



2001 CHAPTER 5

Consequences of redemption

Effect of certificate of redemption

10.—(1) Subject to subsection (2), a certificate of redemption is conclusive evidence—

- (a) of the redemption of the ground rent to which it relates (and of the right of the rent-payer to that redemption); and
- (b) of the operation in relation to the land, and any other parcel or parcels of land affected, of sections 11 to 17 so far as those sections are applicable and subject to their terms.

(2) Where the court is satisfied that—

- (a) a certificate of redemption has been obtained by fraud; and
- (b) the certificate can be cancelled without hardship to a purchaser of the land in good faith for value,

the court may order the certificate to be cancelled and, where the certificate relates to registered land, may order the register to be rectified accordingly.

Superior rents

11.—(1) When a ground rent is redeemed, all superior rents (if any) to which the land is subject are also redeemed or, where they are charged on other land as well as the land, are redeemed to the extent that they are charged on the land.

(2) For the purposes of this section that extent is to be taken to be a fraction equivalent to the ratio which the redeemed ground rent bears to the aggregate of that ground rent and the ground rents charged on the other land which are payable to the rent-owner.

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Lands in separate occupation subject to single ground rent

12.—(1) This section applies where—

- (a) land comprised of two or more parcels vested in separate persons is subject to a single ground rent;
- (b) the rent-payers do not combine under section 4(6) to redeem the ground rent; and
- (c) a rent payer entitled to any parcel or parcels has complied with section 4(1) and (2) in relation to the ground rent.

(2) The sealing of the certificate of redemption discharges all the parcels from the ground rent.

(3) At the request of a person entitled to any other parcel or parcels, the Registrar on being satisfied—

- (a) of the facts; and
- (b) that that person has paid any amount for which he is liable under subsection (4)(b);

shall deliver to that person a copy of the certificate of redemption.

(4) The rent-payer may require reimbursement of all or an appropriate part (as the case may be) of any moneys lodged under section 4(2)(a), (b), (c) or (e) and of his costs in connection with an application under section 4(1)—

- (a) where he has been indemnified against payment of the ground rent or any part of it, from the indemnifier; or
- (b) in any other case, from the person entitled to any other parcel, unless he himself has indemnified that person against any demand for ground rent.

(5) Without prejudice to any right of set-off or counterclaim, any amount mentioned in subsection (4) may be recovered by the rent-payer in proceedings in any court of competent jurisdiction.

Effect of redemption on titles

13.—(1) Subject to subsection (3), where, immediately before the date of the sealing of a certificate of redemption, the land was held by the rent-payer for an estate in fee simple, the certificate of redemption operates by virtue of this provision on that date (or on the date of reclassification of the rent-payer's title under paragraph 3(i) of Schedule 3 to the Land Registration Act, where the rent-payer's estate is registered land) to discharge that estate from all estates in the land of the rent-owner and any superior owners to the extent that those estates carry entitlement to ground rent or a superior rent or relate to matters connected with any such rent (and to that extent those estates are extinguished).

(2) Subject to subsection (3), where, immediately before the date of the sealing of a certificate of redemption, the land was held by the rent-payer for a

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leasehold estate, the certificate operates by virtue of this provision on that date (or on the date of registration of the rent-payer's title in the Land Registry, or, as the case requires, reclassification of his title, where the estate of the rent-payer or of the rent-owner or of any superior owner is registered land) to enlarge the rent-payer's estate into an estate in fee simple and, accordingly—

- (a) the title of the rent-owner or any superior owner to the fee simple; and
- (b) all other estates in the land of the rent-owner or any superior owners to the extent that those estates carry entitlement to ground rent or a superior rent, or relate to matters connected with any such rent,

are extinguished.

(3) Subsections (1) and (2) do not prejudice section 6, and subsection (2) does not prejudice section 14, nor do subsections (1) and (2) affect the power of the rent-owner or a superior owner to enforce a covenant enforceable by him which is continued by section 16(2) or any liability of his to have a covenant to which that subsection applies enforced against him.

(4) In the case of registered land, a certificate of redemption is sufficient authority for the Registrar (subject to compliance with rules)—

- (a) where the rent-payer's estate in the land is a registered freehold estate, to discharge any burden such as is mentioned in paragraph 2 of Part I of Schedule 6 to the Land Registration Act and make such alteration in the class of title with which the land is registered as appears to him appropriate;
- (b) where the rent-payer's estate in the land is a registered leasehold estate and an application is made under subsection (1) of section 27 of the Land Registration Act, to cancel the entry relating to the title to that estate and register the estate in fee simple vested in the rent-payer by virtue of subsection (2) in accordance with that section with such class of title as appears to him appropriate (the references in that section to the leasehold estate's being converted or not having been converted being read as including references to that estate's being or not having been the subject of a certificate of redemption);
- (c) where the rent-payer's estate in the land is an unregistered leasehold estate registered as a burden on a superior registered freehold or leasehold estate, to cancel the entry or entries relating to the title to the superior estate or estates so far as that title relates to the land and falls to be extinguished by virtue of subsection (2) and register the estate in fee simple vested in the rent-payer by virtue of that subsection with such class of title as appears to him appropriate,

and (notwithstanding any caution or inhibition) to make in the register such consequential entries, changes, cancellations or notes as appear to him appropriate.

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(5) The cancellation referred to in subsection (4)(c) and the consequential entries, changes, cancellations and notes referred to in the final words of subsection (4) may be made at any time after the Registrar becomes aware of the necessity or desirability to make them and without any application to him.

(6) A certificate of redemption is a conveyance for the purposes of the Registration of Deeds Acts and, for those purposes the rent-payer is the grantor.

(7) The enlargement of a leasehold estate effected by virtue of subsection (2)

(a) operates as a grant by the rent-owner and any superior owner to the rent-payer of all easements, rights and privileges in or over land of, respectively, the rent-owner and the superior owner (and, so far as it is within the power of the rent-owner or superior owner to grant, in or over any other land) which existed and were enjoyed, or were prospectively capable of being enjoyed, by the rent-payer immediately before the time when the enlargement took effect;

(b) operates to make the land of the rent-payer continue to be subject to all easements, rights and privileges enjoyed by the rent-owner or any superior owner in or over that land which existed immediately before the time mentioned in paragraph (a), so far as those easements, rights or privileges are not extinguished by virtue of subsection (2)(b);

(c) does not affect any easement, right or privilege in or over land of a third person which had been granted by that person, or a predecessor in title of his, to the rent-payer in right of the rent-payer's land and which existed and was enjoyed, or was prospectively capable of being enjoyed, by the rent-payer immediately before the time mentioned in paragraph (a), but without affecting the duration of any such easement, right or privilege where it is of limited duration (that duration being measured as if the leasehold estate had not been enlarged).

(8) Save as provided in subsection (9), this section does not affect the rights of a third person, and, in particular,—

(a) so far as any such rights consist of an easement, right or privilege in or over land, they are exercisable to the same extent as they would have been if the ground rent had not been redeemed (but no further); and

(b) so far as such rights consist of a right to payment of a sum of money charged on or issuing out of the land, that sum continues to be charged or to issue as theretofore.

(9) So far as the rights of a third person consist of a right to payment of a sum of money charged on or issuing out of a ground rent or superior rent that is redeemed, that sum becomes charged on or payable out of the redemption money (or the share of the redemption money to which the person liable to pay that sum is entitled), and is recoverable as a debt.

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(10) For the purposes of subsections (7) to (9) a third person is a person other than—

- (a) the rent-payer; or
- (b) the rent-owner or a superior owner.

(11) For the purposes of subsections (1) and (2), matters are connected with rent if they are concerned with the amount of the rent or its payment or recovery or are otherwise concerned (directly or indirectly) with the rent.

Continuance of rights and equities affecting leasehold estate

14.—(1) The fee simple estate into which a leasehold estate is enlarged by virtue of section 13(2) is for all purposes (except as provided in section 16(1)) a graft on the leasehold estate and is subject to any rights or equities arising from its being such a graft.

(2) Without prejudice to the generality of subsection (1), that subsection applies to rights and equities which had been created or had come into existence in relation to a superior estate, and which bound the leasehold estate, notwithstanding the extinguishment of the superior estate.

(3) Any provision of a will in respect of such a leasehold estate operates instead on the fee simple.

Mortgages and leases

15.—(1) Where by virtue of section 13(2) a certificate of redemption operates to enlarge a leasehold estate into a fee simple,—

- (a) any mortgage of the leasehold estate continues to have effect as if it were, and had originally been created as, a mortgage of the fee simple, and, in particular—
 - (i) where the instrument creating the mortgage was an assignment of the leasehold estate, it has effect as if it were a conveyance of the fee simple;
 - (ii) where the instrument creating the mortgage was a sub-lease, it has effect as if it were a lease for a term equivalent to the term of the sub-lease and any provision in the instrument providing for an estate acquired by the mortgagor to be held in trust for the mortgagee or appointing the mortgagee as the mortgagor's attorney in relation to such estate applies to the fee simple;
- (b) any sub-lease of the land granted by the rent-payer or a predecessor in title of his has effect as if it were a lease for a term equivalent to the term of the sub-lease, and any mortgage of the estate created by such a sub-lease has effect as if it were a mortgage of the estate created by such a lease.

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(2) Where the land is subject to a mortgage by the terms of which the mortgagee is entitled to possession of the documents relating to the mortgagor's title to the land, there is deemed to be included in the instrument or agreement containing the terms of the mortgage a covenant binding the mortgagor to deliver the certificate of redemption to the mortgagee as soon as reasonably practicable after the redemption date.

(3) This section does not prejudice the generality of section 14.

Covenants

16.—(1) Except as provided by this section, in the following event, that is to say—

- (a) upon the sealing of a certificate of redemption, where the land is unregistered land; or
- (b) upon the making of any relevant alteration, cancellation or entry in the register (in accordance with section 13(4)), where the land is registered land,

all covenants concerning the land by virtue of the rent-payer's fee farm grant or lease, or any superior fee farm grant or lease, or any collateral instrument, cease to have effect.

(2) Covenants of the following kinds continue to benefit or, as the case may be, burden the land, that is to say—

- (a) covenants for title, including—
 - (i) a covenant that a former vendor had a good right to convey, transfer or lease, the whole property and interest he had agreed to sell;
 - (ii) covenants for quiet enjoyment, freedom from incumbrances and further assurance;
 - (iii) covenants by a former assignor of a lease that the lease was valid and in full force and that the rent had been paid and the covenants in the lease duly performed;
- (b) covenants for indemnities (except indemnities relating to a ground rent or superior rent which has been redeemed);
- (c) covenants categorizing boundary walls or fences as party walls or fences or in respect of the maintenance, repair or renewal of walls or fences or the preservation of boundaries;
- (d) covenants to do, or to pay for or contribute to the cost of, works on, or to permit works to be done on, or for access to be had to, or for any activity to be pursued on, the land for the benefit of other land;
- (e) covenants to do, or to pay for, or contribute to the cost of, works done on other land where the works benefit the land;

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- (f) covenants to reinstate in the event of damage or destruction;
- (g) covenants for the protection of amenities or services or for compliance with a statutory provision (or a requirement under it), including—
 - (i) covenants (however expressed) not to use the land for specified purposes or otherwise than for the purposes of a private dwelling;
 - (ii) covenants against causing nuisance, annoyance, damage or inconvenience to neighbours;
 - (iii) covenants against interfering with facilities which benefit neighbours;
 - (iv) covenants prohibiting, regulating or restricting building works or the erection of any structure, or the planting, cutting or removal of vegetation (including grass, trees and shrubs) or requiring the tending of such vegetation;
- (h) covenants in relation to a body corporate formed for the management of land;
- (i) any covenants which were reciprocally enforceable between the rent-payer and other participants in a relevant building scheme immediately before the redemption of the ground rent by virtue of that scheme;
- (j) any covenant, not falling within any of the preceding paragraphs, which is contained in a lease granted by the Northern Ireland Housing Executive before 10th January 2000 and relates—
 - (i) to a district heating supply provided by the Executive; or
 - (ii) to the repayment to the Executive of any discount of part of the purchase price under a house sales scheme made under the Housing (Northern Ireland) Order 1983 (NI 15).

(3) After the event mentioned in paragraph (a) or (b) (whichever is applicable) of subsection (1) (whether that event occurs in relation to both parties or only one party), a covenant categorizing a boundary wall or fence as a party wall or fence has effect as a covenant by each party to contribute one-half of the cost of maintaining, repairing or renewing the wall or fence.

(4) Subsection (2) does not apply to any covenant which is expressed to bind only the covenantor.

(5) Where a covenant to which subsection (2) applies is framed in terms of a condition or limitation, it has effect following the redemption of the ground rent as though it were framed as a covenant (in the strict sense).

(6) Article 45 of the Property (Northern Ireland) Order 1997 (NI 8) (enforcement of covenants) applies in relation to a covenant to which paragraph (2) applies as it applies in relation to a covenant to which Article 34 of that Order applies.

(7) In subsection (2)(i)—

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“building scheme” means a scheme (express or implied) under which land (whether freehold or leasehold) is divided into two or more parcels subject to obligations which are reciprocally enforceable (whether at law or in equity) between owners of the parcels; and

“relevant building scheme”, in relation to any land, means a building scheme which includes the land or which is taken to subsist in respect of the land by virtue of section 17(6).

Enforceability of covenants

17.—(1) A covenant to which section 16(2)(a) applies is enforceable by the covenantee and his successors in title but only against the person against whom the covenant was enforceable immediately before the event mentioned in paragraph (a) or (b) of section 16(1).

(2) A covenant to which section 16(2)(b) applies is enforceable by the covenantee and his successors in title against the covenantor and his successors in title.

(3) A covenant to which section 16(2)(c) applies (with or without section 16(3)) is enforceable by each party and his successors in title against the other party and his successors in title.

(4) Subject to subsection (6), a covenant to which section 16(2)(d), (e), (g), (h) or (j) applies is enforceable by or against the same person as it would have been enforceable by or against had the ground rent not been redeemed (and for this purpose a person taking conveyance of the estate in fee simple which is vested in a rent-payer following redemption of the ground rent payable under a lease is in the same position as an assignee of the lease would have been in had there been no redemption).

(5) A covenant to which section 16(2)(f) applies is enforceable against the person who is or was the rent-payer in relation to the property which has been damaged or destroyed, and his successors in title, by any other person who is or was a rent-payer in relation to the same rent-owner in respect of land the value or amenities of which have been affected by the damage or destruction, or by the successors in title of such another person.

(6) For the purposes of the enforcement of the covenants for the protection of amenities to which section 16(2)(g) applies, after the first operation of section 16 in respect of a parcel of any land there is to be taken to subsist (if it does not subsist apart from this provision) a building scheme in respect of the land in which all the persons holding parcels under dispositions in substantially similar terms from the same rent-owner, and the successors in title of those persons, are participants, and accordingly—

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- (a) not only do those covenants continue to be enforceable by and against the rent-owner and his successors in title so long as he or they continue as such in relation to any participant, but
- (b) the covenants are also enforceable by and against each of the various participants among themselves, whether or not their ground rents have been redeemed;

and a covenant to which section 16(2)(g)(iv) applies is also, so far as it relates to the tending of vegetation, enforceable by any such participant against the covenantor and his successors in title.

(7) A covenant to which subsection (4) or (6) applies which is restrictive in substance or relates to permission is also enforceable by any person by whom it is enforceable under that subsection against any person occupying or using the land.

(8) For the purposes of subsection (6)—

- (a) a rent-owner and his predecessors and successors in title are to be taken to be the same rent-owner;
- (b) a mortgagee in possession of land in which a building scheme subsists or is taken to subsist, or a person acting as a receiver appointed by a mortgagee, is to be taken to be a participant in the building scheme.

(9) A covenant to which section 16(2)(i) applies continues to be enforceable by each participant in the building scheme against every other participant and by and against their respective successors in title.

(10) In this section “building scheme” has the meaning given in section 16(7).

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