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HM COURTS AND TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL

Property: 13 Fairclough Street, Hindley, Wigan, WN2 2RJ

Applicant: Miss Natalie Marie Winrow (represented by Winder Taylor Fallows Solicitors)

Respondents: Robert Dennis Alfred Bergman and Jean Barbara Newling (present address unknown)

Date of Application: 10 May 2012

Type of Application: Application under 21(1)(cza) of the Leasehold Reform Act 1967 for the determination by a Leasehold Valuation Tribunal of the appropriate sum to be paid into Court under S27(5) of the Act.

Tribunal: A Robertson
E Thornton-Firkin

Date of Decision:

Background

1. The Application submitted to the Tribunal by the Applicant's solicitors is dated 10 May 2012 and follows an Order of District Judge Mornington of Wigan County Court regarding the Applicant's Application to that Court for a Vesting Order.
2. The Applicant is the owner of the leasehold interest in the Property and seeks to acquire on fair terms the freehold of the house under Section 1(1) of the Leasehold Reform Act 1967 ('the Act').
3. The Applicants interest in the property is that of a sub-lease for a term of 999 years less 10 days from 1 May 1888, at a ground rent of £1.50.
4. The head-lessee, to whom the Applicant's ground rent is payable, is Tapestart Limited and its lease (which includes other properties) is 999 years from 1 May 1888.
5. The freehold title is not registered, the last known freeholders are no longer at their last known addresses and the Applicant seeks an Order from the County Court that service of the initial notice on the freeholder (under section 8(1) of the Act) be dispensed with and a vesting order in favour of the Applicant be made.

6. The Court Order of 2 May 2012 required the Applicant to apply to the Leasehold Valuation Tribunal ('the Tribunal') for a determination of the appropriate sum payable in respect of the freehold interest.
7. The Tribunal invited the head-lessee to be a party but they declined. The Tribunal is advised that the Applicant and the head-lessee have agreed terms for the purchase by the Applicant of the head-lessee's interest in the Property.
8. The Tribunal, in directions, indicated that they felt this matter could be determined by means of written representation unless requested otherwise by the party. No such request was made and the Tribunal met on 10 August 2012 in order to determine the appropriate sum to be paid into Court.

The Law

9. Section 27(5) of the Act provides that the appropriate sum is the amount determined by (or on appeal from) a Leasehold Valuation Tribunal to be the price payable in accordance with section 9 of the Act.
10. Section 9 of the Act defines the price payable for a house as the amount which it might be expected to realise if sold by a willing seller (with the tenant ... not buying or seeking to buy) on the assumption that the vendor was selling an estate in fee simple subject to the tenancy but that the Act conferred no right to acquire the Freehold.

The Tribunal's Decision

11. The head lessee is entitled to receive a fixed rent of £1.50 per annum, without review, for the subject property for some 875 years and it is the right to this income which the hypothetical purchaser would be acquiring. The freehold reversion is far too distant to have value today.
12. The Tribunal's view is that the costs of collecting the ground rent exceed the amount thereof and that the market, ignoring any interest of the tenant which the Act requires, would not pay even a nominal amount to acquire the freehold.
13. The Tribunal determine that the price, as provided for in section 9 of the Act is nil, and that the sum to be paid into Court under section 27(5) of the Act is nil.

A Robertson
Chairman of the Leasehold Valuation Tribunal
14 August 2012