

Residential
Property
TRIBUNAL SERVICE

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
DIRECTIONS BY LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL**

**LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT
1993. Chapter II**

Ref: LON/00AZ/OLR/2007/1432

The Flat: 108, Queenswood Road, London SE23 2QS

**Applicant: Marcia Campbell
(Solicitors: Grant Saw)**

**Respondent: Sandra Bufano
(Solicitors: Bennett Welch)**

TRIBUNAL MEMBERS

Mr A.J.ENGEL M.A. (Hons.) - Chairman

Mr P.TOBIN F.R.I.C.S. M.C.I.Arb.

DECISIONS

- A. The decision of the (differently constituted) Tribunal, dated 29th February 2008 is confirmed. The Claim Notice is valid.

- B. The premium payable by the Applicant to the Respondent for the new lease of the Flat is £17,100 (Seventeen thousand one hundred pounds).

- C. The Applicant's liability to pay costs incurred by the Respondent is limited to £1,000 (plus VAT, if applicable) in respect of legal costs and £400 (plus VAT, if applicable) in respect of valuation costs.

[If there is a dispute as to whether or not such costs have been incurred, either party has liberty to apply to the Tribunal, in writing - and copied to the other party - for determination of the dispute.]

- D. The application that the Respondent pay costs to the Applicant in respect of the proceedings before the Tribunal is dismissed.
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REASONS

Introduction

1. By written notice, dated 3rd August 2007 (the Claim Notice), the Applicant claimed to exercise her right to acquire a new lease of the Flat – pursuant to Section 42 of the Leasehold Reform, Housing and Urban Development Act 1993 (the Act).
2. The Claim Notice specified a premium of £4,000.
3. The Respondent served a written Counter-Notice, dated 26th September 2007 (the Counter-Notice) admitting the Applicant's right to acquire a new lease.
4. The Counter-Notice specified a premium of £20,000.
5. The Counter-Notice was served without prejudice to the Respondent's contention that the Claim Notice was invalid on the basis that the premium specified therein (£4,000) was unrealistically low.
6. The Applicant applied to the Tribunal, under cover of a letter from the Applicant's solicitors dated 18th December 2007 (the Application), for a determination of the premium (Section 48 of the Act) and the legal and valuation costs (Section 60 of the Act). The Application specified a premium of £16,000 and also contained a claim for costs of the proceedings.

Preliminary Hearing

7. A preliminary hearing was held on 26th February 2008 before a differently constituted Tribunal (the previous Tribunal) which held that:-

- (i) the premium specified in the Claim Notice was realistic;
- (ii) the Claim Notice was valid;
- (iii) the Tribunal had jurisdiction to deal with the Application;
- (iv) that the Application should proceed to a (full) hearing.

8. The document setting out the written Decision and Reasons of the previous Tribunal is dated 29th February 2008

Jurisdiction

9. By letter from the Respondent's Solicitors to the Respondent, dated 16th April 2008 and copied to the Tribunal, the Respondent's Solicitors submitted that the decision made by the previous Tribunal was "of no consequence whatever".
10. The basis of the submission referred to at No. 9 above was that the matters dealt with by the previous Tribunal were matters within the exclusive jurisdiction of the County Court.
11. In support of the submission, reference was made to the decision of a Leasehold Valuation Tribunal in the case of Westmark Limited v Dealex Limited.
12. This Tribunal acquired a copy of the decision in Westmark Limited v Dealex Limited from the archives of the Panel.

We note that this decision was made by a Tribunal which was constituted differently from this Tribunal and the previous Tribunal.

We note too that the decision is dated 25th February 2005 and it was made without any oral or written representations having been made (see Paragraph 14 of the decision).

13. This Tribunal is not bound by the decision of the Tribunal in Westmark Limited v Dealex Limited and it is our view that that decision was wrong.

14. Our view is that if, in this case, an application had been made to the Court, this Tribunal (and the previous Tribunal) would have been bound by the Court's decision but as (so far as we are aware) no application has been made to the Court, the question of jurisdiction is for the previous Tribunal and/or this Tribunal to determine.

15. The reasons for our view (as stated at No.14 above) are:-

- (i) All Tribunals are subject to decisions of Courts;
- (ii) Court proceedings have costs implications which do not apply to Leasehold Valuation Tribunals, which mean that one party by raising an issue as to jurisdiction could gain an unfair tactical advantage;
- (iii) It follows from (ii) above that the Act should, if possible, be read in such a way that the unfairness referred to is avoided (Section 3 of the Human Rights Act 1998 and Article 6.1 of the European Convention on Human Rights). In our view, the Act can be read in a way that the County Court does not have exclusive jurisdiction to determine issues concerning the validity of notices;
- (iv) Every Tribunal should be satisfied that it has jurisdiction to determine a particular issue before it proceeds to do so.

The Full Hearing

16. The full hearing took place before us on 29th April 2008 when the Applicant was represented by Miss Poole of counsel who made oral representations to the Tribunal. The Respondent did not appear and was not represented.

17. Mr Solomon BSc MSc FRICS FCI Arb, a valuer instructed by the Applicant, produced a written report, dated 24th April 2008 and gave oral evidence, in the course of which he explained that there was a typographical error at Paragraph 1.3 of his report in that £230,000

should have been £220,000.

18. At the commencement of the hearing, Miss Poole requested that the Tribunal determine whether or not the new lease should contain a full or a limited title guarantee but this request was withdrawn towards the end of the hearing when Miss Poole informed the Tribunal that she was instructed that the Applicant was content with a limited title guarantee.

The Flat

19. We did not consider that it was necessary for the Tribunal to inspect the Flat and we did not do so.
20. The evidence established that the Flat is in a good residential area. It is a purpose-built first floor maisonette in a two storey terraced building comprising 2 units –each with its own street level front entrance. The Flat has its own rear garden approached by stairs down from the kitchen. The rooms in the flat are set out at Paragraph 6.2 of Mr Solomon's report.
21. There is no underground station in the vicinity and the nearest railway station is about 15 minutes away on foot.

The Claim Notice

22. In our view, we are not bound by the decision of the previous Tribunal. However, we agree with its decision for the reasons it gave. Accordingly, we find that that the Claim Notice is valid.

The Application

23. Mr Solomon's valuation produced a premium of £14,000 – which is below the premium of £16,000 specified in the Application. We are inclined to the view that we would not have the power to determine a premium below the amount specified in the Application but we do not need to decide this issue as our valuation (see below) produces a premium in excess of £16,000.

Valuation

24. The date of valuation is the date on which the Claim Notice was given to the Respondent (Section 39(8) of the Act) – which appears to have taken place in August 2007.

25. We were informed that the length of the new lease (189 years from 31st March 1977) and the (peppercorn) rent was agreed.

26. The (present) lease is for a period of 99 years from 31st March 1977. We have calculated the unexpired term to be 68.5 years.

[This is the figure used by Mr Solomon in his valuation, although he refers to 68.66 at Paragraphs 3.1 and 5.0 of his report.]

EXTENDED LEASE

27. Mr Solomon's evidence was that the extended lease of the Flat was to be valued at £240,000.

28. At Paragraph 10 of his report, Mr Solomon set out a number of tenant's improvements. In his oral evidence, Mr Solomon explained that he had disregarded these items in his valuation but he had not deducted a specific sum on account thereof. We have adopted the same method in our valuation.

29. In arriving at the figure of £240,000, Mr Solomon (who is an experienced surveyor and valuer – but not an estate agent) relied on the following "comparables" – which he had inspected externally:-

8A Queenswood Road

We were told by Mr Solomon that he had been informed that this flat, which is some distance from 108, Queenswood Road, was sold in November 2006 for £250,000 and that it was in very good condition.

There was no other evidence before us concerning this flat.

96, Queenswood Road

We were told by Mr Solomon that he had been informed that this flat was sold in April 2007 for £218,00 and that it had been "in a very poor

state of repair and required a kitchen and bathroom and general repair throughout the property.”

There was no other evidence before us concerning this flat.

100, Queenswood Road

We were told by Mr Solomon that he had been informed that this flat had recently been sold for £275,000.

Mr Solomon provided us with a copy of the Estate Agent's Advertisement, which stated that the flat was under offer at £275,000 and that it was in very good condition with a share of the freehold and stamp duty paid.

110, Queenswood Road

Mr Solomon told us that he had been informed that this flat was sold on a 75 year lease for £228,250 in September 2006 and that it was in good repair.

110, Queenswood Road is next door to the Flat (108, Queenswood Road)

It came to light during the hearing that 110, Queenswood Road is in an end terrace building and that it has a (comparatively) large garden. Mr Solomon had (at Paragraph 15.0 of his report) made a calculation in respect of 110, Queenswood Road without taking those factors into account.

30. The Tribunal considered that the evidence concerning the comparables adduced by Mr Solomon was helpful in that it demonstrated a range between about £225,000 and about £275,000, which co-incided with the range indicated by our own general knowledge and experience.

31. However, we found the calculations at Paragraph 15.0 of Mr Solomons report to be based on too little information (some of it incomplete – see No. 29 above) to provide other than a general guide which narrowed to some degree the range referred to at No.30 above and relying on our own general knowledge and expertise, we determined that the value of the extended lease was £250,000.

RELATIVITY

32. Mr Solomon used a relativity of 92% in his valuation.

In his written report, Mr Solomon included the Beckett and Kay graphs and in his oral evidence he explained that he had used 92% as that was the figure indicated by the LVT graph for a lease with 68.5 years unexpired.

Mr Solomon stated that he had not used the other graphs as they referred mainly to properties in other areas of London. However, the view of the Tribunal is that this factor would be reflected in the value of the extended lease and was not relevant on the issue of relativity.

There is also the problem that if one relies solely on the LVT graph the exercise becomes (over time) circular.

33. We considered the Beckett and Kay graphs were helpful in indicating the correct range but using our general knowledge and experience, we determined that a relativity of 90% was appropriate in this case.

YIELDS

34. It was agreed that a term yield of 7% and a reversionary yield of 5% were appropriate.

CALCULATION

35. Our calculation is as follows:-

| | | |
|---|----------|---------------|
| Ground Rent | £25.00 | |
| Y.P. for 68.5 years @ 7 % | 14.147 | £354 |
| Reversion to vacant possession value, freehold | £250,000 | |
| P.V. of £1 in 68.5 years @ 5% | 0.03535 | £8,838 |
| Value of current freehold interest | | <u>£9,192</u> |

Present leasehold interest 90% of £250,000 = £225,000

Marriage Value

| | |
|-------------------|-----------------|
| Present Freehold | £9,192 |
| Present Leasehold | <u>£225,000</u> |
| | (£234,192) |

| | | | |
|------------------------------|-----------------|--------|----------------|
| Extended Leasehold | <u>£250,000</u> | | |
| Marriage Gain | £15,808 | @ 50 % | <u>£7,904</u> |
| Price for extension of Lease | | | <u>£17,096</u> |
| | | SAY | <u>£17,100</u> |

Legal and Valuation Costs

36. There was adduced in evidence promotional material from the Respondent's Solicitors which stated (in respect of freeholder's costs payable by the tenant) :-

"You should budget for total costs in the region of £1,500."

It appears that this figure (£1,500) includes VAT.

37. In his oral evidence, Mr Solomon told us that he would have charged £400 (+ VAT) for the work done by the Respondent's valuer.

38. The figures set out at Nos 36 and 37 above are within the range indicated by our general knowledge and experience.

39. In our view, the Respondent's reasonable costs in this case are £1,000 (+VAT, if applicable) for legal costs and £400 (+ VAT, if applicable) for valuation costs.

Costs of Proceedings

40. The Tribunal has the power (under Paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002) to award costs of the proceedings (limited to £500) against a party, if:-

"he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings".

41. Thus the circumstances in which costs can be ordered are very different from those appertaining to court proceedings.

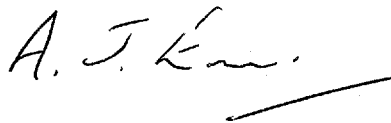
42. In our view, the Respondent's Solicitors in:-

(i) contesting the validity of the Claim Notice when no material benefit could accrue (see Paragraph 13 of the Decision of the previous Tribunal);

and

(ii) their choice of language in the letter of 16th April 2008;

acted in ways which were regrettable – but we have concluded such actions fell just below the (high) bar set by the extract of the 2002 Act quoted at No. 40 above.



(A.J.ENGEL – Chairman)
19th MAY 2008