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BIR/00CN/OAF/2004/0058
BIR/00CN/OC6/2004/0048

THE LEASEHOLD VALUATION TRIBUNAL FOR THE MIDLAND RENT ASSESSMENT PANEL

Leasehold Reform Act 1967, sections 21(1)(a) and 21(1)(ba)

**DETERMINATION OF THE LEASEHOLD VALUATION TRIBUNAL
ON AN APPLICATION BY THE TENANT TO DETERMINE THE PRICE
TO BE PAID FOR THE INTERMEDIATE INTERESTS**

Re 72 Richmond Hill Road, Edgbaston, Birmingham, West Midlands B15 3SA

Applicant: Mrs Sandhya Sahnan (tenant)

Respondents: The Trustees of the Calthorpe Edgbaston Estate (freeholder)

Intermediate landlord: The George Fisher Settlement

Date of tenant's notice of claim: 19 December 2003

Date of application to determine the price for the intermediate interests and costs:
10 March 2004

Date of hearing: 18 May and 4 October 2004

Appearance: Mr Anthony Brunt (Anthony Brunt & Co, valuers) for the tenant

No appearance for the freeholder or for the intermediate landlord

Members of the leasehold valuation tribunal:

Lady Wilson
Mr I D Humphries BSc(Est Man) FRICS
Mrs C L Smith

Date of the tribunal's decision: 15 October 2004

Background

1. This is an application by the occupying sub-underlessee (“the tenant”) for the tribunal to determine the price to be paid to the holder of two intermediate leasehold interests (“the intermediate landlord”) and the costs payable to the intermediate landlord.
2. On 18 March 1964 the freeholder, the Trustees of the Calthorpe Edgbaston Estate, granted a 99 year lease of some land to Conscrip Limited for a term of 99 years from 29 September 1963 at a ground rent of a peppercorn rising to £1000 per annum. A copy of the lease has not been produced to the tribunal, but it is assumed that it was a building lease. It appears from the Land Registry entries that 31 houses, including 72 Richmond Hill Road (“the property”), were built on the demised land and that a rent of £30.05 was subsequently apportioned to the property. An underlease, also not produced to us but which can have a reversion of no more than a few days, was granted by the headlessee to another company, probably Morris & Jacombs Limited. According to the Land Registry entries, Morris & Jacombs Limited on 21 June 1966 granted a sub-underlease of the property to Pauline Marion Woods for a term of 99 years less six days from 29 September 1963 at a ground rent of £60 per annum. Both the interests of the headlessee and of the underlessee are now held by the George Fisher Settlement, and the occupational sub-underlease is now held by Mrs Sandhya Sahnán. The tenant is thus obliged to pay an annual ground rent of £60 per annum to the intermediate landlord who pays £30.05 to the freeholder and retains a profit rent of £29.95. We are told by Mr Brunt that the two intermediate interests have not been formally merged and that, of the profit rent received by the intermediate landlord, £11.30 is apportioned as rent due in respect of the headlease and £18.65 is apportioned to the underleasehold interest.
3. On 19 December 2003 the tenant served a Notice of Tenant’s claim on the freeholder to acquire the freehold of the property and served a copy on the George Fisher Settlement as holder

of the intermediate interests. The tenant's valuer, Mr Brunt, then agreed with the freeholder's representative a price of £24,500 for the freehold and he has subsequently agreed the freeholder's costs. The rateable value of the property was such that the valuation was made under section 9(1A) of the Act and included marriage value. On 10 March 2004, Mr Brunt applied to the tribunal on the tenant's behalf for the determination of the price to be paid for the two intermediate leasehold interests and of the costs payable to the intermediate landlord. In the application he proposed a price of £420 for the two interests and £350 for the intermediate landlord's costs. The application was sent by the tribunal to the freeholder but not to the intermediate landlord. Pre-trial directions were given on 23 March 2004 and sent to the tenant and to the freeholder. On 31 March 2004 the freeholder's solicitors wrote to the tribunal to say that terms had been agreed and that the tenant's valuer would presumably recommend that the matter should be withdrawn. Mr Brunt having informed the tribunal that he wished it to determine the price for the two intermediate leases and the costs due to the intermediate landlord and to the freeholder, a hearing was arranged for 18 May 2004 and notice given to the tenant and to the freeholder. At the hearing on 18 May Mr Brunt appeared for the tenant but neither the freeholder nor the intermediate landlord was represented. Since the tribunal was at that stage neither satisfied that the matter had been correctly dealt with by the parties in accordance with schedule 1 to the Leasehold Reform Act 1967 ("the Act"), nor that it had the information on which it could properly determine the matters it was asked to determine, it adjourned the matter and asked Mr Brunt to consider with the freeholder and the intermediate landlord how best to proceed.

4. On 26 July 2004 the clerk to the tribunal wrote to the representatives of the tenant, the freeholder and the intermediate landlord to enquire whether any of them proposed to invite the tribunal to make any further, and, if so, what order and that unless the application was restored for hearing within the next 28 days it was minded to dismiss it. On 28 July Mr Holland of Messrs Fishers responded on behalf of the intermediate landlord that he did not propose to ask

the tribunal to make any order with regard to their clients' interests since it was his view that "these interests fall outside of the Act by virtue of their quantum" and that the tribunal had therefore no jurisdiction to determine them. By a letter dated 9 August the freeholder's valuer, Mr Michael Cannon of Messrs Bruton Knowles, wrote to the tribunal to say that his firm had acted on behalf of the freeholder in agreeing a purchase price for the freehold interest only. He said that he had not attempted to incorporate or calculate the value of the head leasehold interest. To avoid any conflict of interest he considered that the intermediate landlord should be separately represented. Mr Brunt asked the tribunal to reconvene the hearing as soon as possible. On 24 August, Mr Holland of Messrs Fishers wrote to the tribunal on behalf of the intermediate landlord to say that at no time had his client been advised that an application had been made to the tribunal for a valuation of the intermediate landlord's interest and that he considered that the tenant's application "on this and other grounds" was out of time.

5. On 27 August 2004 the tribunal made directions, which were sent to the representatives of the tenant, the freeholder and the intermediate landlord, that skeleton arguments as to the jurisdiction of the tribunal to determine the price payable for the intermediate interests on the application of the tenant, and as to the price, should be exchanged and lodged and that the tribunal would determine these matters at a hearing on 4 October.

6. On 1 September 2004 Mr Holland again wrote to the tribunal on behalf of the intermediate landlord. He said that he was not aware of any application to the tribunal, that the intermediate landlord's interests were not "minor superior interests" and that Messrs Bruton Knowles for the freeholder had never been instructed to represent the intermediate landlord. He contended that even if the tribunal had jurisdiction to determine the value of the intermediate interests it could not now do so because no application to do so had been made to the tribunal within the prescribed time limit following the service of the tenant's notice.

7. Messrs Bruton Knowles wrote to the tribunal on 30 September 2004 to say that they did not propose to appear at the hearing on 4 October. Messrs Fishers wrote on 1 October to say that their position had been made clear in correspondence and that no-one was available to represent the intermediate landlord at the hearing.

The hearing

8. Mr Brunt attended the hearing. He said that a determination of the tribunal was necessary and was the only way his client could obtain good title to the freehold for which she had paid. He accepted that the procedure which the three parties concerned had not been in accordance with schedule 1 to the Act, but he considered that in the circumstances the tribunal had jurisdiction to determine the value of the intermediate interests and that it was appropriate to exercise that jurisdiction. He said that Messrs Fishers' assertion that their client's interests were outside the Act and that the tenant's application was out of time were incorrect.

8. Addressing the value of the intermediate interests, Mr Brunt said that he considered the appropriate yield rate for this investment was 8 per cent single rate and that since the reversions were nominal, the purchase price should be limited to the capitalised value of the profit rent and should not include any element of marriage value. He drew our attention to an open letter dated 4 June 2004 from Mr Holland on behalf of the intermediate landlord giving a list of prices obtained for similar headleasehold and underleasehold interests, including those in respect of 60, 68, 70, 74 and 76 Richmond Hill Road. The prices (excluding a settlement in 1983) were either £250 or £300 for the headleasehold interests and either £400 or £450 for the underleasehold interests. He said that these figures were more than the interests were worth in the open market. They were almost certainly prices paid by occupying subunderlessees who found it uneconomic to challenge them.

9. On the question of the intermediate landlord's costs, Mr Brunt said that although he accepted that the intermediate landlord was entitled to recover its reasonable legal costs, he did not accept that it had incurred any valuation fees in respect of the simple arithmetical exercise involved in valuing these interests. He agreed that the intermediate landlord should have the opportunity to make written representations on the question of costs before the issue was decided.

Decision

10. By paragraph 1(1)(b) of schedule 1 to the Act, proceedings arising out of a tenant's notice shall be conducted by one of them, the reversioner, on behalf of all superior landlords. By paragraph 2 of the schedule, the reversioner is to be the freeholder where no intermediate tenant has an expectation of possession of 30 years or more, although the county court may instead, in the circumstances set out in paragraph 3, appoint one of the intermediate landlords as reversioner. By paragraph 4, the reversioner may take or defend any legal proceedings under Part I of the Act, and the reversioner's acts are binding on the other landlords. An intermediate landlord may, however, by paragraph 5, be separately represented in any proceedings relating to the price to be paid, and, by paragraph 5(3) it may, for the purpose of agreeing the price to be paid for its interest under section 9 of the Act, on giving written notice to the reversioner and to the claimant, deal directly with the claimant and may require the reversioner to apply to a leasehold valuation tribunal to determine the price. Furthermore, it is considered that the intermediate landlord may apply to the tribunal under regulation 6 of the Leasehold Valuation Tribunals (Procedure) Regulations 2003 to be joined as a party to the proceedings.

11. It appeared possible that the freeholder in its negotiation with the tenant had in fact represented the intermediate landlord as it should have done, no notice having been served on the tenant in accordance with paragraph 5(3) of the schedule that the intermediate landlord

proposed to deal with her directly, and would account to the intermediate landlord for the price payable to it. It is now clear that that was not what happened, and, that being the case, it was to be expected that the intermediate landlord would either require the freeholder to apply to the tribunal in accordance with paragraph 5(3) of schedule 1 or would itself apply to be joined as a party under regulation 6 of the Procedure Regulations. However, the intermediate landlord has refused to take either of these courses on the basis first, that the tribunal has no jurisdiction to determine the value of its interests because they are not "minor superior tenancies" and second, that the tenant's application is out of time and that she must re-apply.

12. Both of these views are, we consider, incorrect. These intermediate interests are, indeed, not minor superior tenancies as defined by paragraph 7A(2) which must be valued according to a statutory formula, but there is no doubt at all that the tribunal has jurisdiction, which it regularly exercises, to value intermediate interests which are not minor superior tenancies (see paragraph 7(1)(b) of schedule 1 and *Hague, Leasehold Enfranchisement*, Fourth Edition at 11-14 and 11-16). Moreover the application to the tribunal is not out of time. Section 21(1B) of the Act provides that no application shall be made under section 21(1) to determine the price unless the landlord has informed the tenant of the price he is asking or two months have elapsed since the notice of tenants's claim, but there is no relevant time limit thereafter for making an application to determine the price. It may be that the intermediate landlord's advisers are confusing this claim with applications under the Leasehold Reform, Housing and Urban Development Act 1993, where applications must be made within six months of the counter-notice.

13. In the above circumstances we see no reason why the tenant cannot herself bring the matter back before the tribunal. We are satisfied that the application was appropriately served on the freeholder as reversioner, the intermediate landlord having taken no steps to be joined to the proceedings. We are also satisfied that the intermediate landlord has been given sufficient and

fair notice of the hearing, in that it was served with the tribunal's directions of 27 August 2004, and thus had a reasonable opportunity to put its case before the tribunal but chose not to appear.

14. We have considered the submissions made by Mr Brunt and the correspondence from Messrs Fishers, including the settlement evidence contained in their letter dated 4 June 2004. We are satisfied that 8 per cent is the appropriate yield to value this low profit rent and that it is inappropriate to include in the price any element of marriage value. We accept Mr Brunt's submission that the settlements relied on by Messrs Fishers are subject to a *Delaforce* effect. While we consider it possible that the two intermediate interests have in fact merged in law, we have divided the prices payable for the two interests. The price payable for the head leasehold interest formerly held by Conscrip Limited is accordingly £140 and the price payable for the underleasehold interest formerly held by Yardley Interests Limited is ££230, a total of £370.

15. The intermediate landlord may have 14 days from receipt of this decision to make written submissions as to why any legal or valuation costs are payable to it by the tenant, and, if so, the amount of those costs. These submissions must be delivered to Mr Brunt and lodged with the tribunal within that time, and the tenant may have 14 days from the receipt of the intermediate landlord's submissions to respond in writing, her response to be delivered to the intermediate landlord's representative and lodged with the tribunal. A further hearing would, it is considered, be disproportionate. A decision on costs will be issued when the representations of the intermediate landlord and the tenant have been received.

CHAIRMAN.....

DATE: 15 October 2004