**FIRST - TIER TRIBUNAL**
**PROPERTY CHAMBER**
**(RESIDENTIAL PROPERTY)**

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| **Case Reference** | : | LON/00AN/OLR/2013/1720 |
| **Property** | : | Ground Floor, 23 Fairholme Road, London W14 9JZ |
| **Applicant** | : | Robert Davies |
| **Representative** | : | In Person |
| **Respondent** | : | John and Annie Fanning |
| **Representative** | : | Parfitt Cresswell (Solicitors) |
| **Type of Application** | : | Enfranchisement |
| **Tribunal Members** | : | Robert Latham<br>Neil Martindale FRICS |
| **Date and venue of Hearing** | : | 25 June 2014<br>10 Alfred Place, London WC1E 7LR |
| **Appearance for Applicant** | : | In Person |
| **Appearance for Respondent** | : | Monty Palfrey (Counsel) |
| **Date of Decision** | : | 1 July 2014 |

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**DECISION**

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The Tribunal determines that we have no residual jurisdiction in this matter, all the relevant terms having been agreed by the parties. We therefore strike out this application pursuant to Rule 9(2)(a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

## Introduction

1. This is an application made pursuant to Section 48 of the Leasehold Reform, Housing and Urban Development Act 1993, as amended ("the Act") for a determination of the premium to be paid and the terms for a new lease. The application is dated 12 December 2013. It was faxed to the Tribunal at 15.55 on Friday, 13 December 2013. A copy was also sent to the Tribunal and was received on 20 December 2013. It was this latter copy of the application which was served on the Respondent.

2. On 14 January 2014, the Tribunal issued standard Directions. This made the normal provision for the valuers appointed by the parties to meet and to exchange reports. This did not occur. The Respondent contends that this was because the premium had been agreed.

3. The Tribunal set this application down for hearing. We have been provided with three bundles:

   (i) The Application Bundle, references to which will be prefixed by "A";

   (ii) The Respondent's Bundle, references to which will be prefixed by "R";

   (iii) A Bundle of 14 Authorities produced by the Respondent's Counsel at the hearing.

4. The Respondent provided the Applicant with the Bundle of Authorities at the hearing. The Applicant complained that he had had insufficient time to deal with them. After the Respondent had presented their case, we granted the Applicant a short adjournment to consider the legal issues that had been raised.

5. Pursuant to the Directions, the Applicant was required to file a brief summary of the issues in dispute to be determined by the Tribunal. His statement is at A62 and refers to (i) the premium - £27,000; (ii) the ground rent – "peppercorn"; and (iii) the freeholder's legal fees – "£835 exc VAT".

6. Mr Palfrey provided a Skelton Argument in which he raises two issues:

   (i) Was the application made in time? This argument was premised on his understanding that the application had been issued on 20 December. When he was told that the application had been faxed to the Tribunal on 13 December, he accepted that this point was unarguable.

   (ii) Did the Tribunal retain any jurisdiction in this matter? This was based on his argument that all the terms had been agreed by the time that

the application had been issued. Alternatively, they had been resolved by 17 March 2014.

7. The Applicant's response to this second issue is as follows:

(i) Whilst the Applicant had had Solicitors acted for him, he had issued the application as a precautionary measure in the event that agreement had not been reached.

(ii) The statutory costs have not been agreed.

(iii) Whilst a premium of £30,000 had been discussed, there has been no final agreement on this. Further, there had been a lack of candour on the part of the Respondent who had contended for a higher premium than could be justified by their expert.

**The Law**

8. Section 48 of the Act permits either the tenant or the landlord to make an application to the Tribunal where any of the "terms of the acquisition remain in dispute at the end of the period of two months beginning with the date when the counter-notice or further counter-notice was so given" (s.48(1)). The phrase "the terms of acquisition" is defined by s.48(7) (emphasis added) as "the terms on which the tenant is to acquire a new lease of his flat, whether they relate to the terms to be contained in the lease or to the premium or any other amount payable by virtue of Schedule 13 in connection with the grant of the lease, or otherwise". Once all the terms have been agreed or determined by a Tribunal, the regulations provide for a lease to be prepared and the Act provides a default procedure.

9. Where a notice is given under section 42, section 60 provides that the tenant is liable to pay the landlord's reasonable costs of and incidental to "(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; and (c) the grant of a new lease under that section" (s.60(1)).

10. Hague on Leasehold Enfranchisement ([30-21] of the 5th Edition) states that the amount of costs payable under s.60 is not one of the terms of acquisitions within s.48(7). The editors of Hague cite the decision of HHJ Jackson in *Montrose v Woburn Estate Co Ltd* (Central London County Court, 18 April 2002, Unreported) in support of this proposition. This is a proposition that has been accepted by this Tribunal. If once a new lease has been granted, the parties are unable to agree the reasonable statutory

costs to which the landlord is entitled, it is necessary for a separate application to be made to the Tribunal.

**The Facts**

11. The Notice of Claim, dated 15 April 2013, is at A13-4). It was served by the Applicant's predecessor-in-title, Michael Craddock. The proposed premium is £20,000. The proposed terms are set out in a schedule, namely the existing unexpired lease term plus 90 years at a peppercorn rent on the same terms as the existing lease subject to any modification required by section 57 of the Act.

12. The Respondent's Counter-notice, dated 13 June 2013, is at A15-6. The right to acquire a new lease is admitted. The proposed premium is not accepted. A counter-offer is made in the sum of £42,610. The terms proposed by the lessee are agreed.

13. On 19 April, the Applicant had acquired the leasehold interest from Mr Fanning for a premium of £355,000 (see A21). Mr Craddock also assigned the benefit of his Notice of Claim (A57).

14. It is apparent from the papers before the Tribunal that Mr Craddock had submitted his Notice of Claim so that the Applicant, as purchaser, could benefit from this. There is nothing unusual in this. There was also some discussion as to what premium the freeholder would require for a lease extension. It is apparent that the freeholder was contemplating a figure of £23,500, albeit her Solicitor suggested that this was too generous (see A65-6).

15. Both Applicant and Respondent had taken professional advice on the likely premium. At this stage, any such report would be confidential between client and expert.

    (i) On 22 March 2013, the Applicant obtained a report from Peter Barry, a Chartered Surveyor (at A46-56). He computed the premium to be £34,000 (A51). In an Appendix, he suggested the likely range, namely £27,000 to £37,000 (A53).

    (ii) On 30 May 2013, the Respondent obtained a report from Mr Geoghegan, a Chartered Surveyor with James Flynn (at A57-61). This computed a premium of £24,205 (A61).

The difference in valuations reflects a number of factors, in particular the assessment of the virtual freehold value of the flat and the rates adopted for capitalisation, relativity and deferment.

16. Nothing seems to have happened over the subsequent months. However, the parties recognised that in default of agreement, the deadline for issuing any application to the Tribunal expired on about Saturday 14 December 2013. There was therefore considerable activity between the parties' Solicitors on 12 December between Christine Stokoe of O'Neill Patient who was acting for the Applicant ("A*") and Andrew Penfold of Parfitt Cresswell who was acting for the Respondent ("R*"). We were referred to the following e-mails: (i) 10.49: A* to R* (R63); (ii) 11.02: R* to A* (R64); (iii) 11.16: A* to R* (R65); (iv) 11.54: R* to A* (R59); (v) 12.11: A* to R* (R60); (vi) 12.25: R* to A* (R61); (vii) 12.55: A* to R* (R67); (viii) 13.06: R* to A* (R67); (ix) 15.50: R* to A* (R68); (x) 11.02: A* to R* (R69).

17. The Tribunal highlights the following exchanges:

(i) The Premium:

10.49: A* to R* (R63): "I have been instructed by my client that the premium has been agreed at £30,000...".

12.25: R* to A* (R61): "I have now spoken with my client's surveyor (Martin Geoghegan) who has informed me that because of the gap of the agreement with your clients it was ultimately agreed extension would be on the basis of ... (ii) A premium of Thirty Thousand Pounds (£30,000);"

(ii) The Terms of the Lease:

12.25: R* to A* (R61): "I have now spoken with my client's surveyor (Martin Geoghegan) who has informed me that because of the gap of the agreement with your clients it was ultimately agreed extension would be on the basis of ... (iii) The lease being for 125 years with (iv) The lease being subject to a ground rent of £350 per annum; (iii) Ground rent doubling every 25 years";

12.55: A* to R* (R67): "I have now taken my client's instructions and confirm that it was agreed that the amount of the annual rent would commence at £350 and double every 25 years for a 125 year lease extension ....";

(iii) Statutory Costs:

Whilst A* accepted her clients liability to pay the landlord's statutory costs, there was no agreement as to the quantum of these costs (see 10.49: A* to R* at R63; and 12.25: R* to A* at R61).

18. The e-mails contemplate that the Applicant might need to issue an application to the Tribunal if the terms were not agreed by close of business on 12 December (see R60). At 15.55 on Friday, 13 December, the Applicant issued their application in the form at R1-7, albeit that this is a

photocopy of the form sent by post and received by the Tribunal on 20 December. For the avoidance of doubt, we confirm that the "Application for the variation of a lease" (at A1-10) is not the application which was issued.

19. In the application form, the Applicant does not specify his Solicitor as acting for him in respect of the application. He does not assert any substantive difference between the parties on either the terms of the premium or the terms of the lease:

(i) Thus at Section 8, an applicant is required to specify the respective contentions of applicant and respondent on the proposed level of the premium. The Applicant merely inserted "to be agreed".

(ii) Although the Applicant suggested at Section 8 that this was an application to determine the provisions of the new lease other than the premium, in Section 9 the Applicant failed to specify what terms were in dispute or the proposed provisions to be contained in the new lease.

This confirms our view that this application was issued as a precautionary measure, less it be later suggested that agreement had not been agreed on the premium and the terms of the lease.

20. On 28 February 2014 (at R77), the Respondent's Solicitor wrote confirming that the wording of the deed of surrender was agreed together with the premium, term and ground rent. The Respondent's version of this document, which the Respondent had executed, is at R41-46. The Respondent stated that the only issue in dispute was the statutory costs.

21. On 17 March 2014 (at R78), the Applicant's Solicitor responded that the deed of surrender and re-grant was agreed. They added that they held a copy on file in readiness to complete once the issue of costs had been resolved. The Solicitor stated: "We confirm that we continue to be instructed in the matter but not in relation to the application to the Tribunal". This indicates that the Solicitor believed that this Tribunal was seized with the issue of the statutory costs.

22. On 10 June 2014, the Respondent's Solicitor wrote to the Tribunal asserting that the only issue in dispute was the Applicant's payment of the landlord's costs. This was contrary to the approach adopted by Mr Palfrey at the hearing.

**Our Determination**

23. First, we are satisfied that this Tribunal has no jurisdiction in respect of statutory costs to which the landlord is entitled pursuant to Section 60 of the Act. This amount of these costs is not one of the terms of acquisitions

within Section 48(7) of the Act. If once a new lease has been granted, the parties are unable to agree the reasonable statutory costs to which the landlord is entitled, it will be necessary for a separate application to be made to the Tribunal.

24. Secondly, we are satisfied that the terms of the acquisition have been agreed. We therefore have no residual jurisdiction in this matter. In particular, we are satisfied that by close of business on 12 December 2013, the parties had agreed: (i) a premium of £30,000; and (ii) the new lease should be for a term of 125 years subject to a ground rent of £350 per annum doubling every 25 years. There has been no dispute as to the form that the new lease would take. The fact that certain e-mails are marked "subject to contract" is not material. We are dealing with a statutory jurisdiction.

25. Mr Davies readily admitted to the Tribunal that he would have been happy had he not seen the report of the landlord's surveyor at A57-61. His grievance is that he agreed to a premium of £30,000 which was in excess of the figure of £24,205 which Mr Geoghegan had advised to the landlord. He was concerned that Mr Geoghegan had subsequently sought to argue for a premium of £42,610 (see A63).

26. Any valuation depends upon a number of factors, in particular an assessment of the virtual freehold value of the flat and the rates adopted for capitalisation, relativity and deferment. All these factors may be in issue. In any dispute, a professional adviser will advocate the figure that is most favourable to their client. In private, the expert is likely to advise their client to adopt a more cautious approach. Mr Davies could rather analyse the position quite differently. His expert, Mr Barry, had advised a figure of £34,000 (see A51). He has managed to negotiate a premium £4,000 less than this.

27. The reality is that the landlord's expert had advised a figure which has proved unduly favourable to the tenant; whilst the tenant's expert had advised a figure which has proved to be unduly favourable to the landlord. In such a situation, it is unsurprising that the parties had no difficulty in agreeing the premium that was payable.

**Robert Latham**

**Tribunal Judge**

**Date: 1 July 2014**