



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/23/2813

Re: Property at 6 Tantallon Road, Baillieston, Glasgow, G69 7AZ (“the Property”)

Parties:

Gibtime Limited, La Vita, 161 Queen Street, Glasgow, G1 3BJ (“the Applicant”)

Miss Giselle Liana Oliveira Magalhaes, 6 Tantallon Road, Baillieston, Glasgow, G69 7AZ (“the Respondent”)

Tribunal Members:

Valerie Bremner (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order be granted in terms of Ground 8 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 in that the tenancy was entered into to provide an employee with a home and the tenant is not a qualifying employee and the Tribunal is satisfied on account of the facts established in this application as set out in Ground 8(2) of Schedule 3 that it is reasonable to grant the application.

Background

1. This application for an eviction order in terms of rule 109 of the tribunal rules of procedure was first lodged with the tribunal on the 17th of August 2023 along with a related application for a payment order with reference FTS.HPC.CV.23.2814. This application was accepted by the Tribunal on 17th October 2023 and a case management discussion was fixed for 19th January 2024 at 2pm.

Case Management Discussion

2.The case management discussion was attended by Miss Robertson of Levy and McRae solicitors who represented the Applicant and by Miss Simpson from Govan Law Centre who represented the Respondent who was also in attendance.

3.The Tribunal had sight of the application, a tenancy agreement, a paper apart, a Notice to Leave and letter sent to the Respondent together with proof of delivery of the notice, a notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003, a rent statement detailing rent arrears, schedule and deposit documents,employee information, redacted P45 and a contract of employment. Miss Robertson had also lodged extensive written representations at the request of the Tribunal.

4.The parties had entered into a private residential tenancy at the property with effect from 17th June 2022.The rent payable in terms of the tenancy agreement is £150 per week payable in advance. The tenancy was entered into in consequence of the Respondent's employment with an organisation trading as La Vita Restaurants, the trading name for a group of companies known as La Vita and controlled by Marco Arcari. Miss Robertson explained that Gibtime Ltd, the landlords in terms of the tenancy agreement provide accommodation for employees of the La Vita group of companies. The directors of all the companies are the same, Mr Arcari and his son. The only shareholder in all of the companies is Mr Marco Arcari and it was not disputed that profits made by Gibtime Ltd are reinvested in the La Vita Group of companies. Miss Robertson's position was that the companies all had the same controlling mind and financial interest and were separate only for the purposes of management of the businesses. The contract of employment relating to the Respondent's employment appeared to be with " La Vita", and it was not disputed that she was an employee of La Vita East End Ltd. Both parties to the application appeared to be of the view that the arrangements made for the employment and tenancy of the Respondent effectively meant that she was the employee of her landlord given the above arrangement.

5.The Respondent became an employee of La Vita Restaurants on 30th May 2022 and the tenancy commenced on June 17th of that year. The tenancy was tied to the Respondent's employment. The Respondent's employment with La Vita ended on 13 January 2023 but she continued to reside at the let property and rent arrears started to accrue in March 2023.

6.The Tribunal had sight of a Notice to Leave dated 17th March 2023 sent to the Respondent by post setting out the eviction ground and indicating that an application to the Tribunal would not be made before 11th June 2023.This Notice was signed for on 28th March 2023.

7.The Tribunal had sight of a Notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 dated 17th August 2023 which was sent to Glasgow City Council in relation to this application.

8.The Respondent did not oppose an eviction order and Miss Simpson indicated on her behalf that she regarded her employer as being her landlord although the tenancy agreement was in the name of Gibtime Ltd and the Respondent was employed by La Vita East End Ltd. Miss Simpson said that the Respondent had treated her employer

and landlord as one and the same and she had always dealt with the same two people in relation to both her job and the tenancy, these being Mr Arcari and his son.

Submissions for the Applicant

9. Miss Robertson submitted that Gibtime Ltd had seven tenancies in operation for use by employees of La Vita group of restaurants. Decisions made for Gibtime Ltd are made by the two directors Mario and Marco Arcari who are Directors of the other companies and direct and control the activities of the group. Miss Robertson referred to the case of *D.H.N Food Distributors Ltd v Tower Hamlets London Borough Council* [1976] 1 WLR 852. She submitted that in this case the court had allowed the “piercing of the corporate veil” in order to ascertain whether two subsidiary companies which were controlled by a trading company in every respect were in fact two separate entities or if the companies in the group could be treated as one economic entity. In that case she submitted that the court had allowed piercing of the corporate veil which regarded companies as separate legal entities and had treated the group of companies as a single economic entity for the purpose of awarding compensation. Miss Robertson invited the tribunal to consider that in this application the Employer La Vita East End Ltd was under the same ownership and complete control as Gibtime Ltd and they ought to be treated as the same entity for the purpose of this application following the decision in *D.H.N.*

10. Further in written submissions relied on by Miss Robertson it was stated that the contact e mail address for the landlord was “gibtime@lavitagroup.co.uk” and indicated that in correspondence with the Applicant’s agent the Respondent herself had referred to the company seeking a payment order from her as being “the same one where I used to work”.

11. There was no dispute on behalf the Respondent that she understood and accepted that her tenancy had been offered to her given her employment with La Vita East End Ltd.

12. Miss Robertson submitted that if the Tribunal was not satisfied that the eviction ground had been made out given that the Employer and Landlord appeared on the face of it to be separate legal entities, that the eviction could be granted in any event. She submitted that the ground is established where the tenancy was entered into to provide an employee with a home and the tenant is not a qualifying employee. She submitted that the statute made very specific provision to allow someone who was not an employee nonetheless to be evicted.

13. Miss Simpson for the Respondent had no objection to an order being granted on the basis of either submission advanced by Miss Robertson for the Applicant. She advised that the Respondent as she was no longer working could not afford to live at the property and wished to be re housed elsewhere but required an eviction order to be in place in order to move forward with housing elsewhere.

Applicable Law

1) It is an eviction ground that the tenancy was entered into to provide an employee with a home and the tenant is not a qualifying employee.

(2)The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—

(a)the tenancy was granted to the tenant—

(i)in consequence of the tenant being an employee of the landlord, or

(ii)in the expectation that the tenant would become an employee of the landlord,

(b)the tenant is not employed by the landlord, and

(c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.

(4)In sub-paragraph (2), “landlord” includes any person who has been a landlord under the tenancy.

14.The Tribunal was satisfied that it has sufficient information upon which to make a decision and that the proceedings had been fair.

Findings in Fact

15.The Respondent entered into employment with La Vita East End Ltd, on 30th May 2022.

16.The parties entered into a private residential tenancy at the property with effect from 17th June 2022.

17.The tenancy was tied to the Respondent’s employment with a company related to the landlord Gibtime Ltd, namely La Vita East End Limited, one of a group of connected companies operating as part of the La Vita Group.

18.These companies are connected in that they share the same directors and sole shareholder.

19.The rent payable in term of the tenancy agreement is £150 per week payable in advance.

20.The Respondent’s employment with La Vita East End Ltd came to an end on 13 January 2023 and she continued to stay at the let property.

21.Rent arrears started to accrue in terms of the tenancy and by 19th January 2024 had reached £6950.

22.The Respondent agreed and always understood that her tenancy was dependent on her employment with La Vita East End Ltd, a company in the La Vita Group.

23.In arranging the employment and related tenancy in the names of the related companies Gibtime Ltd and the Respondent understood and expected that the

Respondent had effectively become the tenant of her employer, even although the employment was with a company related to Gibtime Ltd.

23.The Respondent did not in fact become the employee of the landlord but was the employee of a related company within a group of companies.

24.A Notice to Leave setting out the eviction ground and indicating that an application would not be made to the Tribunal before 11th June 2023 was sent to the Respondent by post on 17th March 2023.

25.A Notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 dated 17th August 2023 was sent to Glasgow City Council in relation to this application.

Reasons for Decision

26.In this application the Tribunal required to be satisfied that the Respondent was no longer a qualifying employee of the landlord or had never become an employee of the landlord although had been expected to do so. In this application the landlord and employer were separate but related companies and therefore separate legal entities. The Applicant's solicitor submitted that the "corporate veil" could be lifted, to consider these companies as the same entity, where the control and ownership of companies was the same as they were effectively a single economic entity following the decision in the case of D.H.N Food Distributors Ltd v Tower Hamlets London Borough Council. This case is now relatively old and more recent cases suggest a different approach. In particular in the case of Prest v Petrodel Resources Ltd [2013] UKSC 34, the Supreme court appeared to suggest that the practice of "lifting" or "piercing" the corporate veil was restricted to certain situations and did not accept that this principle of law could apply in the way it was applied in DHN ie to suggest that two separate entities were a single economic unit.It was suggested that this was an economic argument and not a legal principle. The Tribunal therefore did not accept that the ownership and control of the companies could be looked at in order to find in fact that they were the same legal entity based on this approach.

27.The Tribunal was satisfied in terms of the case of Prest referred to above that this was not a situation where it was appropriate to lift the "corporate veil" given that there was no concealment or allegedly fraudulent conduct which would necessitate looking further at the arrangements for the group of companies. The Tribunal was satisfied that the matter could be considered on the facts, none of which were in dispute. For reasons of convenience the properties lived in by employees of La Vita East End Ltd were leased by Gibtime Ltd although to all intents and purposes the entities were the same. This situation may be somewhat unusual and may not apply in another similar case but the Tribunal took the view that this was the position in this application.

28.Even if the approach set out above is incorrect, in terms of Ground 8(2) of Schedule 3 of the 2016 Act, the eviction ground can be made out if the tenancy is granted to a person in the expectation that they would become an employee of the landlord but in fact does not. It is accepted that this primarily relates to the situation where someone does not take up employment but becomes a tenant of the prospective employer. The

Tribunal took the view that on the facts of this application the parties considered that in making the arrangements they did that the Respondent had effectively become a tenant of the landlord even although this was not actually the case. This was their understanding and expectation. In these somewhat unusual circumstances, the Tribunal was satisfied that the eviction ground was met on this basis.

29. As far as reasonableness is concerned the tribunal considered it reasonable to grant the order which was essentially being sought by both parties. The Respondent wished the tenancy to come to an end as she could no longer afford the tenancy and wished to move on.

Decision

The Tribunal determined that an eviction order be granted in terms of Ground 8 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 in that the tenancy was entered into to provide an employee with a home and the tenant is not a qualifying employee and the Tribunal is satisfied on account of the facts established in this application as set out in Ground 8(2) of Schedule 3 that it is reasonable to grant the application.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

V Bremner

Legal Member/Chair

19.1.24
Date