

HM COURTS AND TRIBUNALS SERVICE
MIDLAND LEASEHOLD VALUATION TRIBUNAL

BIR/00CT/OLR/2011/0056

DECISION

On an application under section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 as amended for a determination of the premium payable for the grant of a new lease and further under section 91(2)(d) for a determination of the costs payable.

Leaseholders: Lee Matthew Thomas Dempsey ('the Applicant')

Freeholder: Abacona Investments Limited ('the Respondent')

Subject property: 24 Emerald Court, Chelmscote Road, Solihull, West Midlands B92 8BX

Hearing date: 6th December 2011

Venue: The Tribunal's Offices in Birmingham

Notice of claim dated: 24th May 2011

Appearances:

For the Leaseholder Mr Michael D Cannon FRICS

For the Freeholder Mr Alan Peter Herbert FRICS MARLA IRRV (Hons.)

Members of the LVT: Mr R Healey (Chairman) and
Mr D J Satchwell FRICS

Date of determination 26 JAN 2012

SUMMARY OF THE DETERMINATION

The premium payable is £9,985.00. The costs application is treated as withdrawn.

Reasons for the decision

Introduction

1. This is a decision on an application under section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 ('the Act') made to the Leasehold Valuation Tribunal for the determination of the premium payable and under section 91(2)(d) of the Act for a determination of the costs payable in respect of the grant of a 90 year lease extension of the lease of a flat known as 24 Emerald Court, Chelmscote Road, Solihull, West Midlands, B92 8BX3 ('the subject property') pursuant to Chapter II of Part 1 of the Act.

Background

2. **Lee Matthew Thomas Dempsey ('the Applicant')** holds the leasehold estate in the subject property by virtue of a lease dated the 29th September 1983 made between Abacona Investments Limited of the one part and Carbury Investments Limited of the other part whereby the subject property was demised for a term of 99 years from the 25th March 1975 subject to an initial ground rent of £35.00 until the 24th March 2008, £55.00 until 24th March 2041 and £75.00 until 24th March 2074 ('the Lease'). The said **Abacona Investments Limited ('the Respondent')** is the freeholder.

3. On 26th January 2011 the Applicants served a Notice of Claim under section 42 of the Act claiming the right to a new lease. On 2nd March 2011 the Respondent served a counter notice admitting the right of the Applicant to a new lease.

4. The Applicant subsequently made the present application to the Tribunal on 23rd August 2011.

Inspection of the subject property

5. The Tribunal was able to gain access on the morning of 6th December 2011.

6. The subject property comprises a purpose built second floor flat in a four storey building and a garage included in the ground floor block with substantial landscaped grounds enjoyed communally.

7. The subject property enjoys communally the benefit of an entrance lobby, stairways and passenger lift. The flat comprised a reception hall, inner hall, 'L' shaped lounge/dining room, kitchen, bathroom, separate w.c., two double bedrooms, balcony and store.

8. The Tribunal observed the subject property has the benefit of central heating and double glazing.

Hearing

9. At the hearing on 6th December 2011 the Applicant was represented by Mr Michael D Cannon FRICS and the Respondent by Mr Alan Peter Herbert FRICS MARLA IRRV (Hons.) Both acted as expert witnesses in accordance with the Royal Institution of Chartered Surveyors Practice Statement.

10. Both parties had supplied skeleton arguments in advance upon which they enlarged when giving evidence and making submissions.

Agreed Matters

11. Unexpired Term - For valuation purposes the parties agreed the unexpired term of the Lease to be 63 years and the valuation date as 25 March 2011.

12. Valuation method - The valuation method agreed by the parties for the calculation of the price payable is for the diminution in the Respondent's freehold interest; the total of the value of the Respondent's freehold interest prior to the new lease and the Respondent's share of the marriage value (50%). The tribunal accepted this approach.

13. Capitalisation of the term - The appropriate yield for capitalisation of the ground rent was agreed by the parties at 5.5% with a resultant figure of £1,026. This is accepted by the tribunal.

14. Deferment rate - The deferment rate was agreed by the parties at 6% and is accepted by the tribunal.

Disputed Issues

Current leasehold value.

15. Mr Cannon for the Applicant submitted details of both comparable properties on the market and sales relating to relevant unextended leases in the locality and submitted as particularly relevant the sales of 19 Sapphire Court in June 2010 at £142,500 and 21 Garnet Court in May 2010 at £141,400.

16. Mr Cannon did not accept that the sale prices in the present instance required adjustment for the 'no act world' He submitted for an unextended lease value net of improvements at £141,000 as at the valuation date.

17. Mr Herbert for the Respondent produced evidence of the sale of four comparable properties between March 2010 and June 2010 at considerations between £125,000 and £165,000. In September 2010 2 Emerald Court – a three bedroom property was sold for £153,000. Mr Herbert produced further evidence of comparable properties on the market for sale and others sold subject to contract.

18. Mr Herbert referred the tribunal to the case of Nailrile and (1) Earl Cadogan and (2) William Hallman and Nancy Hallman LRA/114/2006 and submitted that an allowance must be made against the achieved sale prices to take account of the 'no act world' which in the present case may properly be reflected by a 2% reduction, giving an existing lease value of £137,500.

19. The Tribunal considered the evidence presented by the parties and determined the existing lease value to be £140,000.

Extended lease value & Relativity

20. Mr Cannon produced evidence of recent sales of extended leases and submitted the most relevant sale to be 11 Sapphire Court which sold on 1 March

2011 for £160,000 and submitted for a value net of tenant's improvements of £155,000.

21. Mr Cannon noted the lack of market evidence. The two leasehold valuations showed a relativity of approximately 91%.

22. Mr Cannon referred to the RICS research paper on relativity published in October 2009 and in particular to the graph of relativity produced by the Leasehold Advisory Service which he considered more relevant than the other graphs of relativity included in the research. At 63 years unexpired the LEASE graph showed a relativity of 89.5%. The Midlands version of the graph produced by Lawrence and Wightman showed a relativity of 93.5%. Mr Cannon submitted that the graphs provided a useful check and supported his extended lease value of £155,000.

23. Mr Herbert produced evidence of four sales with extended leases. The sale of 11 Sapphire Court transferred in March 2011 was closest to the assumed valuation date. The consideration was £160,000 of which £4,000. was attributed to improvements which placed the extended lease value at £156,000. An analysis of the other 3 sales showed adjusted values of £180,000 (23 Emerald Court), £171,000 (12a Amethyst Court) and £160,000 (27 Sapphire Court) Mr Herbert submitted for an extended lease value of £160,000.

24. The Tribunal considered the evidence of the parties and determined an extended lease value of £155,000.

25. There was no application for costs.

Determination

26. The Tribunal's calculation of the premium payable based on the preceding determinations is as follows –

24 Emerald Court, Chelmscote Road, Birmingham B92 8BX

Term	£	£	£
Agreed		1,026	
Reversion			
Extended lease value	155,000		
PV £1 63 years @ 6%	<u>0.0254524</u>		
		<u>3,945</u>	
Current freehold value			4,971
Marriage value			

Current leasehold value	140,000		
Current freehold value	<u>4,971</u>		
A	144,971		
Future leasehold value	155,000		
Future freehold value	<u>0</u>		
B	155,000		
Marriage value B-A	10,029	x 50%	<u>5,014</u>
Lease extension price			9,985

27. The Tribunal determined the premium payable to be £9,985.

28. In reaching its determination the Tribunal had regard to the evidence and submissions of the parties, the relevant law and their own knowledge and experience as an expert tribunal but not any special or secret knowledge.

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Roger Healey

Chairman **26 JAN 2012**