LRA/25/2007

LANDS TRIBUNAL ACT 1949

LEASEHOLD ENFRANCHISEMENT- hope value- held hope value excluded- Leasehold Reform, Housing and Urban Development Act 1993 Sch 6 para 3 - costs

IN THE MATTER OF AN APPEAL FROM THE LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT PANEL

BY

JEAN WINIFRED HORNE
HENRY WEAKLEY
and
SHIRLEY MARIAN MURRAY **Appellants**

Re: Five Oaks,
69 Ryecroft Road,
London SW16 3EN

Before: His Honour Judge Reid QC

Sitting at Procession House, 110 New Bridge Street, London EC4V 6JL
on 6 November 2007

The following cases are referred to in this decision:

Cadogan v Sportelli (LRA/50/2005)
Cadogan v Sportelli and allied cases [2007] EW CA Civ 1042

DECISION

1. This is an appeal from a decision of the Leasehold Valuation Tribunal for the London Rent Assessment Panel given on 6 December 2006, following a hearing on 28 and 29 September 2006. The decision of the LVT related to the price to be paid on the enfranchisement of Five Oaks, 69 Ryecroft Road, London SW16. This lies just off the A214.

2. The property comprises six flats all let on long leases. The applicants were the nominee purchaser and the leaseholders of flats 1, 2 and 3. The leaseholder of flats 4 and 5 had served notices to extend their leases and those applications were suspended pending the determination of the issues before the LVT. The leaseholder of flat 6 had not served notice and it appears is extremely unlikely ever to do so.

3. The LVT had before it an agreed statement of facts and of the matters in dispute. It duly heard evidence and argument and determined the various issues in dispute, producing a decision determining all the issues before it. That decision is challenged now only in one regard.

4. The issue which is challenged relates to the inclusion in the LVT's valuation of a sum of £10,896, reflecting "hope value at 50% of marriage value" available in respect of flat 6, the non-participating flat. Against the inclusion of this figure the applicants appeal. They contend that the hope value in respect of flat 6 should be excluded and that the LVT was wrong to include any hope value in respect of flat 6.

5. In reaching its conclusion the LVT chose to depart from the decision of the Lands Tribunal in *Cadogan v Sportelli* (LRA/50/2005) and linked cases in which at paragraphs 105 and 106 of its decision the Lands Tribunal had held that in the valuation of the landlord's interest under Schedule 6 of the Housing Act 1996 as well as under Schedule 13 of the Act of 1993 no account was to be taken of any hope value or, save as was specifically provided, of marriage value.

6. The LVT said this:

> "20. In the case of flat 6, where notice had not yet been served under section 42, Mr Gallagher [counsel for the freeholder] accepted that Hope Value could only be awarded if Sportelli was not followed. The Tribunal was urged to include Hope Value, bearing in mind that the lessee in that flat was very elderly, and in including Hope Value they would be replicating what the hypothetical open market investor would do. ....
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> 22. The Tribunal, having considered the value of the freeholder's interest under the provisions of Schedule 6, Part 11, 3(1)(b) *'on the assumption that this Chapter and Chapter 11 confer no right to acquire any interest in the specified premises or to*

acquire any new lease (except that this shall not preclude the taking into account of a notice given under section 42 with respect to a flat contained in the specified premises where it is given by a person other than a participating tenant' The Tribunal gave careful consideration to the submissions made on behalf of the parties on Hope Value. They found themselves in agreement with Mr Gallagher, having considered the Lands Tribunal decision in Sportelli, and noting that Schedule 6 applies in the case of flats 4 and 5 where the section 42 notices have already been given and are currently suspended pending the outcome of the present hearing. Having looked at the particular circumstances of flat 6 they have decided to allow a further 50% of the maximum market value of 50% which recognises some element of uncertainty."

7. Whatever might have been the merits of the LVT's decision at the time it was made the law has now been clarified by the Court of Appeal in *Cadogan v Sportelli* and allied cases [2007] EW CA Civ 1042 in which the Court dealt with the issue of hope value. Carnwath LJ with whom Ward LJ and Sir Peter Gibson agreed dealt with the issue at paragraphs 13 to 59 of his judgment.

8. It is unnecessary to set out the whole of those lengthy passages in this judgment, but it is worth identifying some key passages. At paragraphs 43 and 44 Carnwath LJ said this:

> "43. In my view the Tribunal were correct in their conclusion that "hope value" was not a permissible element in the valuations under Schedule 6 or 13. However, I would express my reasoning somewhat differently.
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> 44. The starting point must be to identify what is in issue. For that we have the Tribunal's own definition of "hope value". As the definition makes clear, and as appears to be common ground, hope value and marriage value are directly linked. Hope value represents no more than the anticipation of future marriage value. The scheme of the 1993 Act differs from its predecessors in that there is detailed provision for the definition and allocation of marriage value, as a separate element of the price payable to the landlord. The question is whether this leaves any scope for the separate inclusion of hope value.

9. Then at paragraph 51 the learned Lord Justice continued:

> "51. It is true that in this case, unlike Schedule 13, there is no exact match between the exclusion of the tenants from the assumed market, under paragraph 3, and the share of marriage value provided by paragraph 4. All the tenants of the specified premises are excluded from the assumed market, but the landlord's share of marriage value is limited to that arising from the interests of the participating tenants. In relation to non-participating tenants, there is no specific provision for a share of marriage value to be taken into account.
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> 52. As has been seen, this is a change from the 1993 Act as originally enacted. In that, there was a direct match between paragraphs 3 and 4. Only the participating tenants were excluded from the assumed market. Potential bids for lease extensions from non-participating tenants were not excluded from open market value. This was

in fact consistent with the position as described to Parliament by Lord Strathclyde: that marriage value was payable for flats of participating tenants and hope value for flats of non-participating tenants (see para 41 above).

53. The effect of the 1996 changes seems to have been to leave the position unchanged in respect of participating tenants, but to remove hope value for non-participating tenants. That must be taken as a matter of deliberate legislative policy. There is certainly no basis for the court to seek to redress the balance by bringing back hope value by a different interpretative route – whether generally, or (as Miss Jackson argues) only for non-participating tenants."

10. In the light of this decision of the Court of Appeal the LVT's decision cannot stand. No sum for hope value in respect of flat 6 should have been included. Accordingly the LVT's determination should be amended by excluded the sum of £10,896 included in its calculation of the diminution in value of the landlord's interest and that figure reduced accordingly. The appeal will therefore be allowed to that extent.

11. At the conclusion of the hearing the solicitor for the appellants applied for an order that the landlords pay the appellants' costs of the appeal. In my judgement that application must fail. The landlords did not become a party to the case before the Lands Tribunal having indicated by a letter from their solicitors dated 19 June 2007 that they did not intend to respond and did not wish to be a party to the case. In those circumstances the Lands Tribunal has no jurisdiction to make an order for costs against them. Furthermore by virtue of section 175(6) and (7) of the Commonhold and Leasehold Reform Act 2002 no order can be made against a party unless that party has been guilty of unreasonable conduct. Even if he or she has, the limit of costs that may be awarded is £500. It cannot be said that the landlords have acted unreasonably in this matter. The application for costs therefore fails.

Dated 7 November 2007

His Honour Judge Reid QC