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## Decision day on Dolphin Square

Ben Rigby - 28 July, 2014

A long-running leasehold battle takes a decisive turn with a High Court ruling on a high-value central London property dispute.

London's property market has always been attractive to investors. Recent rising prices continue to make it so. It is no surprise, then, that commercial interests clash over the ownership of those property assets, even in the residential sphere.

One such dispute took a decisive turn earlier this month in London's High Court, when Mr Justice Mann handed down a landmark judgment on the legal rights regarding a major piece of central London property.

The judgment was given in favour of US private equity group Westbrook, which owns the underlease of the 1,250-flat Dolphin Square block in Pimlico, which expires in 2034.

The block, bought for GBP 176.5 million in 2004, had been the subject of a dispute over leasehold enfranchisement claims against the freeholder, Friends Life, a UK pension fund manager.

Mann J confirmed Westbrook's legal entitlement to collectively enfranchise Dolphin Square and thereby acquire the freehold of the central London block.

The claim was the largest ever enfranchisement action, with 612 participating company leaseholders involved.

Talking to CDR, Richard Manyon, an associate at Payne Hicks Beach, explains: "Leaseholders, as a group, can have rights to force their landlord to sell a freehold (collective enfranchisement). This right does not apply to a single head lessee, or to a person who owns three or more flats in a property."

Manyon points out that all the flats in Dolphin Square were owned by Friends Life, under a single head lease.

Westbrook, as head tenant, put in place over 600 offshore companies, each one holding two individual flat leases, which were sub-underleases to the vast majority of flats in Dolphin Square, in order to meet the qualification criteria for leasehold enfranchisement.

He says: "The landlord objected to this arrangement on the basis that it was an artificial means of getting around the relevant legislation, and also made other challenges."

### FALCON TRIUMPHANT

The case involved leading silks from London's property law and company law sets, including Falcon Chambers, considered the market leader for leasehold property work, and Erskine Chambers, known for company and commercial litigation expertise.

Nicholas Dowding QC and Anthony Radevsky of Falcon, with Richard Snowden QC and Andrew Thornton of Erskine, were instructed by Andrew Myers and Guy Harper of Stephenson Harwood. Snowden had previously been involved in another combined property and company law case, involving London hotel Claridge's.

Stephen Jourdan QC and Mark Sefton, also of Falcon, were instructed by specialist London property firm, Maples Teesdale, for the defendant.

Stephenson Harwood and Maples Teesdale declined to comment on the case, and as to whether any appeal was pending.

**Commentary provided by Richard Manyon, Dispute Resolution associate at Payne Hicks Beach** first published on 28 July 2014 on CDR News online

ROAD TO JUDGMENT

Westbrook in May 2010 launched a claim to acquire the freehold of the building under UK collective enfranchisement legislation, offering to pay GBP 111.7 million.

This month's decision follows a previous attempt by Friends Life to strike out the claim, on the grounds that it was an abuse of process, following the withdrawal of an earlier claim.

That attempt failed following a Court of Appeal ruling in May 2012 which held that the relevant legislation, the Leasehold Reform, Housing and Urban Development Act 1993, gave tenants an unqualified right to make successive claims for enfranchisement, provided they waited a year after withdrawal of a previous notice.

Friends Life subsequently pursued nine other grounds to challenge Westbrook's claim. Three were abandoned a month before trial in February 2014; the remaining six were considered during the proceedings.

In a 215-page judgment, Mann J found that Friends Life's challenges to Westbrook's collective enfranchisement claim had failed.

Manyon tells CDR: "The court decided that the multiple company structure was effective and that the tenant had not invalidated their original notice by stating a proposed purchase figure – GBP 111 million – which was too low, because this was held to be a genuine offer."

Westbrook is now entitled to buy the freehold of Dolphin Square. The price and other sale terms will either be agreed between Friends and Westbrook or determined by the property chamber of the First Tier Tribunal.

NEXT STEPS

In parallel to the collective enfranchisement claim, the company said in a statement that alternative claims were also made for 90-year lease extensions.



Richard Manyon  
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