the Common Parts were subject to third-party leases, they would not constitute common parts.

The court found that the test to determine whether a common part existed is a “functional test” and not a matter of legal title. Consideration must be had to how the relevant areas were used, as opposed to whether or not they are held under a separate title. As such, the Common Parts were held to constitute common parts.

Reasonably Necessary to Acquire

In accordance with The Leasehold Reform Housing and Urban Development Act 1993, the qualifying tenants then had to show that acquiring the leasehold interest was “reasonably necessary for the proper management or maintenance” of those Common Parts.

Here, the Court of Appeal decided that, if the tenants of the Common Parts exercised their development rights, it would remove their status as common parts. As such, it was reasonably necessary for the proper management or maintenance of the Common Parts to acquire the leasehold interest and insist that the Common Parts remained as they were. It was not sufficient that there were reservations in the leases protecting the landlord’s right to maintain the Common Parts.

The Freehold Interest

Lewison LJ clarified the position that the ordinary rules of common law will apply to the acquisition of the freehold of a building in collective enfranchisement claims. As such, the new owner will be entitled to the airspace above the building and the subterranean strata below it.

Practical Significance

The Court of Appeal has shown a clear intention to apply a broad interpretation of common parts in collective enfranchisement claims. This case will be welcomed by tenants who are seeking to protect their rights to the common parts of their premises in collective enfranchisement claims.

The case serves as a warning to landlords who attempt to frustrate collective enfranchisement claims by leasing the common parts of a premise to third parties. In addition, it serves as a warning to third-party tenants who take leases of the areas of a premise that are designed to be common parts.

Should you require any assistance in respect of collective enfranchisement claims, or otherwise, please do not hesitate to contact our Real Estate Litigation team.

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