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HM COURTS & TRIBUNALS SERVICE
LEASEHOLD VALUATION TRIBUNAL

Case No. CHI/00HN/OCE/2012/0026

DECISION AND REASONS

Application : Sections 26 and 27 of the Leasehold Reform, Housing and Urban Development Act 1993 as amended ("the 1993 Act") (transferred to the Tribunal by order of the Bournemouth and Poole County Court dated 30 April 2012 in claim number 9BH04072)

Applicant/Leaseholders : Hannah Jane Towill (Flat 1), William Harrison and Judith Harrison (Flat 3), and Babylon Investments Limited (03183458) (Flat 4)

Respondent/Landlord : The Estate of Max Mordechai Landau (deceased), represented by Valerie Jane Landau

Building : Randolph Court, 6 Randolph Road, Bournemouth, BH1 4HQ

Flats : the flats in the Building

Leases : the leases of the Flats

Date of Court Application : 7 November 2009

Date of Court Vesting Order : 30 April 2012

Date of Tribunal's Provisional Directions : 27 June 2012

Date of Tribunal's Further Directions : 8 February 2013

Dates of Hearings : 3 December 2012, 8 February 2013, and 5 April 2013

Venues : Salterns Harbourside Hotel, 38 Salterns Way, Lilliput, Poole, Dorset, BH14 8JR (3 December 2012) and Court 8, Bournemouth County Court, Deansleigh Road, Bournemouth, BH7 7DS (8 February and 5 April 2013)

Appearances for Applicant/Leaseholders : 3 December 2013 : Mr P Hester, counsel; 8 February 2013 : no attendance or representation; 5 April 2013 : Mr J Clargo, counsel

Appearances for Respondent/Landlord: no attendance or representation on any of the hearing dates

Members of the Tribunal : Mr P R Boardman MA LLB (Chairman), Mr K Lyons FRICS, and Mr D Lintott FRICS

Date of Tribunal's Decision : 23 April 2013

Introduction

1. These reasons are supplemental to, and are intended to be read with, the Tribunal's further directions dated 8 February 2013, in which the Tribunal summarised the grounds of the application, the terms of the court order dated 30 April 2012, the documents then before the Tribunal, the result of the Tribunal's inspection on 3 December 2012, and the hearing on that date, and set out the directions made by the Tribunal at the subsequent hearing on 8 February 2013

The hearing on 5 April 2013

2. No-one attended the hearing on behalf of the Respondent/Landlord. The Tribunal decided to proceed with the hearing in the absence of the Respondent/Landlord in accordance with regulation 14(8) of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003

Further documents

3. Further documents before the Tribunal at the hearing on 5 April 2013 were :
 - a. a letter from the Applicant/Leaseholders' solicitors dated 3 April 2013
 - b. submissions by the Applicant/Leaseholders' solicitors dated 25 March 2013, submitted by Mr Clargo to the Tribunal at the hearing
 - c. a copy of the lease of Flat 3
 - d. a helpful bundle submitted by Mr Clargo to the Tribunal at the hearing, comprising Mr Clargo's representations and accompanying documents

Valuation

4. Mr Clargo's submissions in his written representations and at the hearing in relation to each element of the valuation exercise, and the Tribunal's findings in each respect, are as set out in the following paragraphs of this determination

Leases

5. Mr Clargo said that he had not seen the leases of Flats 1, 2, or 4, but submitted, in accordance with the Applicant/Leaseholders' solicitors' letter dated 3 April 2013, that the leases of Flats 1, 2, and 4 should be assumed to be in materially identical terms to the lease of Flat 3, except that the service charge proportions were :

Flat 1 : 30%

Flat 2 : 15%

Flat 3 : 25%

Flat 4 : 30%

6. The Tribunal has carried out the Tribunal's valuation accordingly

The impact of the figures of £16000 and £16100 in the landlord's notice under section 5 of the Landlord and Tenant Act 1987 and the Applicant/Leaseholders' notice under section 13 of the 1993 Act, respectively

7. Mr Clargo submitted that they had no impact. There was no evidence how the respective figures had been arrived at

8. *The Tribunal's findings*

9. The Tribunal finds that it has to carry out a valuation in accordance with the provisions of the 1993 Act, and that the previous figures were merely proposals, and the Tribunal is not required, or indeed permitted, by the 1993 Act to take account of them

Valuation date and number of years unexpired at valuation date

10. The relevant provisions in the 1993 Act are as follows :

Section 1(8)

In this Chapter "the relevant date", in relation to any claim to exercise the right to collective enfranchisement, means the date on which notice of the claim is given under section 13

Section 13(1)

A claim to exercise the right to collective enfranchisement with respect to any premises is made by the giving of notice of the claim under this section.

Section 26(1)

Where not less than two-thirds of the qualifying tenants of flats contained in any premises to which this Chapter applies desire to make a claim to exercise the right to collective enfranchisement in relation to those premises but—

(a) (in a case to which section 9(1) applies) the person who owns the freehold of the premises cannot be found or his identity cannot be ascertained, or

the court may, on the application of the qualifying tenants in question, make a vesting order under this subsection—

(i) with respect to any interests of that person (whether in those premises or in any other property) which are liable to acquisition on behalf of those tenants by virtue of section 1(1)

Section 27(1)

A vesting order under section 26(1) is an order providing for the vesting of any such interests as

are referred to in paragraph (i) or (ii) of that provision—

(a) in such person or persons as may be appointed for the purpose by the applicants for the order, and

(b) on such terms as may be determined by a leasehold valuation tribunal to be appropriate with a view to the interests being vested in that person or those persons in like manner (so far as the circumstances permit) as if the applicants had, at the date of their application, given notice under section 13 of their claim to exercise the right to collective enfranchisement in relation to the premises with respect to which the order is made.

11. Mr Higley's letter dated 30 November 2012 assumed that the valuation date would be the date of the notice under section 13 of the 1993 Act, and that that date was in April 2009
12. Mr Clargo submitted that that was correct in principle, but that the actual date of service of the notice under section 13 was 22 June 2009, namely the date of a letter from the Applicant/Leaseholders' solicitors in that respect, copied in the bundle before the Tribunal
13. The Tribunal put it to Mr Clargo that the wording of section 27(1)(b) of the 1993 Act made it clear that the relevant date where the freeholder could not be found was the date of the application to the court for a vesting order
14. Mr Clargo submitted that if that had been the intention, the wording of section 27(1)(b) would have been ".....as if the applicants had, **on** the date of their application given notice under section 13.....", and that the relevant date would only be the date of the application in a case where no notice under section 13 had been given. If this were not the case then in the case of two identical properties in relation to which section 13 notices had been given on the same date, the relevant date would potentially be different in each case if in one of them an application for a vesting order happened to be required. The relevant date should not move simply on the basis of one of the reversioners not being found
15. *The Tribunal's findings*
16. However, the Tribunal finds that :
 - a. the relevant words of 27(1)(b) of the 1993 Act, namely ".....as if the applicants had, at the date of their application given notice under section 13.....", signify, by their ordinary and natural meaning, that in the case of an application for a vesting order the valuation date is the date of the Applicant/Leaseholders' application
 - b. if Parliament had intended that the relevant date were to have been, as Mr Clargo appears to be contending, either the date of the application to the court under section 13 or the date of an earlier purported notice under section 13, it would have been very easy for section 27(1)(b) to have so provided
 - c. however, and on the contrary, the whole purpose of the scheme of sections 26 and 27 is to provide a mechanism for enfranchisement where a landlord cannot be found, and so, with respect to Mr Clargo, it would not be at all odd to have different relevant dates in the case of the enfranchisement of two otherwise identical properties if the landlord of one property could be found but the landlord of the other could not

- d. the date of the application to the court, as helpfully confirmed by Mr Clargo, was 7 November 2009
- e. the valuation date in this case was accordingly 7 November 2013
- f. the term of years under each of the leases expires on 31 December 2086
- g. the number of years unexpired in each case on 7 November 2009 was accordingly 77 years and 2 months

The impact on the value of the freehold interest at the valuation date of the striking off of the management company named in the leases

17. Mr Clargo submitted that the striking off of the management company would have no impact, because :
- a. an application to restore the company could be made administratively or judicially under sections 1024 or 1029 of the Companies Act 2006
 - b. an application could be made to an LVT for the appointment of a manager or for the variation of the leases under sections 24 or 35 of the Landlord and Tenant Act 1987

18. *The Tribunal's findings*

19. However, the Tribunal indicated at the hearing the following findings :
- a. the striking off of the management company affected the carrying out of obligations under the lease, and in particular the obligations to repair and insure, in that those obligations could in the meantime only be carried out, and paid for, by separate agreement amongst the respective leaseholders, particularly as the landlord could not be found
 - b. a hypothetical buyer of the freehold would accordingly regard the striking off of the management company as a defect in the leases, and, whilst the buyer might well take account of the ways in which Mr Clargo has suggested that matters could be remedied, the buyer would also take account of the potential cost and delay in doing so
 - c. in addition, the mechanism in the leases for recovery of service charges under the leases left a potential gap between payments on account and payments of balances at the end of each year, and there was no express power to create a reserve fund, which, again, a buyer would regard as a defect in the leases
 - d. a buyer would therefore require a greater return on investment to reflect the greater risk compared with an investment in an otherwise identical property without those defects
 - e. drawing on the Tribunal's collective knowledge and expertise in this respect, the buyer would accordingly increase the rate of capitalisation of the right to receive the ground rents for the remainder of the leases by 1% to reflect that greater risk

The capitalisation of the right to receive the ground rents for the remainder of the leases

20. Mr Clargo had no submissions to add to the contents of Mr Higley's report

21. *The Tribunal's findings*

22. The Tribunal finds that :
- a. the ground rents owing for the four Flats for the remainder of the terms of the respective

- leases are as shown in the Tribunal's valuation at Appendix 2 to these reasons
- b. the capitalisation rate of 6.5% suggested by Mr Higley, is, in all the circumstances of the case, appropriate as a starting point
 - c. however, for reasons already given, that rate should be increased by 1% to reflect the greater risk caused by the defects in the leases
 - d. the appropriate capitalisation rate is accordingly 7.5%
 - e. the value of the Respondent/Landlord's interest in that respect is £3285, as shown in the Tribunal's valuation at Appendix 2 to these reasons

The value of the Flats at the valuation date

23. Mr Clargo said that no comparable evidence was available, and he had no submissions to add to the contents of Mr Higley's report

24. The Tribunal's findings

25. The Tribunal finds that Mr Higley's valuation figures for the current value of each Flat in April 2009 are, drawing on the Tribunal's collective knowledge and expertise in this respect, and in the absence of direct comparable evidence, appropriate figures for the current value of each Flat at the valuation date

The value of the freehold interest with vacant possession at the valuation date

26. Mr Clargo had no submissions to add to the contents of Mr Higley's report

27. The Tribunal's findings

28. Mr Higley's adoption of a relativity rate of 93% and his calculations leading to his valuation figures for the total value of the freehold interest with vacant possession at the valuation date are, drawing on the Tribunal's collective knowledge and expertise in this respect, and in the absence of direct comparable evidence, appropriate figures in that respect at the valuation date

Deferment rate

29. Mr Clargo submitted that it was appropriate in this case to increase the deferment rate from the **Sportelli** starting point of 5% by 0.25% to reflect a greater risk of deterioration compared with Prime Central London, and a further 0.25% to reflect the increased risks caused by the introduction of the Service Charge (Consultation Requirements) (England) Regulations 2003, whose effect was better known by the market by the valuation date in this case than had been the case by the valuation date in **Sportelli**

30. The Tribunal's findings

31. The Tribunal finds that :

- a. the starting point for assessing the deferment rate in respect of a block of flats is 5% : **Sportelli** LRA/50/2005
- b. the Tribunal has considered all the circumstances, including the extra risk factors

- considered in **Zuckerman** LRA/97/2008, and accepts that the deferment rate in this case should be increased by a total of 0.5%, for the reasons submitted by Mr Clargo
- c. the appropriate deferment rate in this case is accordingly 5.5%

Summary of the Tribunal's findings in relation to the valuation of the freehold interest at the valuation date

32. The Tribunal finds that the value of the freehold interest at the valuation date is £6800, as shown in the Tribunal's valuation at Appendix 2 to these reasons

Marriage value

33. Mr Clargo had no submissions to add to the contents of Mr Higley's report

34. *The Tribunal's findings*

35. The Tribunal finds that :

- a. the marriage value in this case is, effectively, the difference between the total value of the Applicant/Leaseholders' three Flats after enfranchisement on the one hand, and, on the other hand, the total value of the Applicant/Leaseholders' three Flats before enfranchisement plus the value of the freehold interest at the valuation date
- b. the marriage value in respect of the Applicant/Leaseholders' three flats is accordingly £14415, as shown in the Tribunal's valuation at Appendix 2 to these reasons, of which one half should be added to the price payable to the Respondent/Landlord

Hope value

36. Mr Higley's valuation included a figure for hope value on the basis that only three of the four Flat owners, but not the owner of Flat 2, would be applying to the court for a vesting order

37. Mr Clargo submitted that, in accordance with the decision in **Carey-Morgan v Trustees of Sloan Stanley Estate** [2012] EWCA Civ 1181 the appropriate hope value in this case would be 10% of the marriage value which would have been payable for the non-participating Flat, namely Flat 2, and that there was no evidence that the lessee of Flat 2 had security of tenure under schedule 10 to the Local Government and Housing Act 1989

38. *The Tribunal's findings*

39. The Tribunal finds that :

- a. the price payable to the Respondent/Landlord should reflect the hope that the owner of Flat 2 might wish to apply for an extended lease in the future
- b. the value of that hope should be, as shown in the Tribunal's valuation at Appendix 2 to these reasons :
 - based on the share of the additional marriage value which would have been attributable to Flat 2 if the owner of Flat 2 had joined in with the Applicant/Leaseholders in the application to the court, namely £1656
 - treated as one tenth of that share of marriage value, in accordance with the guidance

in **Carey-Morgan v Trustees of Sloan Stanley Estate** [2012] EWCA Civ 1181,
namely £166

Compensation

40. Mr Clargo submitted that there was no evidence to indicate that any compensation should be payable in this case
41. *The Tribunal's findings*
42. The Tribunal finds that no compensation is payable in this case

Appurtenant property

43. Mr Clargo submitted that the Applicant/Leaseholders also wished to acquire appurtenant property under section 1(2)(a) of the 1993 Act, in respect of which they had offered £100 in their notice under section 13
44. The Tribunal's findings
45. The Tribunal finds that £100 is an appropriate sum in this respect, and that £100 should accordingly be added to the price payable by the Applicant/Leaseholders

Total price payable

46. The Tribunal finds that the total price payable is accordingly £17558, as shown in the Tribunal's valuation at Appendix 2 to these reasons

Form of Conveyance

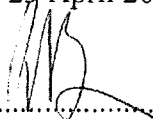
47. Mr Clargo said that there was no form of draft conveyance or transfer before the Tribunal, despite the Tribunal's provisional directions to the Applicant/Leaseholders in that respect dated 27 June 2012, and the Tribunal's subsequent directions dated 3 December 2012 and 8 February 2013
48. The Tribunal indicated that :
- a. it regarded the failure to comply with the Tribunal's directions as little short of contempt
 - b. nevertheless, the Tribunal was prepared, in the interests of justice, to allow the Applicant/Leaseholders until 12 April 2013 to provide the Tribunal with a draft conveyance or transfer for approval, failing which the Tribunal would transfer the matter back to the County Court with its valuation, but without its approval to a draft conveyance or transfer
49. Despite that further allowance of time, no draft conveyance or transfer has been received by the Tribunal
50. *The Tribunal's findings*

51. There is no form of conveyance or transfer before the Tribunal for the Tribunal to approve

Reference back to the County Court

52. The Tribunal refers the matter back to the County Court accordingly

Dated 23 April 2013



.....
P R Boardman
(Chairman)

A Member of the Tribunal
appointed by the Lord Chancellor

HM COURTS & TRIBUNALS SERVICE
LEASEHOLD VALUATION TRIBUNAL

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Applicant/Leaseholders : Hannah Jane Towill (Flat 1), William Harrison and Judith Harrison (Flat 3), and Babylon Investments Limited (03183458) (Flat 4)

Respondent/Landlord : The Estate of Max Mordechai Landau (deceased), represented by Valerie Jane Landau

Building : Randolph Court, 6 Randolph Road, Bournemouth, BH1 4HQ

Appendix 2

The Tribunal’s valuation

6 Randolph Road Bournemouth

Current value of freeholders interest

Value of ground rents

April 2009 – 2020		£200.		
YP 11y 2m @ 7.5%		<u>7.322</u>		£1,464
2020- 2053		£300		
YP 33 yrs @7.5%	12.107			
PV of £1 def 11y 2m @7.5%	<u>0.4460</u>	<u>5.399</u>		£1,620
2053- 2086		£400		
YP 33 yrs @7.5%	12.107			
PV of £1 def 44 yrs @7.5%	<u>.0415</u>	<u>0.502</u>		<u>£ 201</u>
Total value of ground rents				£ 3,285

Value of the reversion

Capital value of reversion		£425,000		
PV of £1 def 77y 2m @5.5%		<u>0.016</u>	<u>£ 6,800</u>	£10,085

Marriage value Flats 1,3 &4

Value with extended lease			£350,000	
<u>Less</u>				
Freeholders present interest		£ 10,085		
Leaseholders present interest		<u>£325,500</u>	<u>£335,585</u>	
Marriage value			£ 14,415	
50% of marriage value				£ 7,207

Marriage value Flat 2

Value with extended lease			£ 75,000	
<u>Less</u>				
Freeholders present interest				
25% of ground rent interest		£ 821		
Capital value of reversion	£69,750			
PV of £1 def 77y 2m @ 5.5%	<u>0.016</u>	£ 1,116		
Present value of lease- holders interest		<u>£69,750</u>	<u>£ 71,687</u>	
			£ 3,313	
Marriage value at 50%			£ 1,656	
Say 10% for hope value				£ 166
Total				£17,458
Add amount for additional land				£ 100
Total Premium				£17,558