



**LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL**

LEASEHOLD REFORM HOUSING AND URBAN DEVELOPMENT ACT 1993

CASE REFERENCE: LON/OOAM/OCE/2008/0339

Address: 149 VICTORIA PARK ROAD, LONDON E9 7GL

Applicants: WHITFIELD, GONSE, SCOTT & DILLON

Represented by: Pritchard, Joyce & Hinds Solicitors

Respondent: THE ADMINISTRATORS OF THE ESTATE OF MUSTAFA
HUSSEIN LESLIE DEC'D

Date of decision: 10 February 2009

Tribunal: Mr M Martynski (Solicitor)
Mrs H Bowers BSc(Econ) MSc MRICS

Decision summary

1. The Tribunal determines that the enfranchisement price is £22,912.00 (the Tribunal's and the Applicants' valuations are attached to this decision).
2. The amount due to the Respondent from the Applicants in respect of obligations under the leases is £800.00.
3. The form of transfer provided (copy attached) is approved.

Background

4. The background to the matter is as follows:-

a.	Date of applicants' application:	30 July 2007
b.	Date of application to Tribunal:	By transfer from the Court
d.	Valuation date:	30 July 2007

- e. Details of tenants' leasehold interests:
 - Date of leases: 25.12.1988
 - Terms of leases: 99 years
 - Ground rents: £100p.a. rising by £50 each 25 years and £300 for the residue
 - Unexpired term at valuation date: 80.4 years
- f. Details of any intermediate interest: None
- g. Number of participators: 3
- h. Applicants' proposed premium: £12,700 plus £100

5. A claim form in respect of the subject property seeking a dispensation of service and a vesting order (under Section 26(1) of the Leasehold Reform, Housing and Urban Development Act 1993 (the Act) was issued by the Clerkenwell and Shoreditch County Court on 14 May 2007.

6. Following an initial refusal of the court to make an order dispensing with service, an application was made to the court by way of Application Notice dated 30 July 2007 for such an order.

7. An order was then made by the court dated 26 September 2007 (later amended by order dated 4 December 2008 dealing with the vesting of the title to the freehold of the subject premises, the terms of the vesting to be determined by the Tribunal.

8. The matter was transferred to the Tribunal on 8 December 2008. The Tribunal considered the matter suitable for a paper determination.

Evidence

9. The following evidence was considered:-

Report:

- Mr Simon J Brook MSc MRICS
- Witness statements from Whitfield, Gonse and Dillon

The law

10. Schedule 6 to the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") provides that the price to be paid by the nominee purchaser for the freehold interest shall be the aggregate of the value of the freeholder's interest, the freeholder's share of the marriage value, and compensation for any other loss.

11. The value of the freehold interest is the amount which at the valuation date that interest might be expected to realise if sold in the open market subject to the tenancy by a willing seller (with the nominee purchaser, or a tenant of premises within the specified premises or an owner of an interest in the premises, not buying or seeking to buy) on the assumption that the tenant has no rights under the Act either to acquire the freehold

interest or to acquire a new lease.

12. Paragraph 4 of the Schedule, as amended, provides that the freeholder's share of the marriage value is to be 50%, and that any marriage value is to be ignored where the unexpired term of the lease exceeds eighty years at the valuation date.

13. Paragraph 5 of the Schedule provides for the payment of compensation for other loss resulting from the enfranchisement.

14. Schedule 6 also provides for the valuation of any intermediate leasehold interests, and for the apportionment of the marriage value.

15. Sections 26 and 27 of the Act provide for situations where the landlord of the property in question cannot be found.

The Tribunal's decision - valuation

16. The Tribunal agreed the valuation date as 30 July 2007 in consequence of section 27(1) (b) of the Act.

Capitalisation

17. Mr Brook in his report argued for a capitalisation rate of 8%. The Tribunal concluded that the rate should be 7.5%. In reaching his rate, Mr Brooks placed reliance on settlements and previous Leasehold Valuation Tribunal decisions. The Tribunal is of the view that this is not sufficiently reliable evidence and relying on its own skill and expertise concluded that 7.5% was the more appropriate rate given the growth in the ground rents over time.

Deferment rate

18. Mr Brook in his report argued for a deferment rate of 6%. The Tribunal concluded that the rate should be 5%. Mr Brooks did not produce any evidence to support his contention for the deferment rate and the Tribunal saw no reason to depart from the authority of Sportelli¹.

Combined flat values

19. The Tribunal had regard to the evidence relied on by Mr Brooks of previous sales of the flats and comparable flats. The Tribunal felt that sufficient weight was not given to the allowance that had to be given for the length of the leases in question as compared with the value of a property with a share of freehold.

20. Additionally, the Tribunal did not consider that Mr Brooks took sufficient account of the date of the comparable sales in relation to the valuation date.

The enfranchisement price

21. The Tribunal determines that the enfranchisement price, in accordance with the

¹ Cadogan v Pitts and another 2008 UKHL 71 (10 December 2008)

Act is £22,912.00

The Tribunal's decision – rents payable

22. On the question of the outstanding ground rent payable the Tribunal noted that, according to the evidence given by way of witness statements of the Applicants, no demand for ground rent had been made and no rent had been paid within the period of 12 years prior to the date of those witness statements.

23. Pursuant to section 166 Commonhold and Leasehold Reform Act 2002 any rent otherwise falling due after the commencement of the relevant parts of that section (28 February 2005) is not payable without written demand in the statutory form.

24. It follows therefore that, so far as flats A & B are concerned, as the leaseholders in question purchased those properties after 28 February 2005, no ground rent can be due from them.

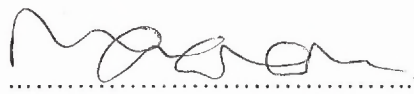
25. So far as flat C is concerned, any ground rent due is limited to a 12 year period. Accordingly ground rent is due at the rate of £100.00 per annum from 25 December 1997 up to and including the rent due on 25 December 2004 making a total of £800.00 which the Tribunal determines as the amount payable.

The Tribunal's decision – service charge

26. According to the evidence from the Applicants referred to above, the only demand in respect of service charge that had been made was in respect of flat C and that demand was made in 1990. Given that this demand is now more than 12 years old and that, according to the evidence of Ms Bodley (Dillon), there is a set-off against this sum in respect of the cost of repairs carried out by her to the fabric of the building, the Tribunal determines that it is not payable.

The Tribunal's decision – transfer

27. The form of transfer is approved.

Signed: 
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Mark Martynski – Chairman

10 February 2009

Leasehold Valuation Tribunal

149, Victoria Park Road, London, E9 7JL

		£	£	£
Freehold Interest				
Term 1		300		
YP 6.4 years @ 7.5%	4.9349	<u>4.9349</u>	1,480	
Term 2		450		
YP 25 years @ 7.5%	11.1469			
PV of £1 in 6.4 years @ 7.5%	<u>0.62988</u>	<u>7.0212</u>	3,159	
Term 3		600		
YP 25 years @ 7.5%	11.1469			
PV of £1 in 31.4 years @ 7.5%	<u>0.10329</u>	<u>1.15136</u>	691	
Term 4		900		
YP 25 years @ 7.5%	10.983			
PV of £1 in 56.4 years @ 7.5%	<u>0.01694</u>	<u>0.18605</u>	167	5,497
Reversion		880,000		
PV of £1 in 80.4 years @ 5%	<u>0.01979</u>	<u>0.01979</u>	<u>17,415</u>	
Premium Payable			<u>17,415</u>	22,912

Property: 149 Victoria Park Road, Hackney, London E9 7JL
 Assessment of price to be paid for enfranchisement in accordance with Schedule 6
 of the Leasehold Reform, Housing and Urban Development Act 1993 as amended by
 the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002.

Lease Terms:

Term			99
Start	12	1988	1989.0
End			2088.0
Notice/Valuation date	7	2007	2007.6
Difference			18.6
Remaining			30.4

<i>Risng</i>			£	<i>rem</i>	<i>total</i>	<i>gr</i>	no. flats
Ground rent	2007.6	2014.0	300.00	6.4		100.00	3
combined	2014.0	2039.0	450.00	25.0		150.00	3
	2039.0	2064.0	600.00	25.0		200.00	3
	2064.0	2088.0	900.00	24.0		300.00	3
				total	30.4		

Diminution in Value of Freehold

<u>Term</u>		Years		Amnt £	£	£
Ground Rent						
YP	8.0%	6.4	4.8715	300.00	1461	
Review To						
YP		25.0	10.6748			
PV £1		6.4	0.6103			
			6.51	450.00	2932	
Review To						
YP		25.0	10.6748			
£1		31.4	0.0891			
			0.95	600.00	571	
Review To						
YP		24.0	10.5288			
PV £1		56.4	0.0130			
			0.14	900.00	123	5087
Reversion						
PV £1	6.0%	80.4	0.0092	825,000		7611
						12698

12698

SAY 

Amount for appertenant land 100
 Amount for development/Compensation 0

Transfer of whole
of registered title(s)

HM Land Registry

TR1

(If you need more room than is provided for in a panel, use continuation sheet CS and staple to this form)

1. Stamp Duty

Place "X" in the box that applies and complete the box in the appropriate certificate.

I/We hereby certify that this instrument falls within category in the Schedule to the Stamp Duty (Exempt instruments) Regulations 1987

It is certified that the transaction effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value or the aggregate amount or value of the consideration exceeds the sum of £60,000

It is certified that this is an instrument on which stamp duty is not chargeable by virtue of the provisions of section 92 of the Finance Act 2001.

2. Title Number(s) of the Property (leave blank if not yet registered)

430681

3. Property

149 Victoria Park Road London E9 7GL

If this transfer is made under section 37 of the Land Registration Act 1925 following a not-yet-registered dealing with part only of the land in a title, or is made under rule 72 of the Land Registration rules 1925, include a reference to the last preceding document of title containing a description of the property.

4. Date

5. Transferor (give full names and Company's Registered Number if any)

The Administrators of the Estate of Mustafa Hussein Leslie Deceased

6. Transferee for entry on the register (Give full names and Company's Registered Number if any; for Scottish Co. Reg. Nos., use an SC prefix. For foreign companies give territory in which incorporated.)

Adam Whitfield, Alister Michael Gonse, Hannah Rebecca Stott and Caroline Dillon

Unless otherwise arranged with Land Registry headquarters, a certified copy of the transferee's constitution (in English or Welsh) will be required if it is a body corporate but is not a company registered in England and Wales or Scotland under the Companies Acts.

7. Transferee's intended address(es) for service in the U.K. (including postcode) for entry on the register

149 Victoria Park Road London E9 7GL

8. The Transferor transfers the property to the Transferee.

9. Consideration (Place "X" in the box that applies. State clearly the currency unit if other than sterling. If none of the boxes applies, insert an appropriate memorandum in the additional provisions panel.)

The Transferor has received from the Transferee for the property the sum of (in words and figures) £

(insert other receipt as appropriate)

The Transfer is not for money or anything which has a monetary value

10. The Transferor transfers with (place "X" in the box which applies and add any modifications)

Full title guarantee Limited title guarantee

11. Declaration of trust *Where there is more than one transferee, place "X" in the appropriate box.*

The transferees are to hold the property on trust for themselves as joint tenants.

The transferees are to hold the property on trust for themselves as tenants in common in equal shares.

The transferees are to hold the property (complete as necessary)

33.3% to Adam Whitfield,

33.3% to Alister Michael Gonse and Hannah Rebecca Stott, and

33.3% to Caroline Dillon

12. Additional Provision(s) *Insert here any required or permitted statement, certificate or application and any agreed covenants, declarations, etc.*

13. Execution *The Transferor must execute this transfer as a deed using the space below. If there is more than one Transferor, all must execute. Forms of execution are given in Schedule 9 to the Land Registration Rules 2003. If the transfer contains Transferee's covenants or declarations or contains an application by the Transferee (e.g. for a restriction), it must also be executed by the Transferee (all of them if there is more than one).*

Signed as a deed by

ADAM WHITIFIELD

in the presence of

Witness

Signature:

Name:

Address:

Occupation:

Signed as a deed by

ALISTER MICHEAL GONSE

in the presence of

Witness

Signature:

Name:

Address:

Occupation:

Signed as a deed by
HANNAH REBECCA STOTT
in the presence of

Witness
Signature:

Name:

Address:

Occupation:

Signed as a deed by
CAROLINE DILLON
in the presence of

Witness
Signature:

Name:

Address:

Occupation: