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## **HM COURTS & TRIBUNALS SERVICE**

### **LEASEHOLD VALUATION TRIBUNAL**

In the matter of an Application under  
Section 48(1) of the Leasehold Reform Housing and Urban Development Act 1993

**Case No.** CHI/21UC/OLR/2012/0178

**Property:** Flat 3  
Kingston House  
8 St. Annes Road  
Eastbourne  
East Sussex  
BN21 2DJ

**Between:** Mr. Timothy Joseph Morgan  
(Executor of Glenys Hughes deceased)  
("the Applicant")

Ms Sophia Arno  
("the First Respondent")

Second Seaside Properties Limited  
("the Second Respondent")

**Date of Hearing:** 7<sup>th</sup> January 2013

**Members of the Tribunal:** Mr. R. Norman  
Mr. R. Athow FRICS MIRPM  
Mr. J.N. Cleverton FRICS

**Date Decision  
Issued:** 15<sup>th</sup> January 2013

**FLAT 3, KINGSTON HOUSE, 8 ST. ANNES ROAD, EASTBOURNE,  
EAST SUSSEX BN21 2DJ**

#### **Determination**

1. The agreed premium of £26,000 in respect of the extended lease of Flat 3, Kingston House, 8 St. Annes Road, Eastbourne, East Sussex BN21 2DJ ("the subject property") is payable by Mr. Timothy Joseph Morgan as the Executor of Glenys Hughes deceased ("the Applicant") in the following proportions:

To Ms Sophia Arno ("the First Respondent") £20,209.

To Second Seaside Properties Limited ("the Second Respondent") £5,791.

## **Background**

2. The Applicant wished to claim an extension of the lease of the subject property and made an application to the Tribunal under Section 48(1) of the Leasehold Reform Housing and Urban Development Act 1993.
3. The Applicant was represented by Mr. Paul Chaloner of Barwells Solicitors and Mr. Guy Bessant BSc Hons MRICS of Ross & Co. Chartered Surveyors
4. The First Respondent was represented by Anthony Collins Solicitors and Mr. Edward Rutledge FRICS of Lawrence & Wightman Chartered Surveyors.
5. The Second Respondent was represented by Churchills Solicitors and Mr. Laurence Nesbitt FRICS of Nesbitt & Co. Chartered Surveyors.
6. Written evidence was provided on behalf of the parties including a valuation by Mr. Rutledge and Mr. Bessant and a valuation by Mr. Nesbitt.
7. In the valuation by Mr. Rutledge and Mr. Bessant, the total premium of £25,685 was apportioned as follows:  
  
To the First Respondent: £23,995.  
  
To the Second Respondent: £1,690.
8. In the valuation by Mr. Nesbitt the total premium was £26,934 but £934 was deducted to reach the agreed total premium of £26,000 which was apportioned as follows:  
  
To the First Respondent: £20,209.  
  
To the Second Respondent: £5,791.
9. By the date of the hearing, the total premium payable by the Applicant in respect of an extended lease of the subject property had been agreed between the parties at £26,000 and the only matter which remained to be determined by the Tribunal was the apportionment of that premium between the First and Second Respondents.
10. The Tribunal had been informed that nobody would be attending the hearing but that Mr. Chaloner and Mr. Bessant would attend the inspection to provide access to the subject property

## **Inspection**

11. An inspection of the subject property was scheduled to take place at 10.00 am on 7<sup>th</sup> January 2013. However nobody was present at the subject property at the scheduled time and the Tribunal was able to inspect only the exterior of Kingston House.

## Hearing

12. The hearing was scheduled to take place at 11.00 am on 7<sup>th</sup> January 2013. Mr. Chaloner and Mr. Bessant attended and explained that there had been a misunderstanding about the arrangements but that they would assist the Tribunal by providing access to the subject property if the Tribunal so required.

13. As the parties had agreed the reversion to leasehold value and there was no dispute as to the extent of the subject property or any other matter requiring an inspection of the interior of the subject property the Tribunal was content to proceed without the need to have access.

## Reasons

14. In respect of the subject property, the First Respondent holds the freehold interest subject to a head lease for a term of 99 years from 24<sup>th</sup> June 1962 and an underlease for a term of 90 years from 29<sup>th</sup> September 1962. The Second Respondent holds the head lease and the Applicant is the holder of the underlease.

15. As the Applicant has agreed to the total premium of £26,000, the Tribunal's decision is of limited interest to him but it will affect the First and Second Respondents in that it will determine the proportion of that sum which they will each receive.

16. A statement of agreed facts and matters in dispute dated 18<sup>th</sup> December 2012 was signed by Mr. Rutledge and Mr. Nesbitt on behalf of the First and Second Respondents respectively.

17. In that statement the following matters which are not agreed are set out:

“1. Capitalisation rate for assessing the value of the Headleaseholders Net Rental Income after the expiry of the underlease for the period of 8.8 years.

Mr. Rutledge for the freeholder claims 10% sinking fund 3% Tax adjustment 25%  
Mr. Nesbitt for the headlessee claims 7% sinking fund 3% Tax adjustment 25%.

2. Deferment rate for assessing the value of the headleaseholders reversion.

Mr. Rutledge for the freeholder claims 10%  
Mr. Nesbitt for the headlessee claims 5.5%

As a consequence of the above two items Mr. Rutledge calculates the apportionment of the agreed premium of £26,000 payable to the Headlessee to amount of **£1,690** and Mr. Nesbitt calculates the apportionment to amount to **£5,791.**”

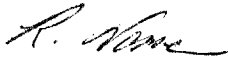
18. In neither valuation has the valuer produced any justification for the use of those percentages.

19. Mr. Nesbitt's percentages are in line with the methodology adopted by the Court of Appeal in the case of Earl Cadogan v Sportelli and Mr. Rutledge has provided no evidence to justify departing from that methodology.

20. The Tribunal considered various possibilities and made various calculations before coming to a decision. Some minor variations from the 'Sportelli' percentages may be appropriate in particular cases but the Tribunal could not see how the use of 10% could be justified in this case.

21. Perhaps a variation from 7% to 8% could have been justified but in the absence of evidence to support even that variation the Tribunal was not satisfied that there could be any variation.

22. Consequently, the Tribunal accepted the valuation from Mr. Nesbitt and found that £20,209 is payable to the First Respondent and £5,791 is payable to the Second Respondent.



R. Norman  
Chairman