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

Case reference : **PJ/LON/OOAC/OLR/2013/1019**

Property : **Ground Floor Maisonette, 17 Milton Road, London NW7 4AU**

Applicant : **Louise Jane Goldsmith**

Representative : **Pearlmans Solicitors LLP**

Expert : **Mr N P Braham**

Respondent : **Jason Ian Clifton-Samuel**

Representative : **Woodfords Solicitors LLP**

Expert : **Mr M Clein FRICS**

Type of application : **Leasehold Reform Housing and Urban Development Act 1993 – Section 48**

Tribunal members : **Judge Goulden
Mr L Jarero BSc FRICS**

Date and venue of hearing : **3 December 2013
10 Alfred Place, London WC1E 7LR**

Date of decision : **13 January 2014**

DECISION

Determinations

1. The Respondent's application for a postponement of the hearing was refused.
2. The Tribunal determines the premium payable by the Applicant to the Respondent at £13,299.
3. The Tribunal declines to order the Respondent to pay the Applicant's costs pursuant to Rule 13 of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) (Rules 2013) ("the 2013 Rules").

Background

4. An application to the Tribunal dated 6 August 2013, and received by the Tribunal on the same date, had been made under section 48(1) of the Leasehold Reform, Housing and Urban Development Act 1993 ("the 1993 Act") as amended.
5. Directions of the Tribunal were issued to the parties on 21 August 2013.
6. Following receipt of completed listing questionnaire from both parties the application was listed for hearing on 3 and 4 December 2013.
7. The Applicant tenant holds a lease of the Ground Floor Maisonette, 17 Milton Road, London NW7 4AU ("the subject flat"). The lease was granted on 12 September 1986 and was for a term of 99 years from 1 January 1986 at a fixed ground rent of £20 per annum. On 25 June 2010, the lease of the subject flat was assigned to the Applicant. The Applicant gave notice to the Respondent of her right to acquire a new extended lease of the flat. The Notice of Claim was dated 11 April 2013 and proposed that the new lease should be at a premium of £10,790 but otherwise on essentially the same terms as the existing lease.
8. The Respondent landlord served a Counter Notice on 4 June 2013. The landlord admitted the claim but rejected the terms proposed in the claim notice. The landlord proposed a premium of £22,996. This figure was subsequently revised to £18,000.
9. The Respondent's solicitors had written to the Tribunal on 1 December 2013 requesting an adjournment. That letter was received on 2 December 2013. The parties were advised by the Tribunal, in a letter dated 2 December 2013, that "*due to the lateness of the request*" the application for a postponement would be considered at the start of the hearing.

The hearing

10. The hearing took place on 3 December 2013. The Applicant, Louise Jane Goldsmith, appeared in person and was represented by Mr S Pomeranc, Solicitor, and Mr A Pearlman, Trainee Solicitor, both of Pearlmans Solicitors LLP. Expert evidence for the Applicant was provided by Mr N Braham of Braham Sears & Partner. The Respondent, Jason Ian Clifton-Samuel, did not appear but was represented by Mr R Hemmingway, Solicitor, of Woodfords Solicitors LLP. No expert evidence was provided for or on behalf of the Respondent, although an expert, Mr M Clein of Acland & Lensam Property Consultants, had been instructed. A statement of facts apparently agreed between the respective expert valuers was within the hearing bundle, but was unsigned.

Application for a postponement

11. Mr Hemmingway, for the Respondent, made an application for an adjournment, which was opposed by Mr Pomeranc for the Applicant.
12. Mr Hemmingway said that Mr Clein, the valuer for the Respondent, was unwell. He had a hospital appointment and was unable to appear before the Tribunal on 3 December 2013. Mr Pomeranc produced correspondence which he said showed that Mr Clein had not engaged at all with the process of the Tribunal, had not signed the statement of agreed facts or even produced a valuation. Mr Pomeranc said his Client had been disadvantaged.
13. After enquiries had been made by Mr Hemmingway of Mr Clein at the request of the Tribunal, it transpired that Mr Clein's hospital appointment was not until 4 December 2013 and the Tribunal therefore requested his attendance on the afternoon of 3 December 2013. In the event, Mr Clein did not attend, since "*he had other matters to attend to*". The Tribunal retired to consider the application.

The Tribunal's Determination

14. The Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003, Regulation 15(2) states:

"Where a postponement or adjournment has been requested the tribunal shall not postpone or adjourn the hearing except where it considers it is reasonable to do so having regard to-

- (a) **the grounds for the request;**
- (b) **the time at which the request is made; and**
- (c) **the convenience of the parties"**

15. The basic premise is that the Tribunal should not permit adjournments unless it is reasonable to do so.
16. In this case, the Respondent's application had been made very late in the day and had been opposed by the Applicant. The Tribunal must deal with all applications before it in a timely manner and must take into consideration the interests of justice of both sides. The Applicant's case was ready to proceed and it was clear that the Respondent's valuer had failed to negotiate with the Applicant's valuer as would reasonably be expected and he had failed to provide a valuation. No medical certificate had been supplied and, although his hospital appointment was not until the following day, and the Tribunal had afforded him a further opportunity to appear, he had failed to do so without a reasonable explanation.
17. The Respondent's application was refused. The hearing proceeded.

Inspection

18. The Tribunal inspected the subject flat externally only after the close of the hearing, together with the comparables cited. 17 Milton Road was a 2 storey detached house converted into two flats. It was an inter-war property with a rendered front and gardens to front and rear, and appeared to be well maintained. Flats 2A and 4A Birkbeck Road were both first floor 2 bedroom flats in a small 2 storey block of 4 flats built in the 1960s. The block was set higher than street level and there were steps up to the ground floor level. There were gardens to the front and rear. 5 Ashburnham Court was also a 2 bedroom flat in an older block situated on the corner of Marion Road and Daws Lane, a noisier location than Milton Road. It also appeared to be well maintained.

Issues in dispute

19. The issues in dispute related to the capitalisation rate, the freehold value, extended lease value and relativity.
20. The Applicant's case is set out below under the relevant heads, together with the Tribunal's Determinations.

Capitalisation rate

21. Mr Braham contended for 7%. From the unsigned statement of agreed facts, it appeared that the Respondent's valuer, Mr Clein, contended for 5%. (although, as stated in paragraph 16 above, he did not appear and produced no witness statement). Mr Braham maintained that the ground rent was fixed for the term at £20 pa and therefore would be eroded with time and eventually would cost more to recover than the rent itself. This would be an unattractive proposition to investors and justified his figure of 7%.

22. The Tribunal accepts Mr Braham's argument under this head and determines a capitalisation rate of 7%

Freehold value

23. Mr Braham contended for £250,000. From the unsigned statement of agreed facts, it appeared that Mr Clein contended for £287,500. Mr Braham confirmed that he had spoken to Mr Clein during the lunch break and Mr Clein had revised his figure to £277,500, and this was confirmed by Mr Hemmingway for the Respondent.

24. Mr Braham's figure of £250,000 was based on the sale of 4 similar flats on long leases in 2013 (two in January and two in October). He had analysed these sales to arrive at a sale price per square foot for each one, which he then averaged to give a rate of £459 psf and a freehold value for the subject flat of £251,800 which he rounded down to £250,000. The rounding down was to account for one of the flats having a garage and another having the loft space included in the demise and hence the possibility of development. Mr Braham was unable to explain how he had adjusted the sale price of the two October sales to take account of either the garage or the loft space.

25. From questions of the Tribunal, it transpired that the garage was actually rented to the tenant at £50 per month and was not included in the demise.

26. When Mr Braham was asked why he had not adjusted the comparables for time whilst acknowledging that there had been a growth in property prices since the valuation date in April and the sales in October, he said on reflection he should have made an adjustment and in his opinion this would result in a lower figure.

27. In cross examination, he stated that the indices for Barnet from the Land Registry web site (there being no indices for Mill Hill) for February 2013 was 374.2 and 381.0 for September 2013.

28. The Tribunal considers the evidence from Mr Braham was flawed in some respects. Applying the indices to Mr Braham's freehold value would give an adjusted price of £254,500 as at October 2013. This does not compare with the comparables given for sales in October 2013 which are for sums in excess of £300,000. The indices which Mr Braham had quoted for Barnet were incorrect. The indices for February and September 2013 are 373.7 and 381.65. Mr Braham should have quoted the indices for January and October 2013, since his sales took place in those months.

29. Having considered the comparables and making adjustments for time, the Tribunal determines the freehold at £277,500.

Extended lease value

30. Mr Braham contended for an extended lease value of £247,500 and Mr Clein, in the unsigned statement of agreed facts, contended initially for £287,500 but, having spoken to Mr Braham during the lunch break (see paragraph 23 above) reduced this to £277,500, since he did not differentiate between the freehold and long lease value.
31. Mr Braham applied a differential of 1% between the extended leasehold and freehold values, whilst Mr Clein made no differentiation. The Tribunal considers that there should be a differential of 1% between the extended lease and freehold values.
32. The Tribunal determines the extended lease value at 99% of the freehold value, namely £274,725

Relativity

33. Mr Braham had considered the graphs in the RICS report on Relativity (published in October 2013) relating to Greater London and averaged them out to give 93.5%. When it was pointed out that one of the graphs was opinion not transaction based and that another was based on transactions in Brighton and Hove he revised his figure to 92.5%
34. No evidence under this head was provided by Mr Clein.
35. The Tribunal, having considered the Nesbitt and Pridell graphs as being the most appropriate, accepts Mr Braham's revised percentage and determines relativity at 92.5%, which produces an existing lease value of £256,688.

Premium

36. The Applicant contended for a premium of £10,795 and Mr Braham's valuation is attached as Appendix B.
37. The Tribunal determines a premium of £13,299 and its valuation is attached as Appendix A.

Application under Rule 13 of The Tribunal Procedure (First-tier Tribunal) Property Chamber) Rules 2013

38. At the end of the hearing Mr Pomeranc applied for costs pursuant to Rule 13 of the 2013 rules. He handed to the Tribunal and to Mr Hemmingway a statement of costs. The Tribunal accepted the application, since it was

made orally at the hearing under Rule 13(4)(a), but considered that neither side were in a position to present their arguments properly at such short notice. Directions were therefore issued for written representations to be submitted by the solicitors acting for the Applicant and Respondent.

39. In written representations on behalf of the Applicant dated 9 December 2013, Mr Pomeranc set out his charge out rate, together with the charge out rate of the Trainee Solicitor, together with a narrative showing the work carried out, the nature of the work and the relevant fee earner. The legal and expert's costs claimed were in the total sum of £4,338 inclusive of VAT and were stated to *"relate solely to matters connected with and or arising out of the Respondents application for an adjournment to the hearing listed for 3 December 2013. They do not relate to any other matters"*.
40. It was stated that in respect of the hearing on 3 December 2013 *"Pearlmans attendance at the Tribunal on the day was wholly unnecessary and arose solely as a result of the Respondents solicitors..misconduct relating to their application for an adjournment and the Tribunals consequential requirement for the Applicant's solicitors..to attend .."* It was contended that since only the premium was disputed it was intended that the Applicant's expert only would attend, which was accepted Tribunal practice. It was stated *"If Woodfords had therefore dealt with the application for an adjournment in a proper and reasonable manner before the hearing date, Pearlmans would not have had to attend the hearing or any relisted hearing. Accordingly, Pearlmans' full costs for the entire day at the hearing should be awarded"*. However, if the claim for a full day's costs was rejected by the Tribunal, then the time for the adjournment hearing and all related costs should be allowed.
41. It was stated that although the Respondent's solicitors were advised on 7 November 2013 that they would need to write to the Tribunal requesting an adjournment, when it would be agreed by the Applicant, no reply to that letter was ever received (or to subsequent letters of 15, 18,19, 28 or 29 November 2013) nor was any request for an adjournment made to the Tribunal until the late application for an adjournment was received by the Tribunal on 2 December 2013. Since Mr Clein's hospital appointment was not 3 December but 4 December *"the entire correspondence relating to the adjournment hearing was also avoidable, together with all wasted costs"*.
42. In written representations on behalf of the Respondent dated 17 December 2013, the Applicant's application was opposed. It was stated, inter alia *"The Applicant's solicitors seek to rely upon the discussions which were had between the parties prior to the listed hearing date of 3 and 4 December 2013. The Applicants were initially supportive of such an application for postponement of the hearing in (sic) the grounds of ill health of the Respondent's valuer.....The Applicant's solicitor wrote to the Respondent's solicitors on 2 December withdrawing their support for the"*

application for postponement stating that they were 'ready willing and able to proceed'. The Applicant's solicitors then made an open offer for the Respondent to pay the cost of attendance that day and they would then support the application. Given that the Tribunal had indicated that they would proceed in any event if the said application were rejected, the Respondent's solicitors asked for a copy of the valuation report for the purposes of cross examination and that they would proceed in the event that the application were rejected by the Tribunal.The hearing was concluded.....on 3 December 2013 (the first day of the listed two day hearing) and parties were not required to attend the following day".

43. The Respondent relied on the "three stage test" as outlined in the case of **Re A Barrister (Wasted Costs Order) (No 1 of 1991)[1993] QB 293**. The test to be applied was whether legal or other representatives had acted improperly, unreasonably or negligently, whether his conduct had caused a party to incur unnecessary costs or whether it was just, in all the circumstances, to order him to compensate the party for the whole or part of those costs. All were denied by the Respondent and evidence as to failures by the Applicant were provided in support. The Respondent rejected the contention that the Applicant's solicitor would not have attended the hearing had it been known that only valuation evidence had been in dispute and stated that this was contrary to the information supplied to the Tribunal in the listing questionnaire by the Applicant on 10 October 2013. It was stated "*the Applicant's solicitor's conduct has not been exemplary in the matter and his complaining of correspondence not being replied as the basis to the claim is unsupportable and in any event he has undertaken the same conduct complained of...The Applicant has suffered no detriment in proceedings or disposal of the matter from any circumstances arising from the Respondent or his representative's conduct.....a wasted costs order should not be utilised as a device to circumvent the established principle of each party bearing their own costs in this type of application.*"

The Tribunal's Determination

44. The parties' written submissions were considered by the Tribunal.
45. Under the 2013 Rules, which came into force on 1 July 2013, the Tribunal is able to make an order in respect of costs only under S29(4) of the 2007 Act (wasted costs) [Rule 13 (1) (a)] or if a person has acted unreasonably in bringing, defending or conducting proceedings in a residential property case [Rule 13 (1) (b) (ii)]. In residential property cases, this rule replaced both paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002 and paragraph 12 of Schedule 13 to the Housing Act 2004. There is now no limit on the amount of costs which may be awarded.
46. Whilst it is acknowledged that communications with the Respondent's solicitors and/or the Respondent's valuer were unsatisfactory, it was not

considered to have been so out of the ordinary that it should trigger the imposition of a wasted costs order.

47. Rule 13 is not intended to grant this Tribunal full cost sifting powers. It can only make an Order on the grounds as set out in paragraph 45 above.
48. In the view of this Tribunal, Mr Pomeranc, having successfully opposed the Respondent's application for an adjournment, was able to present his case on the date fixed for the hearing, and did so. Indeed, in the Tribunal's letter to the parties of 2 December 2013, which said that the application for a postponement would be considered at the commencement of the hearing on 3 December 2013, it clearly states "*In any event please be fully prepared to present your case on the full hearing date mentioned above, having all documents that you wish the Tribunal to consider*". If Mr Clein had appeared, would Mr Pomeranc have made an application under Rule 13? In the event, Mr Clein did not appear, but the case did proceed and was completed on the same day. The absence of Mr Clein was, presumably, to the advantage of the Applicant. Further, if Mr Clein had attended to provide evidence and be subjected to possible cross examination, re-examination and questions from the Tribunal, it was probable that the hearing would have extended to the following day, with resultant increased costs.
49. The Tribunal makes no Order under Rule 13.

Name: J Goulden

Date: 13 January 2014

Leasehold Valuation Tribunal

Ref

PJ/LON/OOAC/OLR/2013/1019

Ground Floor Flat, 17 Milton Road London NW7 4AU

Valuation Date	11 April 2013		
Lease	99 years from 1 January 1986		
Unexpired term	71.73 years		
Ground rent	£20 pa for the whole term		
Deferment rate	5%		
Capitalisation rate	7%		
Relativity	92.50%		
Freehold value	£277,500		
Long lease value	£274,725		
Existing lease value	£256,688		
Freehold interest			
Existing			
Ground rent receivable	£20		
YP 71.73 yrs @ 7%	14.1742	£283	
Reversion to freehold value	£277,500		
PV of £1 in 71.73 years @ 5%	0.03020	£8,381	
			£8,664
Proposed			
Reversion to freehold value	£277,500		
PV of £1 in 161.73 years @ 5%	0.0003742		£104
Diminution to freehold interest			£8,560
Marriage Value			
Proposed interest			
Freeholder	£104		
Tenant	£274,725		
			£274,829
Existing interest			
Freeholder	£8,664		
Tenant	£256,688		
			£265,352
Marriage value		£9,477	
Marriage value @ 50%			£4,739
Premium payable			£13,299

17 Milton Road, London NW7

CALCULATION – Under the Leasehold Reform Housing and Urban Development Act 1993 as amended by the Commonhold and Leasehold Reform Act 2002.

<u>Term</u>			
Ground rent		£20pa	
YP 71.75 years @ 7%		<u>14.1741</u>	
			£283
<u>Reversion</u>			
Freeholders vacant possession value of the flat		£250,000	
PV £1 in 71.75 years @ 5%		<u>0.0302279</u>	
			<u>£7,557</u>
			£7,840
<u>Marriage Value</u>			
Value of the flat unimproved with a long Lease		£247,500	
Lessees current interest	£233,750		
Freeholders interest	<u>£7,840</u>		
		<u>£241,590</u>	
		£5,910	
50% share			<u>£2,955</u>
Price of the Lease Extension			£10,795

Appendix B