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**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : CHI/21UD/OCE/2014/0026

Property : 27 Desborough Road, Eastleigh, Hampshire.
SO50 5NY

Applicants : Mrs L J Chilton & Mr R T Clarke

Representative : PMS Solicitors

Respondent : Mr P G M Whitfield & Mr M J Whitfield

Representative : ---

Type of Application: Leasehold Reform Housing & Urban Development
Act 1993 ("the 1993 Act") : Missing Landlord

Tribunal Members : Judge P.J. Barber
Mr P D Turner-Powell FRICS Surveyor Member

Date of Decision : 17th November
2014

DECISION

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DECISION

1. The Tribunal determines that
 - (1) the appropriate amount to be paid into court pursuant to section 27(5) of the 1993 Act is £9,304.00
 - (2) The form of transfer contained at Pages 115-119 of the Applicants` bundle is approved subject to the following amendments being made :
 - (a) The second name of the Second Respondent, namely "Jason" being correctly inserted at Panel 4.
 - (b) The sum of £9,304.00 being inserted at Panel 8.

BACKGROUND

2. By an Initial Notice pursuant to Section 13 of the 1993 Act, dated 4th June 2014, the Applicants claimed to exercise the right to collective enfranchisement in respect of 27 Desborough Road Eastleigh Hampshire SO50 5NY ("the Property")
3. By a claim made in Southampton County Court under claim number A00SO484, issued on 14th July 2014, the Applicants claimed to be entitled to a vesting order under Section 26 of the 1993 Act in respect of the freehold in interest in the Property via their nominee purchaser, Lainston Estates Limited, at a price and on terms in accordance with the 1993 Act.
4. On 4th September 2014 District Judge Powell ordered in connection with the above proceedings, that the case be transferred to the First Tier Tribunal (Property Chamber) for further directions including on the issue of service. The Applicants had made all relevant enquiries but had been unable to locate the Respondent landlords.
5. The Tribunal issued directions in this matter on 19th September 2014, inter alia, requiring the Applicants to file a bundle of documents in the matter and providing for the application to be dealt with on the papers without an oral hearing unless a party objected in writing within 28 days of the date of those directions.
6. The first named Applicant Ms L J Chilton (formerly Browning) is the registered proprietor of the leasehold interest in 27a Desborough Road, Eastleigh (the First Floor Flat) under Title Number HP415887 and pursuant to a Lease dated 29th June 1990 for a term of 99 years from 31st January 1990, at a ground rent of £30.00 per annum rising to £90.00.
7. The second named Applicant Mr R T Clarke is the registered proprietor of the leasehold interest in 27 Desborough Road, Eastleigh (the Ground Floor Flat) under Title Number HP426903 and pursuant to a Lease dated 30th November 1990 for a term of 99 years from 31st January 1990, at a ground rent of £30.00 per annum rising to £90.00.
8. The Respondents are the registered proprietors with Title Absolute of the freehold interest in 27 Desborough Road, Eastleigh under Title Number HP360954, subject to certain covenants and rights, and also subject to the

Leases referred to at paragraphs 6 & 7 above. The Respondents appear to have been registered as such proprietors in or about September 1988.

THE LAW

9. Section 26(1) of the 1993 Act provides that :

“...the court may on the application of the qualifying tenants in question, make a vesting order; and

Section 26(3A) of the 1993 Act provides that :

“...the court may, on the application of the qualifying tenants in question, make an order dispensing with the need to give a copy of such notice to that person.”

Section 27(1) of the 1993 Act provides that :

“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 the First Tier Tribunal to be appropriate...”

Section 27(3) of the 1993 Act provides that :

“Where any interests are to be vested in any person or persons by virtue of a vesting order under section 26(1), then on his or their paying into court the appropriate sum in respect of each of those interests there shall be executed by such person as the court may designate a conveyance which-

(a) Is in a form approved by a First Tier Tribunal, and

(b) Contains such provisions as may be so approved for the purpose of giving effect so far as possible to the requirements of section 34 and schedule 7

And that conveyance shall be effective to vest in the person or persons to whom the conveyance is made the interests expressed to be conveyed, subject to and in accordance with the terms of the conveyance.”

Section 27(5) of the 1993 Act makes provisions regarding the appropriate sum determined by the First Tier Tribunal to be paid into court.

INSPECTION

10. The Tribunal inspected the Property on 17th November 2014 in the presence of Ms Amber Swinton, a member of Mr Clarke`s staff, and found it to be as described in report referred to below prepared by Mr Winder, namely a two storey former single terraced house, converted into two flats respectively at ground and first floor levels. Desborough Road comprises terraces of residential housing constructed around 1900 and mostly of a similar size and character. The Property is of brick construction under a pitched, replacement tiled roof. A brief internal inspection was made of Number 27, being the Ground Floor Flat but no access was possible to Number 27a, being the First Floor Flat. The communal entrance hall leading to both flats was small and in poor condition with bare floorboards. Flat Number 27 was only partly furnished and the decorations and

fittings were of poor quality; there was radiator central heating and UPVC windows. A rear entrance door from the kitchen of Number 27 led to a rear yard area.

THE VALUATION

11. The Applicants' bundle included a report and valuation dated 7th October 2014 ("the Report") issued by Mr Richard Winder MRICS of Moores Independent Limited, a firm of chartered surveyors. The Report refers to a valuation date of 14th July 2014 being the date of issue of the claim in Southampton County Court.
12. Mr Winder stated that the basis of his valuation, in accordance with the provisions of Schedule 6 of the 1993 Act was to determine the aggregate of (a) the value of the freeholder's interest (b) the freeholder's share of marriage value and (c) any amount of compensation for loss from enfranchisement.

Value of Freeholder's Interest

Mr Winder submitted in the Report that this interest comprises the capitalisation of the ground rental income and the value of the reversion. Mr Winder applied a yield of 7% and 5% for the reversionary discount yield, thus adhering to the decision in *Sportelli*.

Marriage Value

Mr Winder submitted that the marriage value is the value created by merging the freehold and leasehold interests, adding that where unexpired terms exceed 80 years, marriage value is ignored. In this case, with 74.5 years unexpired, Mr Winder said that marriage value was appropriate and assessed Relativity at 94.5% by reference to RICS Graphs for Greater London & England. Mr Winder concluded that the values of the unimproved leasehold interests are respectively £100,992 (Flat 27) & £100,047 (Flat 27a).

Compensation

Mr Winder submitted that compensation is payable to the freeholder if loss is incurred from the disposal of the freehold in respect of other property owned and set out his calculations in this regard at Appendix 5 to the Report resulting in calculation of a premium payable of £4,675.00 for Flat 27 and £34,635.00 for Flat 27a. Accordingly Mr Winder calculated that total compensation of £9,310.00 was payable.

13. The Applicants' solicitors submitted at Pages 116-119 of their bundle, a draft transfer deed in Form TR1 for approval by the Tribunal in accordance with Section 27(1)(b) of the 1993 Act.

THE DETERMINATION

14. The Tribunal has taken into account all the written submissions and papers in the bundle. In regard to the Report, the Tribunal considered and agreed in principle the calculations, subject to correction of a minor mathematical error in assessment of the Value of the Landlord's Proposed Interest both on Pages 82 & 83 of the bundle where (Page 82) the result of multiplying £106,870 by 0.0003 should be £32 and not £35 as shown and (Page 83) the result of multiplying £105,870 by 0.0003 should be £32 and not £35 as shown. Thus adjusted, the final calculation as to the premium payable at Page 84 of the bundle should be £9,304 and not £9,310 as shown.

15. In regard to the draft TR1 Transfer Deed, the Tribunal approves the document save that the second Respondent`s full names shall be correctly shown at Panel 4. and the amount to be paid into court, namely £9,304 being inserted at Panel 8. The Tribunal formally determines that the amount that the Applicants shall be required to pay into court in order to acquire the freehold interest in the Property is Nine thousand three hundred and four pounds (£9,304.00).
16. In regard to the order of the court dated 4th September 2014 as referred to at paragraph 4 above, the Tribunal makes no directions or determination on the issue of service on the basis that under Section 26(3A)(c) of the 1993 Act, it is a matter for the court, not the Tribunal, to make any order dispensing with the need to give a copy of the initial notice to the Respondents.
16. We made our decisions accordingly.

Judge P J Barber

Appeals :

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.