



Neutral Citation Number: [2023] EWCA Civ 1318

Case No: CA-2022-002111

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN LIVERPOOL
CHANCERY APPEALS (ChD)

Mr Justice Fancourt
[2022] EWHC 3336 (Ch)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14/11/2023

Before :

LORD JUSTICE PETER JACKSON
LADY JUSTICE ASPLIN
and
LORD JUSTICE ARNOLD

Between :

FSV FREEHOLDERS LIMITED
- and -
SGL 1 LIMITED

Appellant

Respondent

Farhan Asghar (instructed by **Direct Access**) for the **Appellant**
John de Waal KC and Gemma de Cordova (instructed by **MSB Solicitors**) for the
Respondent

Hearing date: 26 October 2023

Approved Judgment

This judgment was handed down remotely at 12 noon on 14 November 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.....

Lady Justice Asplin:

1. This appeal is concerned with whether two sets of offer notices which were dated 11 February 2020 and were served by the administrators of Fox Street Village Limited, (“FSV Ltd”) upon qualifying tenants complied with the requirements of section 5 and 5A Landlord and Tenant Act 1987 (“LTA 1987”). The issues arise in relation to the disposal of the freehold title of Blocks A - E, Fox Street, Liverpool, L3 3BQ (the “Entire Property”) and the tenants’ rights of first refusal in relation to the disposal of Blocks A – C and E.
2. By an order dated 11 January 2022, District Judge Lampkin: declared that FSV Ltd, the then freehold owners of the Entire Property had complied with the provisions of section 5 LTA 1987 on its disposal of the freehold title of the Entire Property to the Respondent, SGL1 Limited, (“SGL1”); recorded that the Appellants’ response to the Claim was totally without merit; and ordered that the Appellant and other Defendants pay SGL1’s costs which he summarily assessed at £17,204 plus any applicable VAT.
3. Fancourt J heard an appeal from District Judge Lampkin’s order. By an order dated 14 October 2022 he: allowed the appeal in part; set aside the order of District Judge Lampkin; restored the claim for the purposes of determining whether: (i) Blocks A, B, C and E, Fox Street form one, two, or more “buildings” within the meaning and for the purposes of Part I of the LTA 1987; and (ii) as a result of the answer to (i), whether the notices served on qualifying tenants by FSV Ltd (by its administrators) pursuant to section 5 or 5A of the LTA 1987 were valid; and made directions for the hearing and an order as to costs.
4. The judge rejected the argument that the section 5 LTA 1987 notices were invalid because they did not set out the proposed terms in relation to the entire transaction in the sense of the sale of the Entire Property being Blocks A, B, C, E (and Block D to which the LTA 1987 did not apply,) or alternatively, that the eventual sale of the freehold to SGL1 was invalid in view of the terms of the section 5 notices, which severed the transaction.
5. The judge gave a short ex tempore judgment, the citation of which is [2022] EWHC 3336 (Ch). He dealt with the question of whether the notices were invalid because they did not set out the terms of the transaction that was proposed, being the sale of the Entire Property for £1.6 million at [30]. In summary, he decided that: the argument was based on an incorrect interpretation of the LTA 1987; section 5A(2) which requires the terms of the proposed disposal to be summarised, is a requirement which is incorporated into section 5, but section 5(3) requires the transaction to be severed for the purposes of the notices; the section 5 notices do not have to contain the terms that the purchaser agreed but rather the severed terms that section 5(3) requires; and accordingly, there was no arguable basis for contending that the notices were invalid in this respect. He explained the matter in this way:

“ . . . Section 5A(2), which requires the terms of the proposed disposal to be summarised, is a requirement that is incorporated into section 5 of the Act, but section 5(3) requires the transaction to be severed for the purposes of the notices. That is how the Act works. If block A was one building, and blocks B, C and E were another, the proposed transaction was correctly

severed. It is not the case that if the offers to the lessees are not accepted, the landlord then has to sell on a severed basis to the proposed purchaser. It can proceed with the unsevered transaction. The section 5 notices do not have to contain the terms that the purchaser agreed but rather the severed terms that section 5.3 (sic) requires, which often require the consideration to be apportioned. . . .”

6. The Appellant, FSV Freeholders Limited (“Freeholders”) had been incorporated on 14 January 2021. It was authorised by 115 of the qualifying tenants as their nominee for the purposes of acquiring the freehold. Various other leaseholders who took part in the proceedings below are not parties to the appeal.

Background

7. On 11 February 2020, notices were served on behalf of FSV’s administrators on qualifying tenants, pursuant to section 5 LTA 1987. Although there is no prescribed form for notices under section 5 of the LTA 1987, we were informed that generally they take the form which was used by the administrators’ solicitors. They were each addressed to a particular “qualifying tenant” at his or her flat and stated that they were from FSV acting by its administrators. It was stated expressly that the notice contained important legal rights for the benefit of the addressee and other qualifying tenants under the LTA 1987 and that urgent independent legal advice should be sought.
8. The notices were of two types. One referred to Block A and the other referred to Blocks B, C and E. The type relating to Block A, defined Block A at paragraph 1, as the “Property” edged red on the plan attached and stated that the flat of which the addressee was a qualifying tenant formed part of that Property and that notice was given under section 5 and 5A LTA 1987 (as amended). Paragraph 2 provided that the landlord owned the freehold of which the Property forms part and provided the relevant title number and paragraph 3 made clear that the landlord proposed to “enter into a contract to create or transfer an estate or interest in land, namely to sell the freehold interest in the Property edged red on the plan attached . . .”. Paragraph 4 stated that it was intended that the proposed disposal would be subject to the leases, tenancy agreements, occupancies and other interests affecting the Property, details of which were set out. At paragraph 5, consideration for the “proposed disposal” was stated to be £350,000 and at paragraph 6 it was stated that completion would take place 20 working days after the date of exchange and that a 10% deposit would be payable on exchange of contracts.
9. Paragraph 7 provided as follows:

“THIS NOTICE CONSTITUTES AN OFFER by the landlord to enter into a contract on the principal terms mentioned in paragraphs 3 to 6 of this notice. This offer may be accepted by the requisite majority of qualifying tenants of the constituent flats.”

The notices specified 27 April 2020 as the date for giving notice accepting the offers to sell to the tenants and a further period of two months from the expiration of the

acceptance period during which the qualifying tenants could nominate a purchaser, pursuant to section 6 LTA 1987. Any notice accepting the offer or other correspondence about the notice itself was required to be sent to the landlord's solicitors.

10. The notices in relation to Blocks B, C and E were in very similar form and adopted the same formula. "Property" was defined as Blocks B, C and E, shown edged red on the plan. The material differences from the Block A notices were that: in paragraph 5, consideration for the proposed disposal of Blocks B, C and E was stated to be £1,050,000; and there was no reference to a required deposit.
11. Block D, which was empty, was not subject to the provisions in Part 1 of the LTA 1987 and accordingly, no notices were served in relation to it.
12. No acceptance notices were served by qualifying tenants and by a contract dated 12 June 2020, made between FSV (in administration), the administrators and SGL1, FSV agreed to sell the freehold of the Entire Property being Blocks A, B, C and E and Block D, defined as the "freehold property on the east side of Fox Street, Liverpool and registered at HM Land Registry with title absolute under title number LA303457" for £1.6 million excluding VAT. The purchase price was defined in the following way:

"Purchase Price means £1,600,000 (exclusive of VAT), being the aggregate of the following amounts of consideration attributable to the five blocks comprising the Property:

Block A	£350,000
Blocks B, C and E	£1,050,000
Block D	£200,000"

The deposit was defined as meaning £80,000 exclusive of VAT and included an Exclusivity Sum of £25,000 which had been paid by the buyer and held by the vendor's solicitors.

13. The contract was subject to a number of conditions precedent the first of which was the delivery of a "Sealed Court Order" authorising the sale for no less than the Purchase Price and providing for the cancellation of entries on the Land Register in relation to charging orders and equitable liens protected by a notice. That order was obtained on 25 September 2020. On 25 November 2020, the sale contract was completed and SGL1 was registered as the freehold proprietor of the Entire Property thereafter.
14. It is said that the qualifying tenants were unaware that the administrators of FSV had executed a contract for sale with SGL1 and the notices did not state that the total price for the Entire Property was £1.6 million. Nevertheless, on 28 September 2020, tenants offered to purchase the Entire Property for £1.65 million which was rejected. As I have already mentioned, Freeholders was incorporated on 14 January 2021 and was authorised by 115 of the qualifying tenants as their nominee for the purposes of acquiring the freehold.

15. A notice pursuant to section 11A LTA 1987, dated 22 March 2021, was served on behalf of the majority of qualifying tenants requiring SGL1 to give particulars of the disposal by FSV. Thereafter, a notice pursuant to section 12B LTA 1987, dated 20 June 2021, was served on SGL1 requiring it to dispose of the Property to Freeholders on the same terms as those on which it had been transferred to SGL1. A default notice was served on 30 August 2021, informing SGL1 that it was in default of its obligations under section 12B LTA 1987 and requiring it to make good its default.
16. SGL1 issued a Part 8 Claim on 17 September 2021, seeking a declaration that the provisions of Part 1 of the 1987 Act had been complied with and it was that claim which came before District Judge Lampkin.

Grounds of Appeal

17. Although they are in narrative form, in essence there is a single ground of appeal, namely that the judge interpreted section 5 and 5A LTA 1987 incorrectly when he held that the section 5 notices did not need to contain the terms that the proposed purchaser agreed in relation to the purchase of the freehold of the Entire Property, comprising Blocks A - E. Accordingly, it is said that the judge was wrong to decide that the notices were not invalid for that reason. It is said that the notices should have stated the contractual price of £1.6 million, that a deposit of £80,000 was required and that the terms of the sale were conditional upon obtaining the Sealed Court Order authorising the sale at the agreed price.
18. Although the judge restored the claim for the purposes of determining whether Blocks A, B, C and E form one, two or more “buildings” within the meaning and for the purposes of Part 1 of the LTA 1987, it is assumed for the purposes of this appeal that FSV was correct to treat Block A as one building and Blocks B, C and E as another.

Relevant legislation

19. Part 1 of the LTA 1987 is headed “Tenants’ Rights of First Refusal”. It creates a right of first refusal for certain tenants of flats in buildings where the landlord intends to sell his interest. Section 1(1) provides that a landlord shall not make a “relevant disposal” affecting any premises to which Part 1 of the LTA 1987 applies unless (a) he has previously served a notice under section 5 on the “qualifying tenants”, “being a notice by virtue of which rights of first refusal are conferred on those tenants”; and (b) the disposal is made in accordance with the requirements of sections 6 to 10.
20. Section 2 contains the definition of “landlord” for the purposes of Part 1 and section 3 defines the person who is a “qualifying tenant” of a flat. In summary, a “relevant disposal affecting any premises to which this Part [Part 1 LTA 1987] applies” is defined in section 4 as “a disposal by the landlord of any estate or interest (whether legal or equitable)” of premises to which Part 1 applies, including such an interest in common parts of such premises. “Disposal” is defined in section 4(3) as “a disposal whether by the creation or the transfer of an estate or interest” and includes “the surrender of a tenancy and the grant of an option or right of pre-emption” (section 4(3)(a)) but excludes “a disposal under the terms of a will or under the law relating to intestacy” (section 4(3)(b)). Section 4A makes clear that Part 1 of the 1987 Act applies to a contract to create or transfer an estate or interest in land, whether it is

conditional or unconditional as it applies in relation to a disposal consisting of the creation or transfer of such an estate or interest and that:

“(1)

. . .

(a) references to a disposal of any description shall be construed as references to a contract to make such a disposal;

(b) references to making a disposal of any description shall be construed as references to entering into a contract to make such a disposal; and

(c) references to the transferee under the disposal shall be construed as references to the other party to the contract and include a reference to any other person to whom an estate or interest is to be granted or transferred in pursuance of the contract.”

21. Section 5 (1) LTA 1987 provides that where the landlord “proposes” to make a “relevant disposal affecting premises to which . . . Part [1] applies, he shall serve a notice under this section (an “offer notice”) on the qualifying tenants of the flats contained in the premises . . .” Section 5(2) provides that an “offer notice” must comply with the requirements of whichever of sections 5A - D is applicable. In a case such as this, in which the contract was to be completed by conveyance, the offer notice is required to comply with section 5A. Further, section 5(3) provides as follows:

“Where a landlord proposes to effect a transaction involving the disposal of an estate or interest in more than one building (whether or not involving the same estate or interest), he shall, for the purpose of complying with this section, sever the transaction so as to deal with each building separately.”

22. Section 5A provides, where relevant, as follows:

“(1) The following requirements must be met in relation to an offer notice where the disposal consists of entering into a contract to create or transfer an estate or interest in land.

(2) The notice must contain particulars of the principal terms of the disposal proposed by the landlord, including in particular—

(a) the property, and the estate or interest in that property, to which the contract relates,

(b) the principal terms of the contract (including the deposit and consideration required).

(3) The notice must state that the notice constitutes an offer by the landlord to enter into a contract on those terms which may

be accepted by the requisite majority of qualifying tenants of the constituent flats.

(4) The notice must specify a period within which that offer may be so accepted, being a period of not less than two months which is to begin with the date of service of the notice.

(5) The notice must specify a further period of not less than two months within which a person or persons may be nominated by the tenants under section 6.

...”

23. Where an offer notice has been served, during the period specified in the notice, or such longer period as may be agreed with the requisite majority of the qualifying tenants, the landlord shall not dispose of the interest in the premises other than to a person or persons nominated by the tenants (section 6(1) LTA 1987). A further protected period arises if an “acceptance notice” is served (section 6(2)). Section 6(3) provides that:

“An “acceptance notice” means a notice served on the landlord by the requisite majority of qualifying tenants of the constituent flats informing him that the person by whom it is served accept the offer contained in his notice.”

The “requisite majority of qualifying tenants of the constituent flats” means qualifying tenants of constituent flats with more than 50% of the available votes (section 18A LTA 1987).

24. After the expiry of the period specified for the service of an acceptance notice or the appointment of a nominee, the landlord may dispose of the premises within a period of 12 months to a third party buyer as long as the deposit and consideration are not less than those which were specified in the offer notice (sections 7(1) and (3) LTA 1987).
25. There is no dispute that the service of an offer notice which complies with section 5A LTA 1987 is mandatory and failure to comply with those requirements renders it a nullity. Where no offer notice is served at all, or where a disposal is made in contravention of sections 6 - 10 LTA 1987, the qualifying tenants may also serve an information notice on the landlord pursuant to section 11A LTA 1987 requiring the landlord:

“(a) to give particulars of the terms on which the original disposal was made (including the deposit and consideration required) and the date on which it was made, and

(b) where the disposal consisted of entering into a contract, to provide a copy of the contract.”

Further, if the landlord fails to comply with the requirements set out in Part 1 LTA 1987 and completes a sale to a third party, the qualifying tenants can require the third party to dispose of the premises which was the subject of the original disposal on the

terms upon which it was made, to their nominee, for example, by service of a valid notice pursuant to section 12B LTA 1987. Conversely, if the landlord complies with its obligations under Part 1 LTA 1987, the third party purchaser takes the interest in land free from the qualifying tenants' rights to first refusal. As I have already mentioned, both section 11A and 12B notices were served in this case.

26. I should add that a landlord commits an offence if, without reasonable excuse, he makes a disposal without complying with section 5 LTA 1987 in relation to the service of notices or in contravention of any prohibition or restriction imposed in sections 6 – 10 (section 10A LTA 1987).

Submissions in brief

27. It is said that the section 5 notices were deficient because they did not contain the overall contract price of £1.6 million, the requirement for a £80,000 deposit and a reference to the condition that a Sealed Order be obtained. Accordingly, they did not comply with Part 1 of the LTA 1987 and the landlord is treated as not having served an offer notice at all.
28. Mr Asghar, on behalf of Freeholders, submits that severance of the transaction for the purposes of section 5(3) is an independent exercise and that a valid notice must state the details in relation to the entire property being disposed of even if the transaction must also be severed. During his oral submissions it became clear that he submits that in order to satisfy the requirements of section 5A in circumstances in which section 5(3) also applies, the notice should contain not only the principal terms of the overall disposal but also those of the severed transaction relating to the building in question.
29. He says that it is consistent with the purpose and intention of the LTA 1987 that the tenants should know what is going on in relation to the premises as a whole so that, in this case, the qualifying tenants in Block A and those in Blocks B, C and E could make their bids. Such transparency prevents bad faith on the part of the landlord who might otherwise seek to apportion the ultimate purchase price between buildings on an arbitrary and unfair basis.
30. Mr Asghar submits that this is borne out by the words used. He says that “transaction” in section 5(3) has a different meaning from the terms “contract” and “disposal” which appear in section 5A and that his interpretation is supported by section 5A(2)(a). It states that the notice must contain particulars of the principal terms of the disposal proposed, including “the property, and the estate or interest in that property to which the contract relates” (emphasis added). Mr Asghar says that “the property” is a reference to the entire freehold, which in this case is Blocks A, B, C, E and D, and that the use of “and” has the effect that not only are particulars of the entire property to which the contract relates required, but also particulars of the estate or interest in that property being disposed of being the particular building. In this regard, he also draws attention to the use of “relates” in section 5A(2)(a).
31. He says, therefore, that even if only a particular block or building is being offered, in a section 5 offer notice as part of a severed transaction, the requirement is to include details of the property to which the contract relates as a whole as well as the breakdown of the apportioned price and terms in relation to the building itself.

32. Mr Asghar also points to the wording of section 5A(2)(b) which states that the principal terms of the “contract” includes “the deposit and consideration required”. He says that the reference to “contract” is to the actual proposed contract for sale with the third party which is the disposal proposed by the landlord and that “contract” must have a consistent meaning where it is used in sections 4A, 5A and 11A. He relied upon the presumption to that effect referred to in *Bennion on Statutory Interpretation* at 21.3.
33. He also relied upon the presumption that where different words are used in a statute they have different meanings which is set out in the same paragraph of *Bennion* and drew attention to the comment that: “The presumption that different words have different meanings will generally be easiest to rebut since ‘the use of the same expression is more likely to be deliberate’.” In this regard, he drew attention to the use of “transaction” in section 5(3) and “contract” in section 5A(2). He submits that it is only the offer to the tenants to purchase the “estate or interest” which is the “transaction” which must be severed.
34. Mr de Waal KC, who appeared with Ms de Cordova on behalf of SGL1, submitted that Mr Asghar’s concerns are misplaced. He says that the offer notice is to inform the lessees of the price which they must pay and the other terms including the deposit which will apply if they accept the landlord’s offer in relation to their building. It is to enable them to serve an “acceptance notice” under section 6 LTA 1987. Accordingly, the price in respect of the relevant part of the severed transaction must be included in the offer notice, rather than the global price relating to the transaction as a whole. He says that it is not necessarily the case that “transaction” in section 5(3) and “contract” in section 5A(2) were intended to have different meanings and took us to a passage in *Devon Partnership NHS Trust v Secretary of State for Health and Social Care* [2021] 1 WLR 2945 at [50] where it was stated that:
- “Sometimes, the fact that Parliament uses one formula in one part of an Act and a different formula in another part shows that a different meaning was intended, but that is not invariably so.”
35. Furthermore, he says that the need for a Sealed Court Order was not a principal term of the disposal because it was a condition precedent to completion of the contract rather than being one of its principal terms.

Discussion and Conclusions

36. As this appeal turns upon a question of statutory construction, it is important to bear in mind the nature of that exercise. In *R (O) v Secretary of State for the Home Department, R (Project for the Registration of Children as British Citizens) v Secretary of State for the Home Department* [2022] UKSC 3, [2022] AC 255, Lord Hodge summarised the correct approach as follows:

“29. The courts in conducting statutory interpretation are “seeking the meaning of the words which Parliament used”: *Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG* [1975] AC 591, 613 per Lord Reid of Drem. More recently, Lord Nicholls of Birkenhead stated: “Statutory interpretation is an exercise which requires the court to

identify the meaning borne by the words in question in the particular context.” (R v Secretary of State for the Environment, Transport and the Regions, Ex p Spath Holme Ltd [2001] AC 349, 396). Words and passages in a statute derive their meaning from their context. A phrase or passage must be read in the context of the section as a whole and in the wider context of a relevant group of sections. Other provisions in a statute and the statute as a whole may provide the relevant context. They are the words which Parliament has chosen to enact as an expression of the purpose of the legislation and are therefore the primary source by which meaning is ascertained...

30. External aids to interpretation therefore must play a secondary role. Explanatory notes, prepared under the authority of Parliament, may cast light on the meaning of particular statutory provisions. Other sources ... may disclose the background to a statute and assist the court to identify not only the mischief which it addresses but also the purpose of the legislation, thereby assisting a purposive interpretation of a particular statutory provision. The context disclosed by such materials is relevant to assist the court to ascertain the meaning of the statute, whether or not there is ambiguity and uncertainty, and indeed may reveal ambiguity or uncertainty: Bennion, Bailey and Norbury on Statutory Interpretation, 8th ed (2020), para 11.2. But none of these external aids displace the meanings conveyed by the words of a statute that, after consideration of that context, are clear and unambiguous and which do not produce absurdity.

31. Statutory interpretation involves an objective assessment of the meaning which a reasonable legislature as a body would be seeking to convey in using the statutory words which are being considered. Lord Nicholls, again in *Spath Holme* [2001] 2 AC 349, 396, in an important passage stated: “*The task of the court is often said to be to ascertain the intention of Parliament expressed in the language under consideration. This is correct and may be helpful, so long as it is remembered that the ‘intention of Parliament’ is an objective concept, not subjective. The phrase is a shorthand reference to the intention which the court reasonably imputes to Parliament in respect of the language used. It is not the subjective intention of the minister or other persons who promoted the legislation. Nor is it the subjective intention of the draftsman, or of individual members or even of a majority of individual members of either House. ... Thus, when courts say that such-and-such a meaning ‘cannot be what Parliament intended’, they are saying only that the words under consideration cannot reasonably be taken as used by Parliament with that meaning.*”

37. Bearing that in mind, I turn to section 5. It is important to read the section as a whole and in context. Section 5(1) provides that where the landlord proposes to make a “relevant disposal affecting premises” he shall serve a notice (an “offer notice”) on the qualifying tenants of the flats contained in the premises. It is that offer notice which is capable of being accepted by the service of an “acceptance notice” by the requisite majority of qualifying tenants of the constituent flats (section 6(1) - (3)). It is important, therefore, to interpret section 5 in the light of the fact that the section 5 offer notice must be capable of acceptance.
38. Section 5(2) provides that the offer notice must comply with the requirements of whichever is applicable of sections 5A – E which, in this case, is section 5A. As the judge explained in short form at [30] of his judgment, the effect of section 5(2) is that the requirements in sections 5A – E are incorporated into section 5 by reference. Section 5(3) deals with a particular circumstance. It applies where the transaction which is proposed involves “the disposal of an estate or interest in more than one building . . .” If that circumstance applies, “for the purposes of complying with this section”, the landlord “shall . . . sever the transaction so as to deal with each building separately”.
39. There are a number of important things to note. First, where section 5(3) applies, its terms are mandatory. Secondly, it is natural that the drafter used the word “transaction” in circumstances in which more than one building was involved. Thirdly, the requirement to deal with each building separately arises for the purposes of complying with “this” section being section 5 as a whole. Fourthly, section 5 is concerned with the need to serve an offer notice and its requirements. Accordingly, it follows that where the circumstances in section 5(3) apply, in order to comply with section 5, an offer notice must be served in relation to each building. Fifthly, in such circumstances, the requirements in sections 5A – E which are made mandatory by section 5(2) must relate to the building in question. Lastly, to put the matter another way, the requirements of sections 5A – E must be read in the light of section 5(3) which is in mandatory terms.
40. I emphasise this because at one stage, Mr Asghar suggested that sections 5A and 5(3) stand alone from one another and that the reference in section 5(3) to “complying with this section” does not affect section 5A. Once one appreciates that the requirements in section 5A (and 5B-E) are incorporated into section 5, and must be read in the light of it, the interpretation of section 5A in the circumstances which have arisen becomes clear and there is no need to resort to presumptions.
41. Where section 5(3) applies, it is necessary, therefore, to serve a notice containing particulars of the property in the sense of the separate building and the estate or interest in that separate building to which the contract relates and the principal terms of that contract. That is the effect of the mandatory requirement in section 5(3) upon the requirements set out in section 5A(2)(a) and (b). In circumstances in which section 5(3) applies, references to the “disposal” by entering into a “contract” should be interpreted by reference to each separate building. The reference to “property” in section 5A(2)(a) should be construed to mean the building in question and the reference to the “contract” in section 5A(2)(b) must be interpreted to refer to the contract in relation to the building in question.

42. I do not consider that it is necessary to rebut a presumption to come to such a conclusion. It is just the way in which the ordinary and natural meaning of the words used should be interpreted in the context in which they arise. The same is true about the interpretation of “contract” in sections 4A and 11A LTA 1987. The fact that as a result of their context “contract” has a different meaning does not detract from nor is it contrary to the proper interpretation of the words in section 5A(2) when section 5(3) applies.
43. Such a construction is consistent with section 5A(3) which provides that the notice must state that it constitutes an offer to enter into a contract on those terms. As the qualifying tenants only have a right of first refusal in relation to the estate or interest in the building which is the subject of the disposal of which their flat forms part, it is natural that the terms in the offer notice should relate to that building. Conversely, in a case in which there are separate buildings, if a landlord were only required to give details of the principal terms of the contract in relation to the disposal of the entire site, the qualifying tenants would not know what terms they were being offered which they could accept. They would be provided with a headline purchase price which would be of no assistance to them. The contract will not necessarily contain an apportionment of the purchase price, (although it did in this case) and therefore, there is no scope for concluding that such an apportionment would be one of the “principal terms” for the purposes of section 5A(2)(b). Accordingly, if section 5A requires a notice to refer only to the principal terms of the overall contract, the tenants would be provided with the headline price (in this case, £1.6 million) which would be of no assistance to them.
44. It follows that I reject what appeared to be Mr Asghar’s original submission that in a situation in which section 5(3) applies, the section 5 offer notice must contain the principal terms of the disposal of the entire site, rather than the terms relating to the particular building. In addition to the matters to which I have already referred, if this original submission were correct, it is difficult to see what real purpose or effect section 5(3) would have.
45. I also reject Mr Asghar’s alternative position which was that the section 5 offer notice must contain particulars both of the offer in relation to the individual building (in this case, Block B and Blocks A - C and E) and the contract in relation to the site as a whole (Blocks A – E (including Block D to which the LTA 1987 did not apply)). He relied upon the phrase “the property and the estate or interest in that property” in section 5A(2)(a). He submitted that: the reference to “property” was to the whole premises being disposed of; “estate or interest” referred to separate building or buildings within that premises and was consistent with the use of “estate or interest” in section 5(3) itself; and the use of “and” in section 5A(2)(a) made it clear that details of both the contract for the purchase of the separate building and the premises as a whole were necessary.
46. Not only is such an interpretation inconsistent with section 5A(3), in my judgment, it is also a misreading of the phrase “the property and the estate or interest in that property” in section 5A(2)(a). Once section 5A is read in the light of section 5(3), it becomes clear that the disposal and the contract relating to it refers to the disposal and contract in relation to the separate building. It seems to me therefore, that in that context, the natural and ordinary meaning of “the property” is to the building in question and the additional requirement to provide details of the “estate or interest in

that property” is to the nature of the interest in the building, whether legal or equitable which the landlord proposes to dispose of. This is consistent with the way in which “estate or interest” is used in section 5(3). It seems to me that once section 5 is read as a whole and section 5A is construed in context, there is no room for an interpretation which requires the section 5 notice to contain details of both the contract in relation to the site as a whole and the individual building.

47. The fallacy of the argument is illustrated quite neatly in this case where part of the entire site being disposed of, being Block D, was not even subject to Part 1 of the LTA 1987. There can be no reason why details in relation to Block D should be provided in a section 5 offer notice. This may not be an unusual situation. If Mr Asghar were right, it would be necessary to give details of the principal terms of the contract for sale of the Entire Property which would include Block D.
48. It also seems to me that an interpretation which only requires the details of the offer in relation to the individual building to be provided is consistent with the purpose and intention of Part 1 of the LTA 1987. It is not necessary that qualifying tenants should have information about the disposal of the site as a whole or the way in which the overall headline purchase price has been apportioned between separate blocks in order to enable them to exercise their rights effectively. As the tenants of a building would be extremely unlikely to accept an offer under section 6 without having obtained a separate valuation for their building, it seems unlikely that they would suffer in any way were a landlord to apportion a headline price for the buildings unfairly. In any event, in those circumstances, they would be entitled to seek redress whether in the County Court or the appropriate tribunal. I should add that it is not suggested that there has been any unfairness or bad faith in this case.
49. In the light of my conclusions in relation to the interpretation of section 5A, Mr Asghar’s points about the failure to mention the deposit of £80,000 and the condition precedent of obtaining a Sealed Court Order fall away. I should mention, however, that, in any event, I consider that the Sealed Court Order was not a “principal term” of the main contract for sale of the Entire Property. It was merely part of the machinery for completion. Accordingly, even if section 5A(2) ought to be interpreted in the way Mr Asghar suggested, the failure to mention the Sealed Court Order in the offer notices would not have invalidated them.
50. For all of the reasons set out above, I would dismiss the appeal.

Lord Justice Arnold :

51. I agree.

Lord Justice Peter Jackson:

52. I also agree.