



Property	:	20 Cunningham Rise, North Weald, Epping, Essex CM16 6JR
Applicant	:	Nicola Julie Foster
Respondent	:	St. Jude Investments Ltd.
Date of Vesting Order	:	12th September 2011
Type of Application	:	To determine premium payable on lease extension where landlord cannot be found (Section 51 of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”))
Tribunal	:	Bruce Edgington (lawyer chair) Stephen E Moll FRICS Roland Thomas MRICS
Date and place of hearing	:	24th November 2011 at Harlow Magistrates Court, South Gate, Harlow, CM20 1HH

DECISION

1. The amount to be paid into court in accordance with Section 51(5) of the Act is £7,320.00 as calculated below.

Reasons

Introduction

2. The Applicant is the owner of a leasehold interest in the property being the residue of a term of 99 years from the 25th December 1981 which is registered at HM Land Registry under title number EX289931.
3. She wishes to extend her leasehold interest by using the enfranchisement provisions but unfortunately she has been unable to find the landlord and serve an Initial Notice under Section 42 of the Act.

4. She has therefore applied to the County Court for a vesting order which was duly granted to her on the 12th September 2011 by His Honour Judge Moloney QC sitting at the Norwich County Court. Rather than ordering that a Leasehold Valuation Tribunal ("LVT") determine all the terms of the deed of surrender and new lease which would be the usual order pursuant to Section 51(1) of the Act, the Court only ordered that the premium should be determined by the LVT.
5. 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)"*
6. The Applicant has provided the Tribunal with a valuation prepared by Mr. Peter Gunby MRICS which concludes that the premium which should be paid for the new lease is £6,470.00. However, he later accepted that this figure was wrong.
7. In addition, the Tribunal considered all the papers lodged with the county court including the Part 8 Application and the Affidavit of the Applicant sworn on the 7th June 2011. As far as the valuation date is concerned, the Part 8 application is not dated but the notice of hearing is prepared immediately after issue and the Tribunal therefore takes 27th June 2011 as the valuation date.
8. Unfortunately, Mr. Gunby has taken the valuation date as 21st September 2011 for some unexplained reason. Section 57 makes it clear that the new lease provisions should be as at the relevant date which is defined in Section 51(8) as the date of the application for the vesting order.

The Inspection

9. The members of the Tribunal inspected the property in the presence of Mr. Gunby. They also walked around the immediate vicinity and looked at comparables used by Mr. Gunby. It was a dry, fairly overcast autumn morning.
10. The subject property is a ground floor flat being part of a building containing 4 flats which has the appearance of a semi-detached house. It was built in the early 1980's of brick construction under a pitched tiled

roof. It has the benefit of small pieces of garden to the front and side of the building.

11. Inside, there is a small porch leading into a reception room off which is a small hallway leading to a kitchen, bathroom/WC and a double bedroom. It is generally in good condition with improvements including double glazed uPVC windows, updated kitchen, updated bathroom and boiler.
12. There is a petrol station within about 30/40 yards of the property and, at the time of inspection, some noise pollution from the nearby A414 road. The roads and parking area for this fairly small estate were becoming unkempt and did not appear to be adopted.

The Hearing

13. The hearing was attended by Mr. Gunby who had been kind enough to go to his office in the meantime to obtain details of the leases for the properties on his list of comparables which had been sold. They were all un-extended leases.
14. The Tribunal was able to tell Mr. Gunby that it accepted his assessment of the capitalisation of ground rent at 7% and for the relativity percentage of 92.5%. The other constituent parts of the valuation process were the current value and deferment rates.
15. He then gave evidence as to the comparables and the Tribunal was persuaded that his assessment of the current value without improvements was correct at £135,000.00.
16. As to the deferment rate, he argued that the Sportelli suggested rate of 5% (see below) was too low because of the potentially greater cost of management (.25%) and the fact that this was a property outside London (.25%). His evidence to support the former was that there were inherent problems of management which may not be too evident now but which were going to increase. The roads had not been adopted and were falling into disrepair. There was a risk that fuel tanks in the nearby petrol station could leak which would create all sorts of problems. With no management, the exterior decorative state would deteriorate over time.
17. Mr. Gunby apologised profusely to the Tribunal for some fairly basic errors in his calculations which, he acknowledged, meant that on his calculations, the correct figure to pay into court was £7,424.77. However, this arose from speedy calculations made in the hearing and a closer examination by the Tribunal afterwards revealed another error which would bring that figure down to a figure just over £7,000.00.

Conclusions

18. 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 69.5 years' time to a date in 159.5 years' time (the deferment rate).

19. The first thing one has to do is calculate the difference in value of the leasehold interest as it is now i.e. with 69.5 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.
20. 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.
21. In this case, the Tribunal looked at, and accepted, the evidence supplied by Mr. Gunby that the unimproved value for the purpose of the valuation calculation is £135,000.00. This is based largely on the sale prices of 3 properties in the immediate vicinity of the property.
22. As to the deferment rate, Mr. Gunby refers to the important decision of the Lands Tribunal ("LT") in 5 cases commencing with **Earl Cadogan and Cadogan Estates Ltd. v. Sportelli** which was handed down on the 15th September 2006 ("Sportelli"). It was the subject of appeal but its important provisions were not overturned.
23. 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 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.
24. Having said that, 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*". However, the LT made it clear that before there was to be any change from the rate set down by Sportelli, there had to be clear evidence. Mr. Gunby simply refers to the case of **Zuckerman** and allows "*0.5% to reflect that*

the property does not have a management company and a further 0.5% due to the property being located outside London". As has been seen, he acknowledged at the hearing that he had meant to say .25% in each case rather than .5%.

25. The **Zuckerman** case was decided on its merits. It was post Sportelli but the Tribunal in that case had particular regard to evidence that the property was in an area of the midlands where there had been a considerable reduction in incomes due to the collapse of the manufacturing industry in the area and the fact that the property was built in the 1960's and was of a style and condition which do not bode well for its longevity.
26. In this case, Mr. Gunby provided no evidence at all to support his contention that the rate of 5% should be increased simply because the property was outside London. He simply said that the prime central London properties which were the subject of that case were always going to be more desirable than properties outside London. He clearly does not take on board the whole point of the Sportelli decision which was to give clear guidance that 5% was the appropriate figure not only for prime central London properties, but for all long leasehold properties under the LVT's jurisdiction.
27. Having said that, he did provide clear evidence that the .25% already allowed by the LT in Sportelli for management problems, may not be enough. Whilst the condition of the property at the moment was reasonable, it is quite easy to see that the problems raised by Mr. Gunby could have a bearing on future management. These problems will, of course, affect values but they will also have a deleterious effect on management in the future. The Tribunal therefore agrees to an increase on the Sportelli rate to 5.25%.
28. As to any further sum payable under Section 51(5), the Tribunal does not add anything to the Schedule 13 figure. There was no evidence as to the amount of ground rent not paid. It would not have been that great in view of the length of the lease. There was no other matter of relevance to include.
29. Taking all these factors into account, the Tribunal decided that the appropriate figure for payment into court is £7,320.00 in accordance with the calculation as follows:-

MATTERS DETERMINED

Lease Term:	99years	Commencing:	25/12/1981
Valuation Date:	27 th June 2011		
Unexpired Term:	69½ years		
Ground Rent:	1-33 years =	£25	
	34-66 years =	£50	
	67-99 years =	£75	
Value of unimproved existing lease		£124,875	

Value of unimproved extended lease	£135,000
Relativity:	92.5%
Term Yield:	7%
Reversion Yield:	5.25%
Marriage Value:	50%

VALUE OF LANDLORDS EXISTING INTEREST TERM

i)	27/6/2011-24/12/2014	Ground Rent	£25	
		YP for 3 years @ 7%	<u>3.0057</u>	£75.14
i)	25/12/2014-24/12/2047	Ground Rent	£50	
		YP for 33 years @ 7%	12.7538	} £503.52
		PV £1 in 3.5 years @ 7%	0.789596	
			<u>10.07</u>	
ii)	25/12/2047-24/12/2081	Ground Rent	£75	
		YP for 33 years @ 7%	12.7538	} £80.99
		PV £1 in 36.5 years @ 7%	0.08467	
			<u>10.7986</u>	
				<u>£659.65</u>

REVERSION

Leaseholders extended lease	£135,000	}	
PV £1 in 69.5 years @ 5.25%	0.0285565	}	£3,855.13

TOTAL VALUE OF LANDLORDS INTEREST £4,514.78

MARRIAGE VALUE

Value of leaseholders extended lease	£135,000.00
Landlords extended lease	Nil

Less

Value of leaseholders existing interest	£124,875.00
Value of landlords existing interest	<u>£4,514.78</u> £129,389.78

Marriage value £5,610.22

Landlords share @ 50% £2,805.11

TOTAL PREMIUM £7,319.89

Say £7,320.00

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Bruce Edgington
Chair
30th November 2011