

IN THE LEASEHOLD VALUATION TRIBUNAL

CHI/43UH/OLR/2005/0011

**IN THE MATTER OF 4 CRAFTNANT COURT, FORDBRIDGE ROAD,
ASHFORD, MIDDLESEX, TW15 2SX**

BETWEEN:

**(1) JOSEPH PAUL O'SHEA
(2) DANIEL FREDERICK O'SHEA**

Applicants

-and-

JEAN SONIA PLATMAN

Respondent

THE TRIBUNAL'S DECISION

Background

1. The Applicants make an application pursuant to s.48(1) of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") for the grant of a new lease on the same terms in respect of the subject property. The Applicants are the leaseholders of the property held under a long residential lease. The existing lease is dated 26 May 1967 and was granted by Willmac Investments Limited to Duncan McDougall for a term of 99 years commencing on 29 September 1966 at a ground rent of £25 per annum for the entire term. The unexpired term of the lease was therefore 61 years as at the date of the Applicants s.42 notice. The Applicants s.42 notice exercising their right to acquire a new lease is dated 3 August 2004 and proposed a premium

of £9,100 for the new grant. The valuation date was therefore 3 August 2004, being the date on the notice.

2. The Respondent's counter-notice, served pursuant to s.45, is dated 15 October 2004. The counter-notice admitted the Applicants right to acquire a new 99 year lease on the same terms. However, the Respondent did not accept the proposed premium of £9,100 and proposed a figure of £20,000 instead.
3. Directions were issued by the Tribunal dated 13 April and 26 May 2005, which were not complied with by the Respondent at all. By a letter dated 1 July 2005, the Applicants solicitors, Messrs Dale & Newberry, made an application under paragraph 10 of Schedule 12 of the Commonhold and Leasehold Reform Act 2002 ("CLRA") for costs totalling £3,129.79 on the basis that the Respondent had acted unreasonably by failing to comply with the Directions issued by the Tribunal
4. The issues to be decided by the Tribunal were:
 - (a) the premium to be paid by the Applicants for the grant of a new lease.
 - (b) whether the Respondent should be awarded her reasonable costs, if any, pursuant to s.60 of the Act.
 - (c) the Applicants application for costs against the Respondent set out at paragraph 3 above.

Inspection

5. The Tribunal inspected the property on 4 July 2005. The subject property is first and second floor maisonette situated in a purpose built block of flats dating from the 1960s. Access to the maisonette is from a fairly spacious entrance on the ground floor. On the first floor is a living room with access to a balcony and a kitchen. There are two bedrooms and a bathroom on the second floor. The property has been improved with the installation of central heating, refurbished kitchen and bathroom. The maisonette has UPVc double-glazed windows. The block is situated on a fairly busy residential road leading into Ashford. There are communal gardens to the front of the block and a side access to garages at the rear.

Decision

Premium

6. The hearing in this matter also took place on 4 July 2005. The Applicants were represented by Mr McDonnell from the firm of Messrs Dale & Newberry, solicitors. The Applicants valuer, Mr Scherer, a Chartered Surveyor from the firm of Campsie & Co, who had prepared a skeleton argument submitted on 28 June 2005, gave expert evidence to the Tribunal as to valuation. It should be noted that the Applicants initial valuation report dated 18 February 2004 had been prepared by a Mr Francis who at the time had been employed by the firm of Campsie & Co. However, Mr Scherer explained to the Tribunal that Mr Francis had since left the firm and had taken the relevant file with him. His evidence was limited to an interpretation of the

report prepared by Mr Francis. Also present were both Applicants. The Respondent did not appear and was not represented.

(a) Yield

7. Mr Scherer was unable to comment on how or why Mr Francis had adopted a yield of 10% when calculating the freeholder's interest. He assumed that it would have been arrived at by reference to the market. The Tribunal, using its own expert knowledge and experience, determined that the appropriate yield to be applied was 9%. The capitalised ground rent for the remaining term of the lease calculated at a yield of 9% provided a figure of £276. Applying the same yield to a value of £150,000 (see below) for the reversion provided a figure of £782. The total value of the freeholder's interest was, therefore, £1,058.

(b) Market Value

9. The Tribunal then considered the virtual freehold value of the Respondent's interest in the property. The use and benefit of a garage did not form part of the valuation as it was subject to a separate lease. In his report, Mr Francis valued the subject property, subject to the grant of a new long lease, at £157,500. Although Mr Scherer did not have any comparable freehold values, he nevertheless submitted that market evidence supported the valuation. He said that his firm had a large Sales Department and that sales of two bedroom flats were very common. New flats were selling for approximately £180,000 whereas older flats, like the subject property, were selling for lower prices. At paragraph 4 of his skeleton argument, Mr Scherer stated that the reason for

this was that once the unexpired term of a lease was less than 70 years, there was concern on the part of lenders that the property provided less security for lending purposes. In evidence, he said that Flat 1 in the same block as the subject property had recently been sold in early 2004 for £140,000 with an unexpired term of 59 years on the lease. The lease of the subject property as at the valuation date had an unexpired term of 61 years, which supported the higher valuation figure of £157,500.

10. Mr Scherer said that, in arriving at his valuation, he had disregarded any improvements made by the lessees. Mr O'Shea told the Tribunal that the only improvement made since he took an assignment of the lease was the installation of double glazing. He could not say if the central heating had been present when the lease had been granted. Mr Scherer did not consider the installation of a new kitchen and bathroom necessarily increased the value of the property. In his view, they would only improve the saleability of the property. He was later able to inform the Tribunal that the original heating in the flats in the block was provided by night storage heaters.
11. The Tribunal determined that the appropriate value of the subject property with the benefit of the grant of a new long lease on the same terms was £150,000. We were not provided with any comparable evidence of long lease sales in the block. Mr Scherer relied on the general evidence of the market. Reference was made to the sale of a one bedroom flat in Sovereign Court on a long lease and improved basis. This had sold for £140,000. We also understand that a long lease for a two bedroom flat in Penton Road in Staines

sold for £160,000. This property is in a better location than the subject property and had been improved. The Tribunal was of the opinion that there have been significant improvements to the property from its original condition and this would have an impact on the value of the maisonette. If the sale price from Penton Road is adjusted to reflect the location of the subject property and the improvements that have been carried out, then we would reach a value of £150,000 for the long lease value of the subject property on an unimproved basis.

12. With regard to the value of existing interest, again, the best comparable evidence available to the Tribunal was Flat 5 in the same block. Mr Scherer told the Tribunal that this flat was presently on the market at a sale price of £129,950. It was unimproved and had a similar unexpired term on the lease. On this basis, the Tribunal determined that the existing value of the leaseholders interest was also £130,000. Taking account of the valuation of the existing freeholder's interest of £1,058, this provided a total marriage value of £18,942. The Respondent's 50% entitlement of the marriage value was, therefore, £9,471.
13. Accordingly, on the basis of the findings made by the Tribunal, the total premium payable by the Applicants for the grant of a new lease is £10,500 (i.e. £1,058 + £9,471 = £10,529, but say £10,500). A copy of the Tribunal's valuation is annexed to this Decision.

Costs

14. There was no evidence before the Tribunal that the Respondent had incurred any costs pursuant to the Applicants s.42 notice and, therefore, the Tribunal makes no award of costs in favour of the Respondent pursuant to s.60 of the Act.
15. As to the Applicants application for costs against the Respondent, it was submitted by Mr McDonnell that the Tribunal's award was not limited to £500 under paragraph 10(3)(a) of Schedule 12 of CLRA. Under paragraph 10(3)(b) the Tribunal could award "*such other amount as may be specified in procedure regulations*". Mr McDonnell said that the amount of costs now being claimed at the hearing was limited to three quarters of the figure of £3,129.70, which had been incurred as a direct result of the Respondent's conduct in this matter.
16. In the Tribunal's view, the Applicants application for costs reveals a misunderstanding of paragraph 10(3)(b) of Schedule 12 of CLRA. It provides that any determination made under that paragraph "*shall not exceed... .. such other amount as may be specified in procedure regulations*". Mr McDonnell was not able to tell the Tribunal whether any greater limit was set out in the procedure regulations. Indeed, a reading of the procedure regulations does not reveal any higher award available to the Tribunal at present. Any award is limited to £500 under paragraph 10(3)(a) of Schedule 12 and before making such an award of costs the Tribunal has to firstly make a finding against the Respondent under paragraph 10(2).

17. The Tribunal cannot ignore the Respondent's conduct in this matter. She has, without good reason, flouted throughout the Directions issued by the Tribunal on two occasions. This would have necessarily resulted in increased costs to the Applicants by their solicitors having to enter into greater correspondence with the Respondent's solicitors and the Tribunal in attempting to comply with the Directions timetable. The Respondent also failed to attend the final hearing or to instruct a representative to do so on her behalf. The Tribunal did not view such conduct lightly and found that it amounted to an abuse of process within the meaning of paragraph 10(2)(b) of Schedule 12 of CLRA. Accordingly, pursuant to paragraph 10(3)(a) of Schedule 12, the Tribunal order that the Respondent pay to the Applicants within 28 days of receipt of the Decision the sum of £500 by way of costs.

CHAIRMAN..... J. Mohan

DATE..... 18/8/05

Leasehold Valuation Tribunal's Valuation

Flat 4, Crafnant Court, Fordbridge Road, Ashford

| | |
|---------------------------|--------|
| Number of years unexpired | 61.00 |
| Ground Rent | £25.00 |
| Yield | 9% |

| | |
|---|----------|
| Value of Flat Long Lease Interest (Unimproved) | £150,000 |
| Value of Flat Short Lease Interest (Unimproved) | £130,000 |

Value of Freeholder's Interest

| | | | |
|--------------------------------------|------------------|----------------|--------|
| Ground Rent Income | £25 | | |
| Years Purchase | 61 years @ 9% | <u>11.0532</u> | |
| | | | £276 |
| Reversion to vacant possession value | £150,000 | | |
| Present Value of £1, 61 years @ 9% | <u>0.0052118</u> | <u>£782</u> | |
| | | £1,058 | £1,058 |

Marriage Value

| | | | |
|---------------------------------|---------------|-----------------|---------------|
| Proposed Long Lease Value | £150,000 | | |
| Less | | | |
| Existing Leaseholder's Interest | £130,000 | | |
| Existing Freeholder's Interest | <u>£1,058</u> | | |
| | £131.058 | <u>£131.058</u> | |
| | | £18,942 | |
| Half share of marriage value | @ 50% | | <u>£9,471</u> |
| | | | £10,529 |

| | |
|----------------|----------------|
| Premium | £10,500 |
|----------------|----------------|