

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL**

Property : 130A Beedell Avenue,
Westcliff-on-Sea,
Essex SS0 9JP

Applicant : Martin Sean Tozer
Represented by solicitors, Tolhurst
Fisher

Respondent : Robert Gee

Case number : CAM/00KF/OLR/2009/0099

Date of Court Transfer : Order of 7th October 2009

Type of Application : To determine purchase price and
terms of lease on enfranchisement
where landlord cannot be found (Section
51 of the Leasehold Reform, Housing
and Urban Development Act 1993 ("the
Act"))

Tribunal : Bruce Edgington (lawyer chair)
Frank James FRICS
Richard Marshall FRICS FAAV

**Date and place
of hearing** : 11th March 2010 at The Balmoral Hotel,
32-36 Valkyrie Road, Westcliff-on-Sea,
Essex SS0 8UB

DECISION

1. The terms of the surrender of the existing lease and the grant of a new term shall be in accordance with the draft annexed to this decision which has been approved by the Tribunal save that the reference to consideration will have to be amended to reflect the fact that the premium is paid into court and not to the landlord. The recitals should also make reference to the vesting order. The Applicant's solicitors shall make these amendments and any other amendment required by the Land Registry.
2. The amount to be paid into court in accordance with Section 51(5) of the Act is £4,240.00

Reasons

Introduction

3. The Applicant is the owner of a leasehold interest in the property being the residue of the term of 99 years from the 28th August 1986 which is registered at HM Land Registry under title number EX337972.
4. He wishes to extend his leasehold interest by using the enfranchisement provisions under the Act but unfortunately he has been unable to find the landlord and serve him with an Initial Notice under Section 42 of the Act.
5. The Act makes provision for this by enabling a tenant in the Applicant's position to apply to the county court for a vesting order. Such an application has been duly made in this case and a vesting order was made by District Judge Ashworth at the Southend county court on the 7th October 2009. This Tribunal has the obligation to approve the form of lease and the amount to be paid into court in accordance with Section 51(5) of the Act.
6. The method of calculating the amount to be paid into court is set out in Section 51(5) of the Act and is "*the aggregate of-*
 - (a) *such amount as may be determined by a leasehold valuation tribunal to be the premium which is payable under Schedule 13 in respect of the grant of the new lease*
 - (b) *such other amount or amounts (if any) as may be determined by such a tribunal to be payable by virtue of that Schedule in connection with the grant of that lease; and*
 - (c) *any amounts or estimated amounts determined by such a tribunal as being, at the time of execution of that lease, due to the landlord from the tenant (whether due under or in respect of the tenant's lease of his flat or under or in respect of any agreement collateral thereto)*"
7. The Applicant has provided the Tribunal with a valuation prepared by Mr. Mike Stapleton FRICS ("Mr. Stapleton") which concludes that the premium which should be paid for the new lease is £3,750.00
8. In addition, the Tribunal considered the existing lease, a deed of covenant dated 7th December 1993, office copies of the freehold title and the leasehold title and the decision of a London Leasehold Valuation Tribunal dated 26th January 2010 relating to 27A Hillside, Kingsbury, London NW9 0NE. In Mr. Stapleton's report is a copy of a decision of N J Rose FRICS in the Lands Tribunal dated 18th November 2009 in the case of **Zuckerman and others v. Trustees of the Calthorpe Estates.**

The Inspection

9. The members of the Tribunal inspected the property in the presence of the Applicant and Mr. Stapleton. The property is a 1st floor flat in a mid terraced house originally built in the early 20th century and converted into

flats in the 1980's. The house is of part rendered brick construction under a timber pitched and cement tiled roof. There is a small common entrance hall with an inner door leading to stairs up to the property. The flat consists of a lounge, 2 bedrooms, kitchen and bathroom/WC. There is a right of way over the footpath at the front but no use of the garden.

10. The only relevant improvements referred to by Mr. Stapleton in his report are the uPVC windows and whilst the Tribunal agreed with this, it disagreed with the value placed on the windows. The replacement of windows almost always involves an element of repair and in view of the small size of this flat, it was not considered that more than £1,500.00 would be attributable to the windows as an improvement.

The Hearing

11. The hearing was attended by Mr. Stapleton, the Applicant and representatives from Tolhurst Fisher, namely Mr. Robert Plant and a colleague. Mr. Stapleton expanded on the arguments set out in his thorough report. Any relevant matters raised are referred to below.

Conclusions

12. In calculating the premium to be paid in an enfranchisement case, the Act states that the calculation is as set out in Schedule 13. In essence, one has to calculate the loss to the landlord of granting an extension to the existing lease of 90 years without any ground rent, taking into account such matters as loss of the ground rent (the capitalisation rate) and the deferment of the right of the landlord to obtain vacant possession of the property from a date in about 52 years' time to a date in 90 years' time (the deferment rate).
13. The first thing one has to do is calculate the difference in value of the leasehold interest as it is now i.e. with about 77.25 years remaining approximately on the basis that there is no right to obtain an extension – often referred to as the 'no-Act world' – and the value after the existing lease has been surrendered and a new lease has been granted at a peppercorn ground rent for the remaining term plus 90 years.
14. This can be very difficult because market evidence of the value of a lease in the no-Act world is obviously going to be difficult to obtain. The fact is that the Act does exist and any buyer of a new lease will know that he or she can get it extended. Where there is little or no evidence, the most usual method of calculating the no-Act world value is to use what is known as a relativity percentage.
15. In this case, the Tribunal looked at, and accepted, the evidence supplied by Mr. Stapleton of 4 sales in the same locality.
16. The Tribunal considered that the best comparables were the two flats in Beedell Avenue itself namely 59a and 47a. They agreed with Mr. Stapleton that the appropriate value for the property is £108,000.00 less the value of the improvements, making a net figure of £106,500.00.

17. Lands Tribunal ("LT") decisions are not generally binding on Leasehold Valuation Tribunals. However, occasionally, the LT does make "*principles of practice to which regard should be had by the first-tier tribunals and by practitioners dealing with claims in any of the Tribunal's original or appellate jurisdictions*" (paragraph 117 of the now well known **Sportelli** decision) Deferment rates have been the subject of much argument and many appeals over the years and Sportelli was a case where the LT sought to end these arguments and appeals and said, in effect, that a deferment rate of 5% for flats with an unexpired term in excess of 20 years was appropriate throughout the country.
18. Sportelli was appealed and has now become a binding decision particularly in relation to properties in what has become known as Prime Central London. However, whilst it did apply the rates across the country, it did leave the door open for persuasive evidence to be provided which could lead to a change in those rates. The Zuckerman case referred to above was just such a case and Mr. Stapleton has referred the Tribunal to this case in some detail.
19. The LT, at paragraph 91 of its decision said that "*we do not rule out the possible need to adjust the deferment rate to take account of such matters as obsolescence and condition*". In this particular case, the Tribunal did not agree with Mr. Stapleton's assertion that the recent Zuckerman case referred to above provided a precedent which this Tribunal should follow. In that case a change in the Sportelli rate was accepted by the Lands Tribunal. Mr. Stapleton's submission was that the extra management and obsolescence factors were just as relevant to a house with 2 flats in Southend as they were to a purpose built block of flats in Edgbaston, Birmingham.
20. The Tribunal disagreed. The sales particulars for the property in Edgbaston i.e. Kelton Court which Mr. Stapleton was able to provide to the Tribunal revealed it to be a relatively modern block of flats. One only has to look in some run down parts of any urban area to see older such blocks being demolished because they have run their useful lives.
21. The chances of something similar happening to a terraced house in Southend are less. Furthermore, Southend and its surrounding area are well served by road and rail links to London which many people use to commute. This must have a beneficial effect on the ability and willingness of people to keep properties in reasonable condition particularly where there is no lift or flat roof, both of which can be major items of expenditure. Birmingham is more likely to be affected by recession in the manufacturing sector.
22. In prosperous times, properties such as the subject property could even be converted back to houses as has happened in some of the more prosperous suburbs of London. This could never happen with Kelton Court.

23. The Tribunal therefore decided that the appropriate deferment rate is the Sportelli rate of 5% as it was not satisfied that the evidence was sufficiently compelling to change that rate.
24. As to capitalisation, the Tribunal was persuaded by Mr. Stapleton and agreed a rate of 7.5%. Similarly, with relativity, the Tribunal accepted Mr. Stapleton's case for asserting a rate of 95.5%.
25. Finally, on the issue of unpaid ground rent, the Tribunal accepted that as recent ground rent demands in the appropriate form had not been sent out, such ground rent is irrecoverable. Thus only £50 should be allowed for.
26. Taking all these various matters into account the Tribunal decides that the amount of premium to be paid into court is £4,240.00 as set out in the calculation below.
27. The draft Deed of Surrender and New Lease submitted by the Applicant's solicitors is approved save that the reference to consideration will have to be amended to reflect the fact that the money is paid into court and not, as drafted, to being received by the landlord. The Tribunal also considered that the Land Registry would want some reference to the vesting order in the recitals. The Applicant's solicitors shall make these amendments.
28. As the Land Registry is now much more pro-active in its acceptance or non acceptance of documents of title, it may be as well for the Applicant's solicitors to obtain its approval for this form. Clearly, this Tribunal cannot anticipate the requirements of the Land Registry in such matters.

Tribunal's calculation of amount to be paid into court

Leasehold Reform & Housing and Urban Development Act 1993 Schedule 13

130a Beedell Avenue Westcliff-on-Sea, Essex SS0 9JP

Valuation

Base Facts

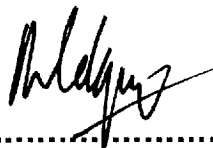
Valuation Date	28 th May 2009
Lease Expiry Date	27 th August 2085
Unexpired Lease	76.25 years
Ground Rent	£50.00pa subject to review
Yield	7.50%
Value Tenants improvements	£1500
Value Extended Lease	£106500
Deferment Rate	5.00%
Existing Lease Value	£101708

<u>Value of Landlords Interest</u>	£	£	£
Ground Rent		50.00pa	
YP @ 7.5% for 10.25 Years		<u>6.98</u>	

			349.00	
Ground Rent		100.00pa		
Y P @7.5% for 33 years	12.11			
PV £1 defr 10.25 yrs @7.5%	<u>0.48</u>	<u>5.83</u>		
			583.00	
Ground Rent		150.00pa		
YP @7.5 % for 33 years	12.11			
PV £1 defr 43.25 yrs @7.5%	<u>0.044</u>	<u>0.53</u>		
			<u>79.50</u>	
Total				1011.50
Revn to			106500.00	
PV £1 defr 76.25 yrs @5.00%			<u>0.0242</u>	
Revn Value				<u>2577.30</u>
Freeholders Existing interest				3588.80

Marriage Value

Extended Lease			106500.00	
Less				
Existing Lease Value	101708.00			
Freehold value	<u>3589.00</u>			
Total			<u>105297.00</u>	
Marriage Value			1203.00	
50% Share				<u>601.50</u>
Premium Payable				4190.30
Ground Rent Outstanding				<u>50.00</u>
Total				4240.30
Total Payable Say				<u>£ 4240.00</u>



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Bruce Edgington
Chair
15th March 2010

Dated

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ROBERT GEE

and

MARTIN SEAN TOZER

Deed of Surrender and Grant of New Lease

in relation to
130 Beedell Avenue, Westcliff on Sea, Essex SS0 9JP

Approved subject to
amendments in
decision



Tolhurst Fisher LLP
Trafalgar House
8-10 Nelson Street
Southend-on-Sea
Essex SS1 1EF

Telephone: 01702 352511

Facsimile: 01702 431710

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LR1. Date of lease

LR2. Title number(s)

LR2.1 Landlord's title number(s)

Title number(s) out of which this lease is granted. Leave blank if not registered.

EX135497

LR2.2 Other title numbers

Existing title number(s) against which entries of matters referred to in LR9, LR10, LR11 and LR13 are to be made.

None

LR3. Parties to this lease

Give full names, addresses and company's registered number, if any, of each of the parties. For Scottish companies use a SC prefix and for limited liability partnerships use an OC prefix. For foreign companies give territory in which incorporated.

Landlord

Robert Gee
130 Beedell Avenue, Westcliff on Sea, Essex SS0 9JP

Tenant

Martin Sean Tozer
130 Beedell Avenue, Westcliff on Sea, Essex SS0 9JP

Other parties

Specify capacity of each party, for example "management company", "guarantor", etc.

None

LR4. Property

Insert a full description of the land being leased

or

Refer to the clause, schedule or paragraph of a schedule in this lease in which the land being leased is more fully described.

Where there is a letting of part of a registered title, a plan must be attached to this lease and any floor levels must be specified.

In the case of a conflict between this clause and the remainder of this lease then, for the purposes of registration, this clause shall prevail.

The Property known as 130 Beedell Avenue, Westcliff on Sea, Essex SS0 9JP as more particularly defined in the First Schedule in the Previous Lease

LR5. Prescribed statements etc.

If this lease includes a statement falling within LR5.1, insert under that sub-clause the relevant statement or refer to the clause, schedule or paragraph of a schedule in this lease which contains the statement.

In LR5.2, omit or delete those Acts which do not apply to this lease.

LR5.1 Statements prescribed under rules 179 (dispositions in favour of a charity), 180 (dispositions by a charity) or 196 (leases under the Leasehold Reform, Housing and Urban Development Act 1993) of the Land Registration Rules 2003.

This lease is granted under Section 56 of the Leasehold Reform, Housing & Urban Development Act 1993

LR5.2 This lease is made under, or by reference to, provisions of:
Leasehold Reform Act 1967
Housing Act 1985
Housing Act 1988
Housing Act 1996

Not applicable

LR6. Term for which the Property is leased

Include only the appropriate statement (duly completed) from the three options.

NOTE: The information you provide, or refer to, here will be used as part of the particulars to identify the lease under rule 6 of the Land Registration Rules 2003.

The term is as follows:

189 years from 28th August 1986

LR7. Premium

Specify the total premium, inclusive of any VAT where payable.

(£.00)

LR8. Prohibitions or restrictions on disposing of this lease

Include whichever of the two statements is appropriate.

Do not set out here the wording of the provision.

This lease does contain a provision that prohibits or restricts dispositions

LR9. Rights of acquisition etc.

Insert the relevant provisions in the sub-clauses or refer to the clause, schedule or paragraph of a schedule in this lease which contains the provisions.

LR9.1 Tenant's contractual rights to renew this lease, to acquire the reversion or another lease of the Property, or to acquire an interest in other land

None

LR9.2 Tenant's covenant to (or offer to) surrender this lease

None

LR9.3 Landlord's contractual rights to acquire this lease

None

LR10. Restrictive covenants given in this lease by the Landlord in respect of land other than the Property

Insert the relevant provisions or refer to the clause, schedule or paragraph of a schedule in this lease which contains the provisions.

None.

LR11. Easements

Refer here only to the clause, schedule or paragraph of a schedule in this lease which sets out the easements.

LR11.1 Easements granted by this lease for the benefit of the Property

The easements as referred to in the Second Schedule of the Previous Lease

LR11.2 Easements granted or reserved by this lease over the Property for the benefit of other property

The easements as referred to in the Third Schedule of the Previous Lease

LR12. Estate rentcharge burdening the Property

Refer here only to the clause, schedule or paragraph of a schedule in this lease which sets out the rentcharge.

None

LR13. Application for standard form of restriction

Set out the full text of the standard form of restriction and the title against which it is to be entered. If you wish to apply for more than one standard form of restriction use this clause to apply for each of them, tell us who is applying against which title and set out the full text of the restriction you are applying for.

Standard forms of restriction are set out in Schedule 4 to the Land Registration Rules 2003.

None

LR14. Declaration of trust where there is more than one person comprising the Tenant

If the Tenant is one person, omit or delete all the alternative statements.

If the Tenant is more than one person, complete this clause by omitting or deleting all inapplicable alternative statements.

Not applicable

THIS LEASE is made the
BETWEEN :

day of

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- (1) **ROBERT GEE** of 130 Beedell Avenue, Westcliff on Sea, Essex SS0 9JP (hereinafter called "the Landlord")
- (2) **MARTIN SEAN TOZER** of 130 Beedell Avenue, Westcliff on Sea, Essex SS0 9JP (hereinafter called "the Tenant")

INTERPRETATION

References to the **Landlord** include a reference to the person entitled for the time being to the immediate reversion to the Lease.

References to the **Tenant** include a reference to its respective successors in title and assigns.

A reference to the Lease includes any deed, licence, consent, approval or other instrument supplemental to it.

A reference to laws in general is to all local, national and directly applicable supra-national laws in force for the time being, taking account of any amendment, extension, application or re-enactment and includes any subordinate laws for the time being in force made under them and all orders, notices, codes of practice and guidance made under them.

A **person** includes a corporate or unincorporated body.

Each of the expressions **landlord covenant** and **tenant covenant** have the meaning given to them by the Landlord and Tenant (Covenants) Act 1995.

Unless the context otherwise requires, a reference to the **Property** is to the whole and any part of it.

Except where a contrary intention appears, a reference to a clause or Schedule, is a reference to a clause of, or Schedule to, this deed and a reference in a Schedule to a paragraph is to a paragraph of that Schedule.

Clause, Schedule and paragraph headings do not affect the interpretation of this deed.

Except to the extent that they are inconsistent with the definitions and interpretations of this deed, the definitions and interpretations of the Lease shall apply to this deed.

RECITALS

- A. The Landlord is the freehold owner of the property known as 130 Beedell Avenue, Westcliff on Sea, Essex SS0 9JP as the same is registered at the Land Registry under Title Number EX135497
- B. By a Lease dated 28th August 1986 and made between (1) Robert Gee and (2) Robert Alfred Marshall as varied by a Deed dated 7th December 1993 made between

(1) Michelle Kemp and (2) Lee James Styles ("the Previous Lease") the property known as 130A Beedell Avenue aforesaid ("the Premises") was demised to the said Robert Albert Marshall for a term of 99 years from 28th August 1986

- C. The Previous Lease is now vested in the Tenant and is registered at the Land Registry under Title Number EX337972
- D. The Tenant has requested the Landlord in its capacity as freehold owner to grant it a new Lease of the Premises and the Landlord in that capacity has agreed to do so on the terms set out below
- E. The Lease is made pursuant to Section 56 of the Leasehold Reform Housing & Urban Development Act 1993 ("the Act") and this Lease shall have effect for the creation of the term hereby granted and for the operation of the rights and obligations conferred and imposed herein.
- F. This Lease is granted in substitution for the Previous Lease.
- G. This is a new Lease for the purposes of Section 1 of the Landlord and Tenant (Covenants) Act 1995
- H. The Landlord shall not be personally liable under any of the covenants on its part herein contained otherwise than in respect of breaches thereof for which it is responsible

1. DEMISE

In consideration of the surrender of the Previous Lease and payment of the sum of **POUNDS (£.00)** receipt of which the Landlord hereby acknowledges and in consideration of the covenants on the part of the Tenant hereinafter contained the Landlord in its capacity as freehold owner with limited title guarantee demises to the Tenant the Premises **TO HOLD** the Premises to the Tenant **TOGETHER WITH** the rights granted by the Previous Lease but **EXCEPTING AND RESERVING** to the Landlord the matters excepted and reserved by the Previous Lease for a term of 189 years from 28th August 1986 **YIELDING AND PAYING** to the Landlord **FIRST** a rent of a peppercorn per annum (if demanded) **AND SECONDLY** on demand all other sums payable by the Tenant hereunder and in the Previous Lease except as to rent

2. TERMS

This Lease is made upon the same terms and subject to the same covenants provisos and conditions as are contained in the Previous Lease except as to the rent and term of years granted and so that this Lease shall be construed and take effect as if such terms covenants provisos and conditions were (except as modified herein) repeated in this Lease in full with such modifications only as are necessary to make them applicable to this demise and the parties to this Lease.

3. COVENANTS

3.1 The Tenant covenants with the Landlord to observe and perform all the covenants and conditions on the tenant's part contained in the Previous Lease as modified above

3.2 The Landlord covenants with the Tenant to observe and perform all the covenants and conditions on the landlord's behalf contained in the Previous Lease and as modified above

4. AGREEMENT FOR LEASE

It is hereby certified that there is no agreement for Lease to which this Lease gives effect

IN WITNESS whereof the parties hereto have executed this Lease as a Deed the day and year first before written

On Original

Signed as a Deed by the signature of a District Judge of the Southend County Court nominated to execute the Deed on behalf of Robert Gee

On Counterpart

Signed as a Deed by the said **MARTIN SEAN TOZER** in the presence of:

Signature of Witness

Name of Witness

Address of Witness

Occupation of Witness