First-tier Tribunal
Property Chamber
(Residential Property)

Case reference	**:**	**CHI/00ML/OLR/2021/0058-61**
Properties	**:**	**Flats 21C, 24, 25 & 26 Palmeira Avenue Mansions, 21-23 Church Road, Hove BN3 2FA**
Applicants	**:**	**Patrick James Newby (21C) Renee Vinette Hunt (24) Birgul Kutan & Mario Novemmo (25) Erik Olof Norell, Angelica Irma Marianne Norvell & Teodora Andrea Francesca Norell (26)**
Represented by		**Ben Maltz of counsel (Coole Bevis Llp)**
Respondent	**:**	**The Martin Reiss Hanson Trustees Ltd.**
Date of Applications	**:**	**18th April 2021**
Type of Application	**:**	**To determine the premiums for the lease extensions of the properties**
Tribunal	**:**	**Judge Bruce Edgington (chair) Johanne Coupe FRICS**
Date & place of hearing:		**7th September 2021 as a video hearing from Havant Justice Centre in view of Covid pandemic restrictions**

DECISION

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1. The premiums payable for the lease extensions for the properties are £11,989.00 for flat 21C, £8,816.00 for flat 24, £8,140.00 for flat 25 and £5,591.00 for flat 26. The figure for flat 21C is calculated in the reasons below and the remainder are as set out in the report of Julian Wilkins MRICS as set out in pages 249-254 of the hearing bundle.

2. With regard to any proposed application for costs by the Applicants pursuant to rule 13(1) of the **Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013** ("a rule 13 application"), the Tribunal makes no determination.

Reasons

3. This is an application for the Tribunal to determine the premiums for lease extensions for the properties. The Tribunal issued directions orders on the 19th May, 3rd June and 23rd July 2021 timetabling the case to a final hearing. The final order said that unless the Respondent served its valuation evidence by 4.00 pm on the 13th August 2021, it would be debarred from relying on any expert evidence.

4. Further, it ordered that if this was not complied with, the Applicants must inform the Tribunal 'whether it still requires (*sic*) an oral hearing'. No such evidence was served but the Applicants did not say whether they still required an oral hearing. As the date for the hearing had been fixed, the Tribunal considered that it could not just cancel it and that it should go ahead.

5. A hearing bundle was delivered to the Tribunal from which it was clear that the Respondent had not taken any part in the process leading up to this decision. Thus, the Tribunal has seen the Applicants' expert's report from Julian Wilkins MRICS but there were no experts' reports from the Respondent justifying the premium figures set out in the counter-notices.

6. The Applicants have indicated that they may wish to pursue a rule 13 application asking for an order that the Respondent pay the Applicants' costs because of the Respondent's unreasonable behaviour in its conduct of these proceedings.

7. It should be said that Robert Gates & Co., a firm of property management agents, has been representing the Respondents. Upon receipt of the last directions order, they wrote to the Tribunal office on the 20th August 2021 registering their "*strong objections to the way that these cases have been handled and impossible timescales without, at any time, prior consultation or agreement from ourselves*".

8. The case officer pointed out to them that if they wanted to make any application, they should complete an application form and a blank form was attached to the e-mail. The form was completed and filed on the 31st August 2021 and was an application to adjourn this hearing.

9. Judge Edgington considered the application and refused it by formal order dated 1st September 2021 saying, *inter alia,* that the bundle lodged for the Tribunal by the Applicants' representatives contained no valuation evidence from the Respondent and added, in accordance with his knowledge of the facts at the time, "*The Tribunal has heard nothing from the Respondent's representative since the proceedings began until a formal application was lodged on the 31st August 2021 for the hearing fixed for the 7th September 2021 to be adjourned*".

10. A letter was then received from Robert Gates & Co. on the 6th September 2021 referring to that sentence and saying "*There is a deliberate lie contained in the second paragraph of the "Background" in that we contacted your Tribunal on*

the 20th August (copy attached) with our objections to the way these cases had been steamrollered, not on 31st August". This is most inappropriate language. There was no 'lie', deliberate or otherwise. The application of the 31st August made no mention of any earlier letter to the Tribunal office and Judge Edgington was simply unaware of it.

11. The fact of the matter is that these applications were made almost 5 months ago and Robert Gates & Co. were named in the application forms as being the Respondent's representative. All orders have been sent to them and they have chosen to just ignore them, either on their own account or by instructions. In particular, and despite the fact that these applications are for the Tribunal to determine the premiums for the new leases, the orders requiring them to file and serve valuation evidence have not been complied with. Almost 5 months between the applications and the hearing can hardly be described as 'steamrollering'.

The Inspection

12. As was stated in the directions orders, the members of the Tribunal did not inspect the properties and no request was made by any party for such an inspection. Mr. Wilkins' report contained a full description of the building and attached a number of photographs which greatly assisted the Tribunal.

The Leases

13. The existing terms for the leases are 125 years from the 29th September 1983 with an increasing ground rent for flat 21C but fixed ground rents for the other 3 flats. This is an important difference which will be discussed below.

14. There is nothing else in the lease terms which would materially affect the level of the premium.

The Law

15. The valuation of a premium payable in respect of a new lease in these circumstances is governed by Schedule 13 of the **Leasehold Reform, Housing and Urban Development Act 1993** ("the 1993 Act"). Paragraph 2 says that:-

> "*The premium payable by the tenant in respect of the grant of the new lease shall be the aggregate of-*
> *(a) the diminution in value of the landlord's interest in the tenant's flat as determined in accordance with paragraph 3,*
> *(b) the landlord's share of the marriage value as determined in accordance with paragraph 4, and*
> *(c) any amount of compensation payable to the landlord under paragraph 5*

The Hearing

16. The hearing was attended by counsel for the Applicants, Mr. Ben Maltz, together with Mr. Julian Wilkins MRICS and his colleague Mr. Martin Geoghegan MRICS. No-one attended from the Respondent or any representative. When Robert Gates & Co. wrote to the Tribunal on the 20th August 2021, they complained about the Applicants' solicitor's behaviour and then added that 'until these issues are resolved we will not be in a position to

attend a Video Hearing'. Nevertheless, both they and, presumably, their client knew that the hearing would be proceeding. They therefore chose not to attend.

17. The Tribunal Judge then introduced himself and the other Tribunal member. He then made it clear to counsel that the Tribunal members had discussed the written evidence filed. They agreed with Mr. Wilkins' assessments of the premiums in respect of flats 24, 25 and 26. However, in respect of flat 21C, they had a problem with the capitalisation of ground rent because the ground rents were so different. With flats 24, 25 and 26, the ground rent was £40 per annum for the whole term. With flat 21C, the ground rent was £300 as at the valuation date, increasing to £600 per annum from 2033 and then increasing to £1,200 per annum for the remainder of the term.

18. Mr. Wilkins responded by referring to another First-tier Tribunal case in the bundle – which does not, of course, bind this Tribunal – but acknowledged the difference in ground rents and then went on to suggest that the figure for flats 24, 25 and 26 should, perhaps, have been 7.5% or more. The evidence in his report at page 237 in the bundle refers to cases "*where ground rents are reasonably low and subject to small, fixed increases at 25 year or 33 year intervals. There is general acceptance between lease extension and enfranchisement valuers in London and the South East that a 7% capitalisation rate is the default rate for a lease with modest ground rents*".

19. As far as costs are concerned, Mr. Maltz said that he would want to reserve the Applicant's position and any rule 13 application would be submitted after the hearing. The Tribunal chair pointed out that there may be problems over that and he would set those out in the determination so that the Applicants would know what issues to address.

Conclusions

20. The Tribunal was concerned about the Respondent's behaviour. The reasons given in correspondence with the Tribunal office for not participating were (a) there was no good reason for the cases to be 'steamrollered, especially during the COVID-19 situation where we are all working under very difficult circumstances' and (b) the counter notices were all served without prejudice because, so the Respondent said, there were breaches of covenants and substantial rent arrears.

21. The first point has been dealt with above. The Tribunal does not consider that the applications have been 'steamrollered'. Wherever possible the legal process should still continue and has continued in this case, with reasonable time frames for each party to prepare for this hearing.

22. As far as the second point is concerned, the Respondent did serve counter-notices. Such notices cannot be 'without prejudice' in the legal sense suggested. The normal legal interpretation of those words is that such document could not be referred to in legal proceedings. If that had occurred, there would not, in effect, have been counter notices and the Applicants could have just proceeded under section 49 of the 1993 Act to ask the court (not this Tribunal) to extend the leases at the premium set out in the initial notices i.e. lower premiums than have now been achieved.

23. If the Respondent has not bothered to enforce the terms of the leases through the courts i.e. not through this Tribunal, then that is a matter for them. In fact, the end result of the terms of the counter notices is that the Respondent may well have reserved its position so that if the Applicants need to pursue these lease extensions through the court, they may be able to persuade the court not to finalise them without a resolution of the breaches. However, that is a matter for the court, not this Tribunal. For the avoidance of doubt, the Respondent has not quantified any compensation application as referred to in Schedule 13 of the 1993 Act or otherwise.

24. As to the Tribunal's determination, it is based entirely on the evidence, the collective experience of the Tribunal members and the submissions of the Applicants' counsel and expert witness. It is the Tribunal's decision that the premiums for flats 24, 25 and 26 will be as set out in Mr. Wilkins' report. So far as flat 21C is concerned, all the figures set out in such report are agreed save for the capitalisation of ground rent.

25. Mr. Wilkins' suggestion that the rate for flats 24, 25 and 26 should perhaps be higher than 7% is not understood as that rate accorded with his written evidence. However flat 21C has much higher ground rent now and this doubles every 25 years to reach a high of £1,200 per annum for the last 25 years. It is not "*reasonably low and subject to small, fixed increases at 25 or 33 year intervals*". The Respondent should be adequately compensated for this discrepancy and the Tribunal considers that 6% is the correct rate.

26. Accordingly, the Tribunal has recalculated Mr. Wilkins premium for flat 21C simply by substituting the capitalisation of ground rent percentage of 6.5% with 6%. All other figures are accepted. The end result of this is a figure of £11,989.00 as opposed to the figure of £11,096.00 on page 248.

Costs

27. The Tribunal noted that a rule 13 application is being considered. The suggestion is that because the Respondent has not co-operated at all in this application and has refused to provide valuation evidence, that is unreasonable behaviour. If the Tribunal found this to be a correct interpretation of such behaviour, it then has to go on to determine what costs have actually been incurred as a result of that behaviour.

28. There are 2 relevant issues here. Firstly, the suggested premiums in the initial notices are lower than the Applicants' expert has suggested now. In other words, the evidence is that the suggested premiums were too low and it is therefore not unreasonable for the Respondent to say that the matter should be dealt with by the Tribunal. The fact that the Respondent has not taken part in the process means, in effect, that the costs incurred by the Applicants should be less than if they had needed to consider valuation evidence from the Respondent, consider discussions and attend what would have been a contested hearing in the event that no settlement was reached.

29. The second point is that section 60 of the 1993 Act says that the landlord's reasonable costs incurred in a lease renewal are payable by the tenant. Thus

the tenant is responsible for his/her own costs and those of the landlord. In fact the Respondent has not, so far, made any application for costs.

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Judge Bruce Edgington
7th September 2021

ANNEX - RIGHTS OF APPEAL

i. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.

ii. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

iii. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

iv. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.