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Leasehold Valuation Tribunal

Case Reference : **CAM/22UF/OLR/2013/0026**

Property : **36 Haltwhistle Road, South
Woodham Ferrers,
Essex CM3 5ZF**

Applicants : **Frances May Grigg and
Philip William Grigg
(Represented by Mr Stapleton
FRICS valuer)**

Respondents : **Christopher Charles Allnut,
Carol Felicia Allnut, Raymond
John Parker and MW Trustees
Ltd
(Represented by Mr R. Ailsby
solicitor of Watts and Leeding
solicitors
Mr C. Baker of McDowalls valuer)**

Date of Application : **12th February 2013**

Type of Application : **To determine the terms of acquisition
and the cost of the lease extension of
the Property**

Tribunal : **Mr D. Robertson (Lawyer/Chair)
Mrs E. Flint DMS FRICS IRRV
Mr G. Smith MRICS FAAV**

**Date and venue of
Hearing** : **17th May 2013
The Court House, 80 Victoria Avenue,
Southend-on-Sea, Essex SS2 6EW**

DECISION

1. The price to be paid for the statutory extension of the existing Lease is calculated by the Tribunal to be £5,660.00 in accordance with the Schedule annexed hereto.
2. The costs claimed by Christopher Allnut in his capacity as senior licensed conveyancer initially acting on behalf of the Respondents are reduced to the sum of £370.00 exclusive of VAT.

3. The costs claimed by Watts and Leeding as solicitors subsequently instructed by the Respondents are reduced to the sum of £700.00 exclusive of VAT.

4. There are no costs awarded to Mr C. Baker of McDowalls as valuer for the Respondents.

5. There is no award for costs under Schedule 12 of the Commonhold and Leasehold Reform Act 2002.

REASONS

Background

1. The Application relates to the extension of the existing Lease dated the 8th May 1987 in relation to the Property for a term of 99 years from the 1st July 1986 with an initial ground rent of £70.00 for the first 25 years increasing to £140.00 for the next 25 years, £210.00 for the next 25 years and £280.00 for the final 24 years.

2. The Application was made under Section 48 of the Leasehold Reform Housing and Urban Development Act 1993 ("the Act"). The Applicants served a notice in accordance with Section 42 of the Act and the Respondents served a counter-notice under Section 45 of the Act admitting the Applicants right to a new lease.

The Property and Inspection

3. The Property was inspected by the Tribunal in the presence of the tenant of the Applicants the Tribunal having been allowed access via Mr Stapleton. The Property is a purpose built flat constructed in about 1986. It is situate on the second floor of a brick built building with a tiled roof and comprises two bedrooms, lounge, kitchen and bathroom/WC. The flat has electric heating and the Tribunal noted an improvement has been made with the installation of UVPC double glazed windows by way of replacement for those windows incorporated within the original construction. The Tribunal noted that the rooms are fairly small. The Property and the common parts are in a reasonable state of repair. The Property has a car parking space.

4. The Property is located in an area of mixed development with a car sales garage and an industrial estate nearby. It does have a pleasant outlook over playing fields and is close to the many amenities found in the centre of the town of South Woodham Ferrers.

Introduction before Preliminary Hearing

5. Mr Ailsby advised the Tribunal that he is dyslexic. He pointed out that there might be aspects of his conduct that would not be normally anticipated from a solicitor. The Tribunal discussed with him what issues should be considered under the provisions of equality legislation. It was agreed that allowing him extra time to consider documents and points being made would be an appropriate reasonable adjustment.

6. Leading on from this he wished to pursue a point concerning the inspection that had taken place prior to the Hearing. The issue that he raised was a question of whether Mr Stapleton told the Tribunal Office that he would be present at the time of inspection. Mr Ailsby had not received any copy letter from Mr Stapleton. Mr Stapleton confirmed that he had not communicated with the Tribunal Office. The Tribunal Office had sent the standard letter to all parties confirming that inspection would take place at 10.00 am on the 17th May 2013. Mr Ailsby and Mr Baker could have come to the inspection if they so chose. No representations were made by Mr Stapleton at the inspection and in fact he stood outside the front door whilst the Applicants' tenant showed the Tribunal around the flat.

Application for Dismissal

7. Mr Ailsby by way of a letter of the 10th May 2013 to the Tribunal makes an application for dismissal of the Application on the following grounds:-

- (a) The agreed bundle was not delivered by Mr Stapleton within the time frame stipulated by the Directions given in this matter.
- (b) The bundle does not include those documents that Mr Ailsby had previously required to be included.
- (c) The delay and late submission of the bundle now produced by Mr Stapleton has prejudiced Mr Ailsby's ability to prepare a supplemental bundle of documents in good time for the Hearing in support of the Respondents' case.

8. Mr Ailsby also makes an application for a costs order under Schedule 12 of the Commonhold and Leasehold Reform Act 2002.

9. Mr Ailsby makes a written submission of 37 pages supporting his application for dismissal which the Tribunal carefully considered. There is no written representation by Mr Stapleton.

10. The Tribunal reviewed the law concerning their power to dismiss the Application if they consider that the Applicants or their representatives have been frivolous, vexatious or otherwise have abused the process of the Tribunal. They will consider the extent to which the Respondents have been disadvantaged. The Tribunal confirmed that they had power to dismiss to enforce rules of practice but this must be proportionate. They considered that Mr Ailsby is mainly concerned with the rules of practice which relate to the

compliance with Directions and they therefore decided to fully review to what extent these have been complied with.

11. With regard to Directions on costs Direction 1 has not been fully complied with by Mr Ailsby because he did not provide the breakdown of the valuer's fee claimed. Direction 2 was not complied with by Mr Stapleton as his objection to costs did not follow the form recommended by the civil procedure rules. Direction 3 was not complied with by Mr Ailsby. His letter of the 22nd March 2013 to Mr Stapleton says that his objection to costs are noted and will be contested at the Tribunal. He now says that did not comply with Direction 3 because Mr Stapleton had not complied fully with Direction 2.

12. As regards documents the parties are satisfied that the Lease is agreed and Directions numbered 4 and 5 have been complied with. As regards Direction 6 Mr Ailsby assures the Tribunal that all of the correspondence and documents by way of cases relied on to support his case was delivered to Mr Stapleton by the 28th March 2013. Mr Stapleton says this may not be correct but did not wish to pursue the point.

13. As regards Direction numbered 7 and the Statements of Witnesses there are none to which this Direction relates.

14. As regards Expert Evidence Direction 8 has been complied with but there is a failure on both parties to deal properly with Direction 9. Mr Ailsby purports that he is entitled to be an expert to deal with issues in Direction 9. The Tribunal consider that this direction relates to experts of the same discipline and therefore it is Mr Baker and Mr Stapleton who should have been discussing the case and providing the joint statement.

15. The main issue concerning Directions was the preparation of the bundles of documents for the Hearing and the compliance in this respect with Directions numbered 10, 11 and 12.

16. Mr Ailsby's first complaint is that the agreed bundle was not delivered by the Applicants representative within the time frame stipulated by the directions given in this matter. Mr Stapleton sent it to him by e-mail on the 7th May 2013 and then sent him a paper version on the 8th May 2013 which did not arrive until the 10th May 2013. The bundle was probably 2 days late which Mr Ailsby regards as a serious breach of Directions. The Tribunal considers that Mr Stapleton was wrong in trying to serve this document by e-mail. A bundle of this nature should be in a paper format. The Tribunal considers that the delay did not disadvantage Mr Ailsby. The Tribunal was concerned that the bundle had been bound up in a back to front format which made it difficult to read. Mr Stapleton apologised for this explaining that this was an error on the part of Staples Printing Division that he had employed for this purpose.

17. Mr Ailsby then pursued the fact that the bundle did not include those documents that he had previously required to be included. Mr Stapleton said he had objected to these on the basis that the cases referred to were an inappropriate amendment to the expert submission already made. The

Tribunal did not think that this was the correct stance for Mr Stapleton to have taken. The Tribunal are critical that Mr Ailsby provided his documents for the bundle in a piecemeal fashion which would have made Mr Stapleton's compliance difficult.

18. Finally Mr Ailsby says that the delay and late submission of the bundle now produced by Mr Stapleton has prejudiced his ability to prepare a supplemental bundle of documents in good time for the Hearing to support his case. This bundle has now been prepared and considered by all parties and the Tribunal does not consider there has been prejudice.

19. In response to Mr Ailsby's complaints Mr Stapleton says that there is only one issue of substance concerning valuation to be dealt with at the Hearing. Mr Ailsby has not been prejudiced and the Tribunal should consider matters proportionately.

20. Mr Ailsby then pursued his application under Schedule 12 of the Commonhold and Leasehold Reform Act 2002 as regards costs. He highlighted various cases where he believes that Mr Stapleton has a history of failing to comply with Directions.

21. The Tribunal decided that the Application should not be dismissed because the Applicants and their representatives had not been frivolous, vexatious or had otherwise abused the process of the Tribunal. Both parties were at fault in not complying with Directions. The Respondents have not been prejudiced or disadvantaged the Tribunal in particular bearing in mind its need to be proportionate. The application for costs under Schedule 12 was also rejected because both parties had been at fault in a failure to comply with Directions.

Introduction to the Main Hearing

22. Mr Stapleton applied to introduce a revised valuation. He had made an error in his initial calculations. He now says the premium should be £5,725.00 rather than £4,725.00. As this is in favour of the Respondents everybody agreed that his revised schedule could be submitted and considered.

23. Mr Ailsby has prepared a supplemental bundle for consideration by the Tribunal. Mr Stapleton objects to the cases included in this bundle being considered by the Tribunal on the basis that they try and amend the Respondent's experts submission already made. He considers that any cases should be included within the experts report. Mr Ailsby argues that these cases could be referred to on the day of the Hearing without prior notice being given to Mr Stapleton.

24. The Tribunal accepts that these cases should be considered by them. They have done so, but only three of the cases are in fact to be referred to in the Hearing in relation to valuation. There is one Lands Tribunal case and two Leasehold Valuation cases. The Tribunal at this stage confirmed that they are not bound by the LVT cases but would place such weight on them as they considered appropriate.

Issues Outstanding

25. The parties have agreed that the valuation of the Property is to be made in accordance with Schedule 13 of the Act. In this respect they agree there is a marriage value payable at 50% but there is no compensation payable. They agree the following:-

- (a) The wording of the Deed to allow for surrender and grant of the new Lease.
- (b) The valuation date of the 16th June 2012
- (c) The unexpired term of 73.04 years
- (d) Interest rate for capitalisation 7%
- (e) Deferment rate yield 5%
- (f) Existing Lease value £121,500.00

26. The issues outstanding that are not agreed and are to be decided at this Hearing are as follows:-

- (a) The value of the unimproved virtual freehold
- (b) Relativity for the present value
- (c) Costs in accordance with Section 60 of the Act.

Unimproved Virtual Freehold

27. The Applicants say the value is £123,000.00 and the Respondents say it is £132,000.00. Mr Stapleton says his valuation takes into account £1,300 for improvements. After much discussion Mr Baker says the improvements are worth £1000.

28. Mr Stapleton provides 5 comparables involving sales of nearby properties which have leases starting in the 1980's running for terms of between 199 years and 999 years.

29. Mr Baker does not contest this evidence but refers to four sales in the same block and also a new sale of 64 Haltwhistle Road which is being negotiated at the moment at a price of £132,000.00 on the basis that it will have a new 125 year lease with a rising ground rent.

30. The further argument of Mr Baker is that the Property must have a minimum unimproved virtual freehold value of £127,225.00 this being the existing value agreed of £121,500.00 plus £5,725.00 being the revised lease extension valuation put forward by Mr Stapleton. Relativity should be applied in establishing the unimproved virtual freehold.

Relativity

31. The argument of Mr Stapleton is straightforward. The Tribunal should look at the market and the agreed figure of £121,500.00 and should not be concerned with graph evidence. The fact that this then gives a relativity of 98.78% although unusual is a product of the calculation.

32. Mr Baker says to have a relativity of 98.78% is wrong and this should be a 92.05%. A limited number of sales in South Woodham Ferrers is not good evidence and the wider evidence that is provided by graphs is appropriate. He repeats his contention that the minimum price for the unimproved virtual freehold would have to be £121,500.00 plus the £5,725.00 offered by Mr Stapleton for the extended lease.

33. He refers to the graphs used by South East Leasehold, Nesbitt & Co and Austin Gray. He used these to arrive at his figure of 92.05%.

34. If his relativity is not followed and the relativity of Mr Stapleton is accepted he considers that this would then create a blight on sales in this development of extended leases. He also refers to various cases to support his contention.

35. He refers to the cases of 137 Cornflower Drive where Mr Stapleton asserted that local market evidence is dangerous without the valuer having a lot of detailed knowledge. He also makes reference to the Lands Tribunal Case of Coolrace Limited and others although it transpires that this was a case concerning graphs where there was no market evidence. Finally he refers to the case of Edery vs Karl where Mr Stapleton agreed a deferment rate of 85% on an unexpired term of nearly 73 years. He did concede that this was a London case but said the gap was very wide between this and the 98.78% now being put forward by Mr Stapleton.

36. The issue of mortgagees was then discussed. Mr Ailsby considers that most mortgagees will accept a lease that runs for less than about 70 years because they are now aware of the rights to have a lease extension. The Tribunal disagree with this contention.

37. The Tribunal considered all the evidence. They thought that Mr Stapleton's arguments based on market evidence rather than graphs were stronger than those of Mr Baker. Applying their own knowledge and experience they decided on an unimproved virtual freehold value of £123,700.00 this being £125,000.00 less £1,300.00 for improvements. In this respect Mr Stapleton said the double glazing was now worth £1,300.00 and Mr Barker said it was worth £1,000.00. Again the evidence of Mr Stapleton is preferred. The Tribunal annex a schedule of their calculations.

Costs under Section 60 of the Act

38. Mr Stapleton accepts that charging rates should be exclusive of VAT so far as appropriate be as follows:-

- (a) Mr Ailsby £200.00 per hour
- (b) Mr Allnutt £185.00 per hour
- (c) Mr Baker £150.00 per hour

39. Mr Allnutt as licence conveyancer initially instructed by the Respondents wishes to charge for three hours work. Mr Stapleton contends that the charge should only be for two hours of professional time in considering the notice of claim, consulting clients and serving the counter-notice. Mr Ailsby points out that although Mr Allnutt and his wife are two of the four Respondents he would have owed a duty of care to all of them. The evidence given showed that Mr Allnutt had difficulties in preparing the Deed of Surrender and Lease and felt that he was generally out of his depth. For this reason the Respondents instructed Mr Ailsby. The Tribunal asked themselves what the Respondents would reasonably expect to be charged. They concluded that the sum offered by Mr Stapleton of £370.00 exclusive of VAT was correct.

40. The charges of Mr Ailsby were then considered except for the 30 minutes for arranging the valuation and 20 minutes for considering the valuation. These charges are considered at the same time as the valuation fee of Mr Baker.

41. Mr Ailsby is certain he spent 40 minutes in preparing the request for deposit and Mr Stapleton contends that no more than 15 minutes should be allowed. This led to some argument between Mr Ailsby and Mr Stapleton. It transpired that Mr Ailsby infrequently acts for landlords and had to prepare the document specially as it was not on his system. The Tribunal decided to allow 20 minutes in this respect to which is added 10 minutes for obtaining Office Copies. 30 minutes is therefore allowed for these two elements of the costs.

42. As regards the preparation of the new Lease Mr Stapleton referred to the draft that had originally been prepared by Mr Allnutt which was wrong and which put the Applicants to unnecessary expense. Mr Ailsby contends that what he has now prepared is a beautiful and flawless document which took him two hours to prepare and has been accepted by the Applicant's solicitor as drafted. He then went on to say that the reading of the original Lease before the drafting of the document had taken one hour. Mr Stapleton contends that you need to see the original Lease before drafting the new Lease and only a total of one hour and a half should be allowed for these two jobs.

The Tribunal thinks that he is wrong as regards the time spent undertaking these jobs. The reading of the original Lease and the preparation of a new Deed of Surrender and Lease should take in total two hours.

43. Mr Ailsby asks for two hours in anticipation of the costs of completion and went through in detail the various jobs that he would undertake. Mr Stapleton contends that this should only be one hours work and the Tribunal using their knowledge and experience agree that this is correct.

44. As regards the fees of Mr Baker, Mr Stapleton contends that as these were incurred after the Section 48 Application they should not be allowed as they relate to work undertaken in contemplation of the proceedings before the Tribunal.

45. Mr Ailsby contends that you are entitled to instruct the valuer at any stage and refers to page 570 of the text book Hague. It then transpired from the evidence that Mr Baker had not been appointed until the 21st February 2013 after Directions had been issued on the 15th February 2013. The Tribunal agreed with the contention of Mr Stapleton. To claim costs the Tribunal consider the valuer must be instructed prior to the counter-notice. Mr Baker's request of fees totalling £450.00 plus VAT for three hours work is rejected by the Tribunal.

46. Following on from this the fees of Mr Ailsby for instructing the valuer and considering his report are also rejected by the Tribunal. The total fees that Mr Ailsby is entitled to are therefore three and a half hours at £200.00 per hour equalling £700.00 exclusive of VAT.

Costs claims under Schedule 12 of the Commonhold and Leasehold Reform Act 2002

47. The Tribunal notes that there are now three claims being made in this respect:-

- (a) By Mr Ailsby in his letter of the 27th February 2013
- (b) By Mr Ailsby in his letter of the 14th May 2013
- (c) By Mr Stapleton at the hearing

48. Mr Ailsby makes numerous points about the conduct of Mr Stapleton being unreasonable in connection with the proceedings and also says that he acted abusively in alleging in correspondence that Mr Ailsby had been disingenuous and then at the Hearing saying Mr Ailsby was economical with the truth.

49 Mr Stapleton makes reference to a general strategy of disruptiveness on the part of Mr Ailsby and his constant interruptions at the Hearing. He highlights as an example, Mr Ailsby's letter to him of the 6th March 2013 referring to Section 60 costs being disputed when at that stage that was not the case.

50. The Tribunal reject all applications for costs under Schedule 12 of the Commonhold and Leasehold Reform Act 2002 because both parties are at fault. The Tribunal are most concerned that there are personality issues between Mr Ailsby and Mr Stapleton that got in the way of their conduct being that expected from professional people. This resulted in a considerable waste of public money that had to be expended by the Tribunal in dealing with certain aspects of this case.

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MR D.T. ROBERTSON
Chair

Dated 31st day of May 2013

The Schedule

36 Haltwhistle Road South Woodham Ferrers CM3 5ZF

Valuation Date 16 June 2012

Lease 99 years from 1 July 1986 at £70 pa rising bt £70pa every 25 years

Value of extended lease £123,700

Value of existing lease £121,500

Unexpired term 73.04 years

Capitalisation rate 7%

Deferment rate 5%

Marriage value 50%

Landlord's present interest

Ground rent		£140	
YP 24.04 years at 7%		11.477	£1,606.78
Ground rent		£210	
YP 25 years at 7%	11.6536		
x PV 24.04 years at 7%	0.1967	2.292263	£481.38
Ground rent		£280	
YP 24 years at 7%	11.469		
x PV 49.04 years at 7%	0.0362	0.415178	£116.25
Reversion to		£123,700	
x PV 73.04 years at 5%		0.0283	£3,500.71
			£5,705.12

Landlord's proposed interest

Reversion to freehold		£123,700	
x PV 163.03 years at 5%		0.00035	£43.30

Diminution in landlord's interest £5,661.82

Calculation of marriage value

Landlord's proposed interest	£43.30	
Extended lease value	£123,700	£123,743.30
less		
Landlord's existing interest	£5,705.12	
Existing lease value	£121,500	£127,205.12
Marriage value		-£3,461.82
Freeholders share of marriage value		-£1,730.91 nil

Price payable for lease extension £5,660.00