

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

PROPERTY: **84 OSLO COURT PRINCE ALBERT ROAD LONDON
NW8 7EW**

APPLICANT: **MS FARIBA REZVANI**
Represented by: **MS J Alpert MRICS of P C Benveniste**

RESPONDENT: **CITY & COUNTRY PROPERTIES LIMITED**
Represented by: **Mr M Dray Counsel instructed by Wallace LLP**
 Ms J. Ellis FRICS of Langley Taylor

TRIBUNAL

Mrs T I Rabin	JP	Chairman
Mr D Levene	OBE MRICS	
Mr P Roberts	DipArch RIBA	

Date of Tribunal's decision: 15th January 2007

84 OSLO COURT PRINCE ALBERT ROAD LONDON NW8 7EW

INTRODUCTION

1. By a notice dated 24th February 2006 served by Ms Fariba Rezvani ("the Applicant"), the lessee of the fourth floor flat known as 84 Oslo Court Prince Albert Road London NW8 7EW ("the Flat") the Applicant gave notice to City & County Properties Limited ("the Respondent ") of her desire to exercise her right to acquire an extended lease of the Premises from the Respondent under Section 42 of the Leasehold Reform Act 1967 ("the Act"). The Flat was held under the terms of a lease ("the Lease") dated 26th May 1978 and made between the Respondent (1) Fifth Charles Investments (2) Tarlink Ltd (3) and Mahin Eskame (4) for a term of ninety nine years from 25th December 1974 (the Term") at a ground rent of £50 per annum until 25th December 2007, £100 per annum for the next thirty three years and £150 per annum for the remainder of the Term. The current ground rent is £50 per annum
2. The claim was admitted by a counter notice from the Respondent dated 27th April 2006 and on 24th July 2006 the Applicant made an application to the Leasehold Valuation Tribunal ("the Tribunal") for the determination of the price payable for the extended lease pursuant to the Act

REPRESENTATIONS

3. At the hearing before the Tribunal on 7th November 2006 the Applicant was represented by Ms Jacqueline Alpert MRICS of P Benveniste and the Respondent by Mr Michael Dray of Counsel instructed by Wallace LLP and Ms Jennifer Ellis FRICS of Langley Taylor. The Applicant and Mr Michael da Costa were in attendance. Both Ms Alpert and Ms Ellis produced valuation reports, which they amplified in evidence
4. The following matters were agreed between the Applicant and the Respondent
 - The valuation to be carried out in accordance with Schedule 13 of the Act
 - The valuation date of 24th February 2006 with an unexpired term of 67.83 years
 - No claim for compensation by the Respondent under paragraph 5 of Schedule 13 of the Act
 - The deferment rate at 5%
 - The value of the 67.83 year leasehold interest at £288,256
5. The following matters were in dispute between the Applicant and the Respondent:
 - The rate at which to capitalise the rent
 - The value of the 157.83 year extended leasehold interest and the freehold value
6. A copy of Ms Alpert's calculation of the premium at £14,770 is attached as Appendix 1 and a copy of Ms Ellis's valuation at £28,540 is attached as Appendix 2.

ACCOMMODATION

7. The members of the Tribunal inspected the Flat the day following the hearing. The Flat was in a six and seven storey block of flats built between the wars and with some 130 flats including a porter's flat. The block was in generally good condition. The Flat was at the end of a corridor on the fourth floor and had a view over Regent's Park, enjoyed by only two flats on each floor. The Flat was a one bedroom flat and a previous long leaseholder had removed the wall between the kitchen and what was now the sitting room and the Applicant had installed high quality glass doors throughout the Flat. There was secondary double glazing but the metal windows were in poor condition and needed decorating. The bedroom was a good size but the living room was small. The Flat had been reconfigured so that the original layout with the bedroom at the rear and the living room overlooking the park was reversed and the kitchen door had been relocated to facilitate this. There was a small internal bathroom/wc.

EVIDENCE

8. Ms Alpert referred to her valuation report. She concluded that the value of the extended lease was £305,000 and the existing lease was valued at £288,256. This figure for the existing lease was arrived at by taking the extended lease value and applying a relativity of 94.51%. Ms Alpert told the Tribunal that she derived the figure for relativity from the table of relativity indices attached to her report at Appendix E ("the Table") which she indicated had been prepared by a number of companies, although she was unable to provide any details. She stated that the indices in the Table were a reflection of the market and, when asked, stated that the Table was not based solely on LVT decisions. She confirmed that she would not have relied upon it had she been aware it was derived only from LVT decisions. She did not produce any comparable market evidence to show how she had arrived at the figure of £305,000 and gave the Tribunal no explanation of how she arrived at that figure. She pointed out that none of the other leases of flats in the block had been extended and there was accordingly no evidence of long leasehold values within the block.
9. Ms Alpert confirmed that the deferment rate had been agreed, following the decision in **Sportelli** at 5% and proposed a capitalisation rate of 8% but, again, produced no evidence to support this figure but said that the capitalisation rate would make little difference to the valuation as it related only to the ground rent. When asked how she arrived at the figure of 8%, having produced no evidence, she stated that it was based upon her judgment alone. She accepted that Ms Ellis's method of calculating the deferment rate at 7%, although she was not familiar with her methodology but confirmed her original figure of 8%. She noted that Ms Ellis had made a deduction of 1% from the freehold value to reach the long leasehold value of the Flat and, although she did not apply this, she was happy for the Tribunal to accept that approach, since this made very little difference to the final figure for the long leasehold interest.
10. When questioned by Mr Dray, Ms Alpert agreed that the main issue was relativity. Mr Dray produced a copy of a report prepared by the College of Estate Management in August 2000 (the Report) and which had been commissioned by

Department of Environment Transport and the Regions as an exercise to assess whether it would be appropriate for the government to legislate to produce a table of relativity but ultimately it was concluded that it was not appropriate. He pointed out that the table of relativity annexed to the Report was the Table which had been relied upon by Ms Alpert and that the Report stated that, in contrast to Ms Alpert's evidence, the data used to compile the table was all derived from LVT decisions. Ms Alpert had not considered using the graph of graphs by Beckett and Kay which was reproduced in Ms Ellis' report, as she was happy with the Table and stated that this had been accepted by the Tribunal in another case in which she had been involved, namely **Flat 4 Barons Court 56-70 Broom Road Teddington LON/NL/453/2005** where the Tribunal had accepted the Table. She acknowledged that when appearing as an expert in another Tribunal case, namely **74 Queenstown Road LON/ENF/1400/2005**, she had used the Beckett and Kay graph of graphs. She explained that she had broadened her views and considered evidence beyond the graph of graphs after the Table had been drawn to her attention in the Queenstown Road case.

11. Ms Ellis adopted her valuation report and produced an additional statement to which was attached sales particulars relating to 83 Oslo Court, a flat immediately adjacent to the Flat and enjoying the same view over Regent's Park and with accommodation and a lease on virtually the same terms as the Flat. When the Applicant pointed out that 83 Oslo Court had been withdrawn from the market after only a short time, Ms Ellis accepted this was the case, although she had not been advised of this by the agents. Flat 83 had been on the market at £350,000 and the owner had told the Applicant that an offer of £320,000 had been rejected. Ms Ellis confirmed that none of the leases in Oslo Court had been extended but she had checked the short lease sales that had been undertaken in the block and had, coincidentally, arrived at a figure for the existing lease within £1,000 of the figure proposed by Ms Alpert. She adopted a relativity of 86% based upon the settlements for flats in Melina Court, 33B Redington Road and 46 Fellows Road referred to in her Report where she had compared the existing lease terms to the existing lease term of the Flat and arrived at a relativity figure of 86%. She then applied a relativity uplift of 86% on the agreed existing lease value of £288,256 to reach the freehold value and then had made a deduction of 1% to reach the long lease value of £331,850.
12. With regard to her figure for relativity, Ms Ellis stated that the settlements for Melina Court, Redington Road and Fellows Road related to flats which were reasonably similar to the Flat and had leases ranging from 61.86-70 years. She had checked her results against the Beckett and Kay graph of graphs, omitting the section which related to decisions of the LVT. The relativity that she had adopted fell at a mid-point of the range for the number of years at issue.

DECISION

13. The Tribunal considered the evidence for the long lease value. Ms Alpert had provided no evidence whatsoever to support her figure of £305,000. Neither Ms Alpert nor Ms Ellis produced any market comparables and, although the Tribunal is aware that there have been no lease extensions within the block, there are a number of blocks of similar flats in the area where the Flat is located and the

Tribunal doubts that there would be no sales evidence relating to similar flats to put before them. Ms Alpert applied a relativity of 94.51% to her unsupported long lease valuation using the Table which, contrary to the evidence she gave the Tribunal was in fact from the research paper leading to the preparation of the Report and, despite Ms Alpert giving evidence to the Tribunal that settlement data was applied as well as LVT decisions, it became clear during her evidence that the data was based upon LVT decisions alone.

14. Ms Alpert further misled the Tribunal by stating that the Tribunal had previously accepted the table and referred to the decision in **Flat 4 Barons Court**. It was clear from reading the decision that this was not the case and there was no reference to the Tribunal having accepted the index or, indeed any reference at all to the table. She was referred to the case of **74 Queenstown Road** where she in fact relied upon the Beckett and Kay graph of graphs and the surveyor for the proposed purchaser relied upon the Table. The Tribunal at that time found that the Table was unsatisfactory due to the fact that it was based solely on LVT decisions and Ms Alpert must have been aware of this as she was an expert in that case. . The expert evidence produced by Ms Alpert was, on the best reading flawed and on the worst, an attempt to mislead the Tribunal. In any event, the nature of the expert evidence produced by Ms Alpert is such that the Tribunal cannot place any weight on her evidence which is totally unsupported and based on a table using past LVT decisions. She appears to have ignored the fact that the Lands Tribunal has made it clear that these decisions should not be relied upon. The basis of her determination of relativity was the Table which was intended as a research paper, and not a valuation tool. The Tribunal finds that the evidence given by Ms Alpert was of a quality which fell well below that expected from an expert witness.
15. On the other hand, Ms Ellis has based her valuation on as much evidence as she was able to find and an examination of the short lease transactions in Oslo Court although evidence of her calculations was not produced to the Tribunal since the existing lease value had been agreed prior to the hearing. . She used the graph of graph to check settlements she had been involved with and, although the graph was largely based on opinions of a number of estate agents, this opinion would have been informed by market transactions. She quite properly excluded the LVT decisions when making her checks and relied only on the indices in the graph of graphs relating to similar properties within the central London area. The Tribunal did not consider that the evidence regarding the marketing of 83 Oslo Court to be helpful since it was only on the market for a short period and there was no more than anecdotal of evidence of an offer. The Tribunal consider it unfortunate that no market evidence was produced but Ms Ellis had produced settlement evidence as well as applying the graph of graphs in an appropriate manner and Ms Alpert did not challenge the 1% adjustment to the freehold value to reach the long lease value. The Tribunal therefore accepts Ms Ellis's figure of **£331,850** for the extended lease and **£335,200** for the freehold value.
16. Ms Alpert proposed a capitalisation rate of 8%, base solely upon her judgement. She gave no explanation of how she had reached this figure and this approach is not acceptable from an expert giving evidence to the Tribunal. Ms Ellis produced a reasoned argument as to how she had reached her figure of 7%, referring to the

Lands Tribunal decisions of Arbib and Sportelli and making an allowance for the fact that the decisions related to deferment rates. Ms Ellis' approach follows the thinking of the Lands Tribunal and is to be preferred to Ms Alpert's casual approach. The Tribunal, having followed the reasoning in Arbib and Sportelli accept that a capitalisation rate of 7% should be applied.

Conclusion

17. The Tribunal finds that the premium to be paid for the new lease is **£28,540** and accept Ms Ellis' valuation at Appendix 2

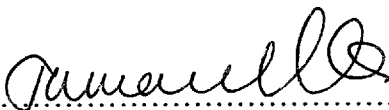
Terms of the Lease

18. The draft lease was submitted to the Tribunal. The Applicant was given an opportunity to make comments upon its terms, after the conclusion of the hearing. The Appellant made a number of amendments following the hearing, most of which were accepted by the Respondent and the parties have subsequently confirmed that the terms of the draft lease have now been agreed and the Tribunal accepts this.

Costs

19. The Respondent's solicitors provided a detailed breakdown of the costs payable by the Appellant under Section 60 of the Act and the invoice for the Respondent's valuers. Under Section 60 of the Act, the Appellant is responsible for the Respondent's costs incidental to the following:
- (a) any investigation reasonably undertaken of the Tenant's right to a new lease
 - (b) any valuation of the tenant's flat obtained for the purpose of fixing the premium or any other amount payable by virtue of Schedule 13 in connection with the grant of a new lease under Section 56
 - (c) the grant of a new lease under that Section.....
20. The statement of Samantha Bone in support of the submission of costs for the Tribunal's consideration sets out the basis of charge and the rates adopted by the Respondent's solicitors. The total sum was £3,765.65 was claimed, being £1,885.65, including VAT for legal costs and £1,880 including VAT for the valuation fee. The Tribunal was referred to the case of **Daejan Investments Freehold Limited and Parkside 78 Limited LON/ENF/1005/03** in which the Tribunal set out the basis upon which the determination of "reasonable" was made.
21. The Applicant sent written representations regarding the costs. In relation to the legal costs, she pointed out that the Respondent had suggested a figure of £750 for its costs, had the matter proceeded informally. The Applicant also pointed out that the lease was in a standard form and that she had suggested very few amendments, resulting in a few minor adjustments and that she had not been provided with a copy of the client care letter showing the rates charged. She stated that the level of expertise applied was excessive for the nature of the transaction.

22. Dealing with the valuation costs, the Applicant considered that the sum charged for "checking" was unreasonable. She also considered that the charge of £1,600 was too high bearing in mind the Flat was inspected together with five other flats by a different person than that mentioned on the account and that there was a further short visit, the purpose of which was not clear. The Applicant has also requested that there be a reimbursement or set off in respect of the original valuation fees paid in the sum of £300 plus VAT.
23. The Tribunal can make no comment on any proposed costs that were outside the terms of these proceedings. The Respondent is entitled to charge for any costs incurred in checking the claim, the valuation of the Flat and the costs of granting the new lease. The costs incurred by the Respondent's legal advisers have been set out clearly with the length of time spent on each of the activities. The draft lease was amended by the Applicant and these amendments had to be considered and some of them agreed. The Respondent is entitled to instruct whatever firm of solicitors it chooses and there is no indication that the Respondent would not have instructed the same firm had they been responsible for their costs. However, the Tribunal considers that the time for preparing the draft lease, which is a standard document, and a further £300 for checking the minor amendments is excessive and disallows the sum of £300. Subject thereto, the charges made and the time spent is reasonable and the Tribunal allows legal costs in the sum of **£1,533.15** including VAT and disbursements.
24. The invoice from Langley Taylor is generally reasonable for the work involved. However the Tribunal does not consider that it was necessary for the work of a fully qualified associate to be monitored and the sum of £300 plus VAT is disallowed. The Tribunal determines that the costs for the valuer should be **£1527.50**, including VAT.

CHAIRMAN.. 

Date: 15th January 2007

APPENDIX 1
VALUATION ON BEHALF OF THE APPLICANT

OSLO COURT, PRINCE ALBERT ROAD, LONDON NW8 7EW

**Valuation in accordance with Schedule 13 of the
Leasehold Reform, Housing and Urban Development Act 1993 as amended**
Date of Valuation: February 2006 Lease expires: 25 December 2073 (67 years unexpired)

Value of new 157 year lease with no ground rent:		£305,000
Present value of lease in accordance with Schedule 13 (94.51%)		£288,256
<u>Extinguishment of ground rent</u>		
Present ground rent p.a.		£50
YP for 2 years @	8.00%	1.7833
		£89
Ground rent in 2007		£100
YP for 33 years @	8.00%	11.5139
Deferred for 2 years		0.857339
		£987
Ground rent in 2040		£150
YP for 33 years @	8.00%	11.5139
Deferred for 35 years		0.067635
		£117
Reversion in 2073		£305,000
Present Value £1 in 67 years @	5.00%	0.038047
		£11,604
Diminution in value of freeholder's interest		£12,797
<u>Marriage value</u>		
Proposed freeholders interest		0
Proposed leaseholder's interest		£305,000
		£305,000
Present freeholder's interest		£12,797
Present leasehold interest (94.51%)		£288,256
		£301,053
Marriage value		£3,947
50% marriage value		£1,974
Lease extension price		£14,771
SAY		£14,770

APPENDIX 2
VALUATION ON BEHALF OF THE RESPONDENT

ASSESSMENT OF LEASE EXTENSION PRICE

JE1

FLAT 84 OSLO COURT Premium £ 28,540

Valuation date	24/02/2006	Current ground rent :	50 pa
Lease expiry	24/12/2073	Review in	25/12/2007 1.83 years
Unexpired lease term	67.83 years	Rent on review	100 pa
		Review in	25/12/2040 33.00 years
Current lease value	£ 288,256	Rent on review	150 pa
Long lease value	£ 331,850		
Freehold value	£ 335,200		
Capitalisation rate	7%		
Cur deferment rate	5%		

A DIMINUTION IN VALUE OF FREEHOLDER'S INTEREST excluding prospects of marriage

1 Currently Term

1.1	Rent receivable				£ 50.00	
	YP	1.83 years @	7%		1.67	£ 83
1.2	Review in	25/12/2007 to			£ 100.00	
	YP	33.00 years @	7%	12.75		
	PV £1 after	1.83 years @	7%	0.88	11.27	£ 1,127
1.3	Review in	25/12/2040 to			£ 150.00	
	YP	33.00 years @	7%	12.75		
	PV £1 after	34.83 years @	7%	0.09	1.21	£ 181
						£ 1,391

1.4	<u>Reversion</u>					
	To capital value				£ 335,200	
	PV £1 after	67.83 years @	5%		0.03654	£ 12,247
						£ 13,638

2 Intended

2.1	<u>Term</u>	No rent receivable				
2.2	<u>Reversion</u>					
	To capital value				£ 335,200	
	PV £1 after	157.83 years @	5.0%		0.0005	£ 152

3 Diminution in value of freeholder's interest £ 13,486

B VENDORS' SHARE OF MARRIAGE VALUE

4 After marriage

Freeholder's interest	£ 152	
Lessee's interest	£ 331,850	£ 332,002

5 Before marriage

Freeholder's interest	£ 13,638	
Lessee's interest	£ 288,256	£ 301,894
Gain on marriage of interests		£ 30,108

7 Vendors' share @ 50%

C LEASE EXTENSION PRICE £ 15,054
£ 28,540