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## **LONDON LEASEHOLD VALUATION TRIBUNAL**

**Case Reference: LON/00BK/OLR/2011/0118**

### **DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTION 48 OF THE LEASEHOLD REFORM, HOUSING & URBAN DEVELOPMENT ACT 1993**

**Applicants:** (1) Peter Gemmell Hendry (2) Maki Peter Hendry

**Respondents:** (1) Coralmint Ltd (2) Tameace Ltd

**Property:** Flat 66, Portsea Hall, Portsea Place, London, W2

**Date of Application:** 21 January 2011

**Hearing:** 12 July 2011

**Inspection:** 13 July 2011

#### Appearances

##### Applicants

Mrs L. England

Counsel

Mr S. Jones BA (Hons) MRICS

Chartered Surveyor of John D. Wood & Co

##### Respondents

Mr W. Clark

Counsel

Mr D. J. Lachs FNAEA

Estate Agents and Property Valuer of Hurford  
Salvi Carr

##### Leasehold Valuation Tribunal

Mr I Mohabir LLB (Hons)

Mr J C Avery BSc FRICS

### ***Introduction***

1. This is an application made by the Applicants under section 48 of the Leasehold Reform, Housing and Urban Development Act (as amended) (“the Act”) for a determination of the premium to be paid to the Respondents for an extended lease of Flat 66, Portsea Hall, Portsea Place, London, W2 (“the property”).
2. The Applicants are the lessees of the property pursuant to a lease dated 5 June 1972 for a term of 61 years less three days from 25 March 1971 (“the lease”). As at the valuation date, the unexpired term of the lease was 21.77 years.
3. Both Respondents are part of the same group of companies. Coralmint Ltd presently holds the headlease of the flats in Portsea Hall together with the commercial units. The headlease was granted for a term of 94 years from 26 March 1938 and expires on 25 March 2032.
4. A new headlease was granted in relation to the flats only to Tameace Ltd for a term of 131 years and six months from 29 September 1993 expiring on 29 March 2125. This lease excludes the commercial premises and takes effect as an overriding lease of the flats and that part of the headlease held by Coralmint which relates to the flats and thus takes effect as an underlease.
5. By a Notice of Claim dated 15 June 2010 served pursuant to section 42 of the Act, the Applicants’ predecessor in title exercised the right to the grant of a new lease of the property. The proposed premium was £211,500 and £ 23,500 for other amounts payable under Schedule 13 of the Act. Subsequently, the Applicants took an assignment of the lease.
6. By a counter notice dated 11 August 2010 served pursuant to section 45 of the Act, Tameace Ltd proposed a total premium of £317,465 for the grant of a new lease, of which £1,223 was apportioned to Coralmint Ltd and £316,232 was apportioned to Tameace Ltd.

5. It seems that the parties were unable to agree the premium to be paid for the new lease and on 21 January 2011 the Applicants issued this application for the Tribunal to make this determination.
6. The expert valuation evidence relied upon by the Applicants and the Respondents were set out in the reports of Mr S. Jones of John D. Wood & Co and Mr D. J. Lachs of Hurford Salvi Carr dated 7 and 8 July 2011 respectively.

***Matters Agreed***

7. These are set out in the statement of agreed facts annexed hereto. The Tribunal was also told that the new lease terms were agreed.

***Matters Not Agreed***

8. The issues that fell to be decided by the Tribunal were:
  - (a) the unimproved extended lease vacant possession value.
  - (b) the deferment rate is to apply to Tameace Ltd's existing and proposed leasehold reversions.
  - (c) the "No Act World" discount to apply to sale prices of unextended leases.
  - (d) relativity at 21.77 years unexpired.

The arguments advanced by both parties in respect of these issues are dealt with below.

***The Relevant Law***

9. Given that both parties were professionally represented, it would be trite to recite in any detail the relevant statutory provisions that apply to the determination of this application. It is sufficient to note that the Tribunal's determination takes place under section 48 on the statutory assumptions set out in Schedule 13 of the Act.

***Hearing and Decision***

10. The hearing in this matter took place on 12 July 2010. The Applicants were represented by Mrs England of Counsel. The Respondents were represented

by Mr Clark of Counsel. It should be noted that the Tribunal internally inspected the property and externally inspected the comparable properties relied on by the parties on 13 July 2011.

### ***Deferment Rate***

11. Mr Jones, for the Applicants, contended for a deferment rate of 5.5% for Tameace Ltd's existing and proposed intermediate leasehold reversions. This figure was primarily based on the Lands Tribunal's decision in *Nailrile Ltd v Earl Cadogan and William Hallman and Nancy Hallman* (2009) in respect of the deferment rate applicable to the leasehold interest of five flats at Regency Lodge in Hampstead, each of which was a party in that case. In that instance, the Lands Tribunal concluded that the intermediate leasehold reversion of 54 years of the head leaseholder required an adjustment to the generic *Sportelli* of 5% required an adjustment of 0.5% to reflect the fact that the intermediate leasehold interest is a declining asset and there was a risk of receiving the reversion at a downturn in the market and that risk is greater for the leaseholder than for the freeholder.
12. Mr Jones also relied on the LVT decision in *Grosvenor West End Properties v Harrison* (2006) regarding 12 Culross Street in Mayfair where the Tribunal held that the intermediate leasehold interest of 159 years should be deferred at a higher rate to reflect the additional risk premium associated with a lease however long and concluded that the deferment rate of 5.5% was appropriate in that instance.
13. Mr Jones further relied on the recent (now) Upper Tribunal in *Erkman & Ors v Earl Cadogan* (2010) where it was held that deferment rate of 5.25% and 5.5% for the collective enfranchisement of leases having between 15.6 to 17.8 years unexpired should be adopted having regard to the position of the property cycle at the date of valuation. Given that the subject property had 21.77 years unexpired as at the valuation date, being for five years longer than the leases in *Erkman*, Mr Jones submitted that the correct deferment rate in this instance was 5.5%.

18. In the Tribunal's judgement, *Erkman* refined the position further in relation to leases with unexpired terms of less than 20 years and the decision had no application in this instance.
19. Similarly, the Tribunal concluded that the earlier LVT decision regarding 12 Culross Street was of no assistance because it did not bind this Tribunal and was a decision made in 2006 and predated *Sportelli*.
20. Whilst, there was no evidence before the Tribunal of which cycle the market was in at the present time, it concluded that such evidence was not required because what was being valued was the risk that Tameace Ltd runs that the market may be in a downturn at the time the lease reverts in 21.77 years.
21. Having carefully considered the authorities, the Tribunal concluded that the correct valuation approach to be taken in relation to Tameace Ltd's leasehold reversion was that taken by the (then) Lands Tribunal in *Nailrile*. In other words, an adjustment was needed to reflect the fact that the intermediate leasehold interest was a declining asset and there was a risk of receiving the reversion as a downturn in the market. As stated earlier, no evidence was required in relation to market cycles because only the risk of such a downturn was being valued. The valuation carried out by Mr Lachs took no account of this risk. The Tribunal accepted the evidence of Mr Jones that an adjustment of 0.5% should be made to reflect the risk and found that the deferment rate of 5.5% was appropriate in this instance.

### ***Relativity***

22. This issue concerned the relative value of the existing 21.77 year lease compared to the proposed 111.77 year lease. Mr Jones contended for a relativity of 52.12% having regard to the John D. Wood & Co Working Paper on Relativity Graphs. This was derived from an analysis of over 560 relativities determined by LVTs and the Lands Tribunal from 1993 to 2011. In chief, Mr Jones said that he had compiled the graph about four weeks previously. He stated that it was more reliable than other graphs, which were based on other non-relevant factors. In cross examination, Mr Jones stated

that he had used the "Graphs of Graphs" on the issue of relativity but had preferred his own graph on this occasion. Having regard to his own graph<sup>1</sup> he conceded that the current trend for the unexpired term here was below 50%.

23. Mr Lachs contended for a relativity of 49.5%. This was based on his analysis of various graphs contained in a report commissioned by the RICS entitled "Leasehold Graphs of Relativity". Mr Lachs had regard to those graphs in the report which included both flats and houses in the prime central London area. In particular, the Gerald Eve graphs produced a relativity of 48% for a term of 21.76 years. The W A Ellis graph produced a relativity of about 42%. Similarly, the Cluttons graph (2009) produced a relativity of about 50%. The "Graphs of Graphs" prepared by Becket & Kay, when averaged, produced a relativity of about 50% or less. In cross examination, Mr Lachs conceded that he had agreed a relativity rate of 57% in 2008 in relation to Flats 115 and 119 in the same building. By way of explanation, he said that the relativity graphs used in this case had not been available to him in 2008 and by agreeing a rate of 57% then, he had got it wrong. Had the graphs been available to him, he would have agreed a lower figure of approximately 50%. When asked by the Tribunal, he said that since 1 June 2010 he had negotiated a number of transactions in the same building where he had agreed relativity rates of 50-50.5%.
24. The graph used by Mr Jones is based entirely on decisions made by LVTs and the Lands Tribunal on the issue of relativity. The evidential value of such earlier decisions was considered in the case of *Arrowdell* and was disapproved of by the Lands Tribunal. For this reason, the Tribunal placed little or no weight on the evidence given by Mr Jones on this issue. Therefore, the only evidence before the Tribunal on which it could base a finding was that given by Mr Lachs. Whilst the Lands Tribunal in *Arrowdell* found that the use of relativity graphs to be unsatisfactory evidence, nevertheless, they did have some evidential value. Mr Lachs had attempted to carry out an analysis of the various graphs he considered to be relevant. The Tribunal, therefore, accepted

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<sup>1</sup> at page 5

his evidence on this issue and found that a relativity figure of 49.5% should be adopted. Indeed, Mr Jones conceded, on the basis of his own graph, that the relativity trend was below 50%.

***No Act World Discount***

25. Mr Jones contended that a discount of more than 13.5% should be applied to reflect the value attributable to the right to obtain the grant of a new lease under the Act. He arrived at this figure by having regard to his firm's sale of 18 Gerald Road, SW1 in 2007. This concerned a house held on a lease with an unexpired term of 43.75 years. It had been marketed at a guide price of £1,950,000 on the basis that the property was enfranchisable under the 1967 legislation because the executors agree to serve the appropriate notice to exercise this right and assign it to any purchaser. The sale was agreed at £2,550,000. However, prior to exchange of contracts, it was discovered that the lease was not enfranchiseable and eventually the property was sold for £2,205,000. The discount was equivalent to 13.5%.
26. Mr Jones argued that a greater discount should be applied as the lease becomes shorter. Therefore, in the present case, the discount to apply to a 21.77 year lease should be higher than 13.5%. Materially, in cross examination, Mr Jones accepted that the sale price for 18 Gerald Road included an element for development value and that he had not made an adjustment for this nor had he mentioned it in his report. He conceded that the purchase price had been tainted in this way.
27. Mr Lachs contended for a discount of 10% simply on the basis that this was the conventional figure previously used by the LVT in relation to this building.
28. The Tribunal had little difficulty in accepting the evidence of Mr Lachs that the "No Act World" discount should be 10% having regard to the concessions made by Mr Jones in cross examination that the evidence he relied upon was tainted because he had not made any adjustment for development value regarding the sale of 18 Gerald Road.

### *Unimproved Extended Lease Value*

29. Both valuers considered four transactions of three flats in the building, namely, Flats 81, 102 and 103, some of which they believed to be of assistance in valuing the extended leasehold interest, as well as a sale of the existing interest of the subject premises. All flats had two bedrooms but differed in their layout, improvements, aspects and/or floor level.
30. Flat 81 and Flat 66 are identical in layout but Flat 81 is on the seventh floor. It had been sold twice, once in April 2010 for £690,000 and again in November 2010 for £936,000.
31. Flats 102 and 103 are on the Edgware Road side of the building with poorer views and more noise, lack a balcony and have a less convenient layout.
32. Mr Lachs split the difference between his adjustments of Flat 66 and the November sale of Flat 81. Mr Jones adopted the adjusted rate per square foot of Flat 102.
33. Mr Lachs regarded the November sale Flat 81 as good evidence but thought that the April sale had been too low and the November one might have been too high. He analysed the sale of the short lease of the subject flat by deducting £10,000 for improvements, applying his relativity of 49.5% to the sale price and adjusting by 10% for the “No Act World”. He then split the difference between the resultant sum for Flat 66 and the price achieved in November for Flat 81 and relied entirely on this calculation to arrive at an extended lease value of £830,176. He provided analyses of the sales of Flats 102 and 103 but disregarded them.
34. Mr Jones contended that the April sale of Flat 81 was a good comparable. It was sold very close to the valuation date and only needed adjusting to disregard improvements (by £35,000). He had adjusted for the small time difference by reference to his own firm’s index. This gave him a value per sq ft of £662. The subsequent sale in November was for such an unbelievably high price that he said doubt must be cast on its usefulness.



However he gave priority to the sale of Flat 102 as it took place very close to the valuation date. He adjusted for the differences and adopted the resultant price per square foot of £688 to value the subject flat at £636,400.

35. The Tribunal inspected the interior of both the subject flat and Flat 103, which the parties agreed was identical in its layout and aspect to Flat 102. The location and layout of Flats 102 and 103 are markedly inferior to Flats 66 and 81, and for that reason are less than ideal, as very considerable subjective adjustments must be made. Nevertheless, they are useful in giving (or withholding) weight to the two sales of Flat 81.
36. The Tribunal considered that the April sale of Flat 81 was the best comparable. It required the fewest adjustments and had been properly marketed with some competition in realising the price.
37. To adjust the short lease sale of Flat 66 to arrive at a notional long lease value is unnecessary when there are comparable long lease sales.
38. The November sale of Flat 81 was for a price that is so far out of line with the level of sales in the building that, in the absence of any explanation, the Tribunal considers it should be disregarded.
39. Neither valuer placed any reliance on Flat 103 which had been sold some 12 months after the valuation date and the Tribunal agrees.
40. The Tribunal regards Mr Jones' approach to the analysis of the comparables as more balanced and has no reason not to adopt the figure he chose. Although it is based on the sale of Flat 102, which is somewhat higher than the sale of Flat 81, in the Tribunal's view it is the best comparable. The Tribunal is disinclined to determine a value that is lower than that proposed by either expert.
41. Accordingly, the extended lease value is therefore determined at £636,400 and the existing lease value, at 49.5% relativity, £315,018.

42. In conclusion, the Tribunal determines that the premium payable by the Applicants for the grant of a new lease is £260,370 apportioned £258,899 to Tameace Ltd and £1,472 to Coralmint Ltd. The Tribunal's valuation is annexed hereto.

Dated the 30 day of August 2011

CHAIRMAN.....

Mr I Mohabir LLB (Hons)

<b>PROPERTY:</b>	Lease Expiry Date:	<b>21/03/2032</b>	Unexpired:	<b>21.77</b> years
<b>66 Portsea Hall,</b>	Existing Leasehold Value:	<b>£315,018</b>	Relativity:	<b>49.50%</b>
<b>Portsea Place,</b>	Date of Notice:	<b>15/06/2010</b>		
<b>London W2 2BY</b>	Extended Leasehold Value:	<b>£636,400</b>		
	Gross Internal Floor Area:	<b>925</b>		sq ft
	Rate per Square Foot:	<b>£688</b>		per foot

**1. CORALMINT'S LOSS OF GROUND RENT INTEREST:**

Existing Ground Rent:			£80	
YP	10.77	years @	6 %	7.7684
				£621
Review to:			£120	
YP	11	years @	6 %	7.8869
PV	10.77	years @	6 %	0.534
				£505
				£1,127

**2. TAMEACE'S LOSS OF REVERSIONARY INTEREST:**

Extended Lease Value:			636,400	Plus:
PV	21.77	years @	5.5 %	0.312
				£198,392

**3. TAMEACE'S PROPOSED 3-YEAR REVERSIONARY INTEREST:**

Extended Lease Value:			636,400	
3-Year Relativity @			10 %	63,640
PV	111.77	years @	5.5 %	0.0025
				£160

**4. TOTAL DIMINUTION IN LANDLORDS' INTERESTS:**

Total: £199,358

**5. MARRIAGE VALUE:**

Proposed Extended Lease Value:	£636,400	
Proposed Ground Rent Interest:	£0	
Proposed Reversionary Interest:	£160	
Less		£636,560
Existing Lease Value:	£315,018	
Existing Ground Rent Interest:	£1,127	
Existing Reversionary Interest:	£198,392	
		Less:
		£514,537

**Marriage Value:**

Total: £122,024

**50%:**

Plus:  
£61,012

**6. TOTAL PREMIUM TO LANDLORDS:**

£260,370

**7. APPORTIONMENT:**

Coralmint's Ground Rent Interest:	£1,127	
Tameace's Reversionary Interest:	£198,232	
		£199,358
50% Marriage Value:		£61,012
Pro Rata Portion to Coralmint Limited:		
Limited:	£345	
Pro Rata Portion to Tameace Limited:	£60,667	

**Total Amount to Coralmint Limited:**

£1,472

**Total Amount to Tameace Limited:**

£258,899