Tarquin Management Ltd
85 Pimlico Road, London, SW1W 8PH
Tel. 020 77352650
Mob. 07941 845148 – 07920 811827

F.a.o. Jason Kallis
Merali Beedle

By email 28 July 2025

Dear Jason,

Thank you for confirming that the Claimants now consent to the order of 12 February 2025 being set aside. We disagree that the application involved complex issues and would be much simpler than any substantive hearing.

The application is straightforward. All three conditions under CPR 39.3(5) are met: (1) we did not have any sufficient or valid notice of the 12 February 2025 hearing, and (2) we acted promptly, applying to set aside the order on 17 April 2025, having received notice of it on 8 April 2025. We filed our application after attempting to obtain your agreement to set it aside by consent.

Reasonable prospect of success

Regarding the third condition, a reasonable prospect of success in the context of a vesting order, the only question for this Court is whether we have a reasonable prospect of demonstrating that any term of the acquisition remains to be agreed upon or determined by the Tribunal.

The Tribunal's determination must be specific, having considered the terms in dispute—not a generic sweeping statement, as in the current decision, that it is "satisfied that the terms of the draft transfer are appropriate," referring, apparently, to a TR1 that contains virtually no terms at all.

If at the substantive hearing, we can establish that one single term is still at large, your claim for a vesting order must fail in its entirety. The Court has no jurisdiction to determine even the most minor and uncontroversial term of the acquisition. That remains within the exclusive jurisdiction of the Tribunal. We only need a reasonable chance of showing that at least one term remains to be agreed or determined at large at the set aside application. There are many.

The Tribunal's jurisdiction has not concluded, regardless of what the Judge may think or you referring to the decision as "final"; its remit continues until all disputes before it are resolved, meaning all terms relating to the acquisition have either been agreed by the parties or determined by the Tribunal itself. That jurisdiction is not confined to a single hearing or one decision; it endures until the acquisition process is substantively complete. For authority, we refer you once again to the clear explanation of the statutory scheme and respective jurisdictions by the Court of Appeal in ***Goldeagle Properties Ltd v Thornbury Court Ltd*** [2008] EWCA Civ 864 and the advice provided at para 17 to 28, with the key reasoning quoted

below for your convenience. It is impossible to distinguish this case from that dealt with by the Court of Appeal:

> *[17] […]But* ***I can see nothing in the language of s.24(1) which prohibits the LVT from dealing with unagreed points in stages.*** *As Mr Letman pointed out, it is easy to imagine cases where the scheme of the Act simply could not be worked if that were not possible.* ***Suppose, for instance, a case where only some of the interests whose prices or nature were in dispute following the counter-notice were referred to the LVT, either by design or accident.*** *One simply could not say that these items must be taken to be agreed upon. Therefore, they would neither be agreed upon nor determined by the LVT, and time would not start to run until they were****. It would be open to go back to the LVT and say, "Please determine this further unagreed matter****."*
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> *20. Tuckey LJ* [in Penman v Upavon Enterprises [2001] EWCA Civ 956] *put it this way:*
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> > *[41] I do not think the obstacle can be overcome by saying the LVT's decision is final. The Tribunal's decision may be final as to what it did decide, 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.*
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> *22. […] The facts of* Sinclair *were close to that of this case****. The LVT had been asked to determine certain disputed matters but not others****. The submission was that the Tribunal was functus officio after it had decided these and it was too late to amend the reference after a final decision****. The submission (and variants of it) was rejected. HHJ Huskinson applied what Tuckey LJ said in Penman, saying:*
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> > *[26] There is no reason in principle why the jurisdiction conferred by s.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.*
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> *23.* ***[…] The jurisdiction of the LVT is over all "matters in dispute" and is not confined to the specific matters raised in the pleadings at any particular time****.*
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> *28.* ***When a party makes a reference it should ensure that all points not agreed are put before the LVT for determination at the outset****. It should say what it wants. If even seemingly minor matters (e.g. the terms of the transfer in a case where these are likely to be routine) have not been positively agreed, the LVT should be asked to determine them. In practice such points will normally go away by agreement, but if they do not and the LVT is not asked, in effect, to make up the parties minds for them, the result is likely to be delay, extra cost and this sort of case."*

It is clear that the Tribunal had jurisdiction over all matters in dispute, not just the ones you decided to put before it at this hearing.

A number of terms remain at large in this case (neither discussed, agreed, nor determined by the Tribunal), including, but not limited to, those you identified in your skeleton argument as requiring further agreement between the parties (see paragraphs 13(a), (b) and (c)), which

closely mirror the applications you persuaded the Tribunal should be stayed pending your application relating to the premium payable. You have refused or ignored any of our proposals to address those matters pragmatically outside the confines of litigation. There is no indication you ever brought any of these, or any other outstanding disputes, to the attention of the Court.

By way of non-exhaustive examples of terms not agreed and not determined:

- **Revision of the premium pursuant to formal registration increased ground rent for Flat 2**, now formally registered with the Land Registry (copy of last month's notification attached). Section 24(4)(b) of LRHUDA ***requires*** the Tribunal to amend that premium for such changes of circumstances

- **Terms relating to service charges and ongoing breaches by Flat 3 and Flat 5**—expressly acknowledged in your skeleton argument at paragraphs 13(a), (b), and (c) as needing to be addressed before the transfer can take place. The mechanisms you suggest may differ, the labels may differ, but the legal position remains the same: each is a term of the acquisition that has neither been agreed upon nor determined by the Tribunal.

- **No agreed or determined terms governing the treatment of the four cellars (plus one alcove) and related rights**. Your position has repeatedly shifted from claiming all the cellars to excluding those under the pavement, which seems to be the current stance. The intended outcome remains unclear, and no terms have been agreed or determined to give it effect one way or the other.

  If all cellars are to be transferred, there are no terms of transfer for unregistered land. If only some are to be transferred, there are no terms—such as rights of way, easements, or covenants binding successors in title—governing access and servicing of the underpavement vaults, which can only be accessed via the registered land.

  The Tribunal also has not decided whether the cellars constituted "other units" of a commercial nature under the relevant legislation, and it remains seized of that question.

- **Error in ground rent calculation.** The parties agreed that the decision was mistaken in adding up the original ground rents, which total £675 p.a., not £625 as set out in the decision. You accepted the mistake and agreed the additional amount of premium to correct the mistake. That remains almost the only example of an agreement between the parties. Nonetheless, the vesting order you obtained disregarded that agreed correction entirely and reverted to the Tribunal's erroneous figure—without any explanation of the basis for doing so.

Each of the above comfortably exceeds the threshold of a reasonable prospect of success, and the Court will not conduct a mini-trial of the substantive case on a set aside application. Success on just one point already justifies setting aside the order. The application is bound to succeed, swiftly and without recourse to complexity.

Cost of the application and of the 12 February hearing

In the circumstances, we do not agree that the costs of either the 12 February hearing or this application should be in the case. We should be awarded the full cost of this application as we have succeeded. Furthermore, your clients should bear the costs of the 12 February hearing, which should never have proceeded in our absence. The alternative is to proceed with the

application, which you must recognise will inevitably be successful, with the resulting additional costs of the preparation and hearing falling to your clients.

The reasons are simple. The 12 February hearing should not have gone ahead. You had only one day's notice; we had at best, half a day's notice or none at all. Knowing the Court had failed to meet the minimum notice requirements for the hearing, and appearing against litigants in person, you should have sought an adjournment as soon as you received the notice of the hearing. Instead, you encouraged the Court to proceed in our absence to gain a clear procedural advantage. The costs of that hearing were wasted, and your clients should be liable for the consequences of your choices.

Likewise, you should have then consented to set-aside the order when we first raised it in our email of 5 March 2025. As an experienced solicitor, you should have seen that the application was bound to succeed. Instead, you withheld key information and refused to engage, preferring delaying tactics and procedural gamesmanship over resolution. Even now, you still refuse—without explanation—to disclose your skeleton argument from that hearing, while misrepresenting to the Court, in sworn evidence, that you had provided a copy of it before the hearing on 12 February, which you know is untrue. Once again, your clients should bear the cost of your procedural choices, whatever the outcome of your claim.

We therefore invite you to agree to an order for costs of the application in our favour, **summarily assessed at £1,700 (no VAT payable)**. That includes the £313 court fee, £80 estimated cost for printing/copying a and stationery, £350 for the external engagement of a document handler to organise and map/summarise existing materials (this represent just a portion of the £1,000 liability incurred to date), and 50 hours of work at the litigant-in-person rate of £19 per hour, covering all time spent on the application and evidence up to the signing of a consent order.

This figure is entirely reasonable—particularly when compared with the £1,750 plus VAT you claim just for preparing your second witness statement or the amount claimed for the uncontested vesting hearing on 12 February.

Your conduct and continuing reliance on unproven allegations are not in your client's best interest

The most striking feature of your witness evidence is its focus on matters you have since admitted are pure conjecture—and irrelevant ones at that. Nowhere do you address the core issue: the outstanding terms of the acquisition. It is plain that you made no mention of these to the Court when seeking the order, nor do you engage with them in your second statement.

Instead, you chose to repeat your allegations against Mario, despite the fact that he has had no role in the conduct of this litigation since April 2024 and has not influenced its direction. I have been solely responsible for the litigation and all decisions relating to it since that point, with my authority formally recorded in company minutes dated June 2024. Given the potential risk to his recovery, Mario's involvement has been limited to reviewing contemporaneous factual material. If the matter proceeds to a hearing, it is not yet decided whether he or I will attend.

Your response to this application so far mirrors your conduct throughout: unfounded and irrelevant allegations of dishonesty and wrongdoing, failure to provide any supporting evidence, blanket denials of legal arguments without responding to them, and a refusal to

entertain any pragmatic resolution or meaningful negotiation. The results were predictable:—disproportionately high costs, wasted time, repeated rebuttals of arguments already dismissed or disproven, and an increasingly toxic environment for reaching mutually pragmatic agreements on any aspect of the dispute or ongoing building management.

Your clients now face a situation in which, due to the way you have conducted, and continue to conduct, this litigation, their total costs and disbursements already appear to exceed £100,000, or at least four times the premium awarded by the Tribunal. And there is still no clear end in sight for the remaining matters in dispute between the parties.

A disputed hearing would involve an examination of the full extent of the misrepresentations in your witness statements, paragraph after paragraph of misleading or plain false factual assertions, unfounded opinions and pure conjectures presented as established facts. Presumably compounded by what may have been included in the skeleton you refuse to provide a copy of.

Surely you must recognise the very real risk of a wasted costs order—one we would not hesitate to pursue at a contested hearing, and which the Court may impose of its own motion. Your professional conduct will come under scrutiny, potentially exposing you to more serious sanctions by the Court for certifying statements as fact that you knew to be either untrue or merely your own opinion. It is difficult to see how such a hearing, and the inevitable examination of your conduct before the Court, could possibly serve your clients' best interests.

The next procedural step in pursuing your vesting order

Finally, your suggestion that the 30-minute hearing listed for 15 August should now consider the substantive vesting claim is entirely inappropriate. We will not agree, and more importantly, it is unlikely that the Court would endorse it even if we did. We have always treated the set-aside application as a narrow procedural matter—straightforward and suitable for a short hearing, at which we would appear without representation.

Any substantive hearing could never be accommodated within such a short listing. As recent correspondence makes clear, the factual differences between us are extensive and cut across every aspect of the case—from the assertions in your witness statements, to the unresolved acquisition terms, and the necessary adjustment to the premium following the change in ground rent. These are not minor matters. They go to the heart of the claim and render continued reliance on the Part 8 procedure untenable. The case can only proceed under Part 7, with the associated procedural consequences. There can be no serious suggestion that the hearing listed for 15 August is either suitable or sufficient.

Furthermore, should you, as appears to remain your intention, continue to rely on the factual allegations set out in your two statements—including as purported justification for urgency—then, again, the case can only proceed as a Part 7 claim. Those allegations are not accepted: they are fundamentally disputed, often misleading, in some instances plainly false, and in others no more than opinion misrepresented as fact. These matters can only be resolved through full evidence, proper disclosure, and the opportunity for cross-examination.

If, on the other hand, you are abandoning all those factual allegations and accusations, we would insist that the current statements be formally withdrawn from the Court in their entirety. The unfounded allegations, in every aspect of the case, are prejudicial and inflammatory and should not remain in a bundle before the Court at this or on any future hearing, with the

possibility of being revived by you at any given time. Once withdrawn, you would then need to file new evidence to support your claim, this time dealing with matters properly within the jurisdiction, as set out above. Completing that in time for a hearing on 15 August is not credible.

In either case, we would need to file our own evidence, dealing directly with the substantive issue and setting out the full particulars of all the terms we claim have not yet been agreed upon or determined by the Tribunal, or are still subject to the Tribunal's jurisdiction. A hearing on 15 August would not allow sufficient time to complete that work.

While we share your wish to see this matter resolved swiftly, speed cannot come at the expense of fairness or due process—nor justify wasting the Court's finite resources for the perceived convenience of your clients. Your proposal fails on all counts. If the Court were to accede, the most likely outcome would be an adjourned hearing, to be resumed at a later date. That would serve no one and waste costs on all sides.

The only fair course, once you consent to the order being set aside, is for the current listing to be vacated and proceedings to resume *as if* valid service had been effected, starting from the Court's confirmation that the consent order has been sealed. The standard timetable for responding to a claim would then apply from that point. Until we receive confirmation, we cannot determine whether to defend your claim or appeal the vesting order to the Court of Appeal.

Any objection on the grounds of delay would ring hollow. Nearly five months have passed since our first approach on 5 March. If there has been a delay, it stems entirely from your conduct.

Your claim is bound to fail

Looking further ahead to the substance of your claim, and taking into account the relevant case law, your case is likely to fail as having been made prematurely, given the number of matters still to be determined by the Tribunal.

You previously acknowledged in your skeleton argument before the Tribunal that several terms remained outstanding between the parties, with the service charge being the most notable. The Tribunal concluded that this precluded it from making a vesting order. The Court's powers in this respect are no broader than those of the Tribunal.

Those terms were not determined by the Tribunal, whether expressly or implicitly. As in *Gleneagle,* that very acceptance of your skeleton argument is necessarily fatal to your current claim. There is no way to argue otherwise, as the disputes to which those terms relate continue unresolved.

Equally fatal is the fact that three applications are still pending before the Tribunal, stayed at your request following your own application. Each will now need to be fully considered, and the acquisition terms relating to them remain undetermined

Likewise, if, as you have stated in correspondence, you are no longer claiming for the cellars under the pavement to be transferred as part of the collective enfranchisement, terms relating to easements/rights of way/supply of electricity/etc in favour of the units not part of the transfer would have to be agreed, as those cellars can only be reached using the outside steps of the registered land to be transferred.

We consider it virtually inconceivable that you could persuade the Court that none of the above terms remain outstanding. Quite apart from consenting to the order being set aside, you should give serious thought to abandoning the vesting claim altogether—or, at the very least, applying for it to be stayed pending the Tribunal's determination of the remaining disputed items.

That would give both parties a chance to take stock and provide a further incentive for your client to come to the negotiating table, rather than just issuing demands to be met.

It is the course of action most likely to save costs and potentially lead to a satisfactory resolution of surrounding disputes. We would suggest it would be in your clients' best interest to accept the claim that the vesting order was ill-conceived from the outset.

Next step

Please confirm your position regarding the application to set aside and the costs. We have attached a draft order for your review and signature if you agree with our proposal. Unless and until we hear otherwise, we will proceed on the basis that the hearing remains contested and prepare accordingly.

Please further confirm whether you intend to continue to pursue this claim or agree that the matter should go back before the Tribunal, with a further attempt at constructive negotiation in the interim.

Regards,

Davy Thielens

For and on behalf of Tarquin Management