

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

DECISION AND REASONS

**LEASEHOLD REFORM, HOUSING AND URBAN
DEVELOPMENT ACT 1993 SECTION 42**

Property:	Flat 6 Marina Court 18 Sea Road Boscombe Bournemouth BH5 1DD	
Applicants:	David Alphonso Thompson Dorothy Elizabeth Thompson	Lessees
Respondents:	Elmbirch Properties plc	Freeholder
Inspection and Hearing Date:	Monday, 6 th March 2006	

APPEARANCES

For the Applicant:	Ms. Heidi Oran DTW Solicitors
For the Respondent:	Mr. Paul Church, FCA
Tribunal:	Mr. K. M. Lyons, FRICS Mr. S. Griffin, LLB Mr. J. Mills
Date of Decision:	28 th March 2006

A record of the case and the decision is set out below.

1. Preliminary

- 1.1. A Notice of Claim dated 5th February 2005 was served on the Respondents on behalf of the Applicants in which the Applicants proposed to pay the sum of £6,000.00 for the grant of a new lease and the sum of £1.00 to the other landlord Marina Court (Boscombe) Limited for the intermediate leasehold interest. The notice was served by the Applicants Solicitors DTW.

1.2. A counter-notice was served on behalf of the Respondent dated 3rd May 2005 by the Respondents Solicitors, Bonallack and Bishop. The counter notice did not accept the Applicants offer and counter proposed:

- i. a premium of £22,215.00
- ii. payment of all the reversioner's reasonable administrative legal and valuation costs and VAT thereon if chargeable and disbursements
- iii. payment of all rent arrears and service charges

1.3. An application was made by the Applicant's Solicitor to the LVT dated 18th October 2005 for the determination of

- i. the purchase price for a new lease
- ii. the Applicant's liability for the Respondents costs and the amount thereof

1.4. Provisional directions were issued by the LVT on 3rd November 2005 and a copy is annexed hereto

Inspection

The Tribunal attended at the property on 6th March 2006 in the presence of Mrs. H. Oran representing the Applicants and Mr. P. Church representing the Respondents.

The property is a self-contained flat on the second floor of Marina Court which is a purpose built block of 12 flats on three floors constructed in the mid 1960's. The block is laid out with front gardens mainly laid to lawn with a driveway on the northern side leading to a range of 12 lock-up garages each flat being allocated one garage.

Sea Road is a popular residential location and the Boscombe seafront and pier are 300-400 metres from the block. The surrounding properties are mainly blocks of flats with a few small hotels. Access to the flats is by three communal entrances approached from the rear of the block. The block is built of cavity brickwork under a flat roof.

At the end of the inspection Ms. Oran passed over copies of a valuation report which had been prepared by Mr. Colin Wetherall, B.Sc., FRICS, FNAEA, a copy of which it was understood had been received by fax by Mr. Orchard earlier that day. The Chairman advised Ms. Oran that the documents would not be accepted at this time and asked her to raise the matter at the hearing because Mr. Wetherall was not the Valuer previously instructed to deal with matters on behalf of the Applicants.

The Lease

The property is held under an Underlease for a period of 99 years less 10 days from 25th December 1967 (i.e. expiring on 15th December 2066) at a fixed ground rent of £15.00 per annum. The lessee is the holder of 1 share in Marina Court (Boscombe)

Limited, the head lessee, and the Management Company. Broadly speaking the lessee is responsible for the maintenance of the demised premises ("the property") and contributes 1/12th of the service charge costs of insuring and maintaining the reserved property.

Marina Court (Boscombe) Ltd. are the lessees of the head lease which is for a period of 99 years from 25th December 2067 paying a head rent of £270.00 per annum fixed for the duration of the lease.

The Hearing

The Applicants were represented by Ms. H. Oran and the Respondents by Mr. P. A. Church.

Application for adjournment

Ms. Oran by her letter to the Tribunal dated 22nd February 2006 had requested that the hearing be postponed. Her reason for doing so was that "the Applicants had encountered various and ongoing difficulties with their expert witness and as a result had been unable to comply with the Tribunal's directions". The letter goes on to say "we confirm that our clients have today had to terminate their retainer with his expert due to the foregoing and at this late stage of the proceedings instruct a new valuer to represent them. As a result of this whilst the new expert instructed by our clients has agreed to "pull out all the stops" in preparing for the hearing we feel that the client would be extremely prejudiced were the hearing to go ahead of 6th March 2006 as agreed".

On the matter being put to Ms. Oram at the hearing she confirmed to the Chairman that as Mr. Wetherall had completed his valuation report and was able to be in attendance she would withdraw the application for a postponement.

Mr. Church pointed out that he had only received the valuation report of Mr. Wetherall that morning that the report was 103 pages long. In his opinion the Applicants were not allowed to replace Mr. Lees with a new expert at the hearing. Nevertheless Mr. Church did not wish the matter to be adjourned at this stage.

The agreed matters and the matters in dispute

The Chairman referred to a document which bore the date of 20th January 2006 by fax of a summary of items agreed and those still in dispute. The only matters not marked "Agreed" related to the unimproved and improved values of the property (copy attached). Ms. Oran contended that Mr. Lees had not been authorised to sign this document on behalf of the Applicant. It was agreed by the parties that the signatures of both Mr. Church and Mr. Lees were on the document.

Mr. Church advised the tribunal that Mr. Lees had been appointed by the Applicants to act as their valuer and that DTW on 19th May 2005 had requested the valuers to meet to consider their respective valuations. Furthermore Mr. Church pointed out that it would be improper for the Applicants to seek to limit the experts opinion. He also advised that he had prepared the document following discussion with Mr. Lees and that Mr. Lees had signed the document first. He had confirmed the situation in

his letter to the tribunal dated 25th January 2006 and had enclosed a copy of the agreed statement copies of which were included in his bundle.

After a short adjournment the Chairman advised the parties that the tribunal accepted that the following items had been agreed:

Lease 99 years from 25th December 1967 (less 10 days)
Years remaining approx 61.75
Ground Rent £15 fixed
Valuation date : Date of Notice 5th February 2005
Yield on remaining reversion 6%
Yield on ground rent income 6%

The Chairman also advised that the tribunal proposed to consider whether the evidence of Mr. Wetherall in regard to the under-mentioned matters still in dispute should be admitted:

Unimproved value with extended lease
Unimproved value with existing lease and Benefit of 1993 Act
Unimproved value with existing lease without benefit of 1993 Act
Price to be paid

Mr. Church objected to the proposal on the grounds of the decisions in the cases of Jackson v. Marley Davenport Ltd. (2004) EWCA Civ 1225; (2004) 1 W.L.R. 2926 (CA (Civ Div)) and Vasiliou v. Hajigeorgiou (2005) EWCA Civ 236; (2005) 1 W.L.R. 2195 (CA (Civ Div))) and Mr. Church supplied copies of the reports of the cases to the tribunal and the Applicants. Mr. Church read extracts from the reports which in summary considered:

1. That the practice of experts' opinions being rejected by a party if the opinions are unhelpful to the parties case should be dealt with in the event of a party seeking to appoint a different expert by requiring the party concerned to make available the copies of the opinions of the first expert (or experts) to the opposing side; and
2. That "expert shopping" which is the practice of successive refinement of instructions to experts in order to ensure that later experts remain unaffected by, or unaware of, factors that led earlier experts to disappoint the party is to be discouraged and that in any event the party should be required to present the abandoned reports of the previous experts.

In the present matter the tribunal had been advised that despite requests to do so Mr. Lees had not produced his valuation report as required by the Directions. Mr. Church pointed out that in his opinion the Applicants could have changed their expert up to the date for the exchange of valuers reports of 20th January 2006 but that it was entirely unreasonable to delay until 22nd February 2006 before attempting to do so.

Mr. Church also objected on the grounds that considerable costs had been incurred by his client in negotiating with Mr. Lees in connection with the hearing which costs were not recoverable from the Applicants and that to permit the appointment of a new expert at this stage would in the event of an adjournment involve his clients in further costs of negotiation which would also not be recoverable.

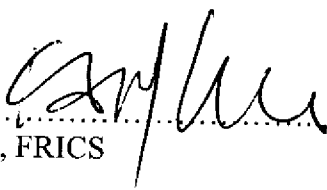
Furthermore there was a suggestion that Mr. Lees had prepared a report which had not been disclosed and no report from Mr. Lees had been received by the tribunal. The Chairman invited Ms. Oram to comment on the cases submitted by Mr. Orchard but Ms. Oram could not submit any counter legal opinion to assist the tribunal.

In the circumstances the tribunal after a short adjournment accepted the view of Mr. Church particularly bearing in mind that no earlier report of Mr. Lees had been identified and advised Miss Oram that the evidence of Mr. Wetherall would not be considered by the tribunal.

At this stage Mr. Church indicated that he and Mr. Wetherall believed that they may be able to reach agreement on the outstanding matters. The Chairman granted an adjournment to allow Ms. Oram to take instructions and upon reconvening the parties confirmed that they had agreed the marriage value in the sum of £12,250.00 with an extended term of an additional 90 years (giving 151 years in total) at a ground rent of £120.00 per annum to commence at the beginning of the 151 year term increasing by £120.00 every 25 years.

In regard to costs the parties anticipated that they would be able to agree these and the tribunal granted leave for the parties to do so on the basis that either party could refer the matter of costs back to the Tribunal for determination if agreement could not be reached.

Signed
K M Lyons, FRICS



Date 31.03.2006