



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

Case Reference	:	GM/LON/OOAH/OLR/2015/1561
Property	:	Ground floor flat, 9 Fairholme Road, Croydon Surrey CRO 3PG
Applicants	:	Srinevas Maddimsetty (1) Anjami Lakshmi Swathy Maddimsetty (2)
Representative	:	Comptons Solicitors
Respondents	:	Sean Cahill (1) Monica Cahill (2)
Representative	:	None
Type of Application	:	Determination of terms of new lease purchase under section 51 of the Leasehold Reform, Housing and Urban Development Act 1993
Tribunal Members	:	Mrs Sonya O'Sullivan – Tribunal Judge Mr Duncan Jagger MRICS – Valuer Member
Date and venue of Paper Determination	:	15 December 2015 10 Alfred Place, London WC1E 7LR
Date of Decision	:	15 December 2015

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the appropriate sum to be paid into Court for the grant of a new lease to the Applicants for Ground floor flat, 9 Fairholme Road, Croydon, Surrey CRO 3PG (“the Flat”), pursuant to section 51(5) of the Leasehold Reform, Housing and Urban Development Act 1993 (“the 1993 Act”), is £11,700.
- (2) The tribunal approves the new lease in the form attached, marked “A”.

The application

1. The Applicants who are the long leaseholder of the Flat seek the tribunal’s determination of the price to be paid for a new lease of the Flat and the terms of the new lease to be granted.
2. The landlord is missing and on 28 May 2015 the Applicants issued a Part 8 Claim in the County Court at Croydon under claim number BO2CR335. On 15 September 2015 an order was made by Deputy District Judge Omoregie under section 51(5) of the 1993 Act which confirmed that a new lease of the Flat shall vest in the Claimants upon terms specified by this tribunal. The requirement to serve a notice under section 42 of the 1993 Act was dispensed with and the Judge ordered that the proceedings be transferred to this tribunal to determine the terms of the new lease.
3. This determination is made on the basis of written representations in accordance with the procedure set out in regulation 13 of the Leasehold Tribunals (Procedure) (England) Regulations 2003. Directions were issued on 29 September 2015. The paper determination took place on 15 December 2015.
4. The Applicant’s solicitors supplied the tribunal with a hearing bundle that contained copies of the existing lease, Land Registry searches for the freehold and leasehold titles, relevant documents from the County Court proceedings, a valuation and a draft lease.
5. The tribunal did not consider that an inspection of the property was necessary given that we had been provided with a photograph of the property and full details of the comparables relied upon and the information provided in the report of Mr Jones (see below).
6. The relevant legal provisions are set out in the Appendix to this decision.

Tenure

7. The lease is for a term of 99 years from 1 January 1984. The ground rent was set at £50 per annum for the first 33 years after which it increases to £80 per annum for the second thirty years and then £120 per annum for the remaining term. There are some 67.5 years unexpired as at the relevant date.
8. The tenants rely on a valuation prepared on their behalf by Mr Stephen Jones BSc (Hons) MRICS of Leasehold Valuers LLP, chartered surveyors. The tribunal has two reports from Mr Jones and relies on the updated figures contained in the second report dated 25 November 2015 served in response to further directions. Leasehold Valuers inspected on 28 October 2015. Mr Jones has provided a photograph, description, a list of comparable transactions and a valuation rationale.
9. He describes the Flat as a flat situated on the ground floor of a converted mid terraced two storey (ground to first floor levels) period house, which has been sub-divided into two flats. There are gardens to the front and rear, which are each demised to the property. The property is accessed via a communal front door which opens onto a communal hallway. It has one bedroom.

Terms of new lease

10. The draft lease submitted by the Applicant's solicitors is approved.

Lease extension premium

11. The county court claim was issued on 28 May 2015 and that is the valuation date which has been correctly adopted by Mr Jones.
12. He relies on the following three comparables, all of which are said to be within similar locations;
 - i. Ground floor flat at 28 Lancing Road - This is a one bedroom flat which sold at £176,000 in July 2015 with a 100 year lease. It is smaller than the subject property.
 - ii. Flat 3 at 7 Cameron Road - This is a split level first and second floor maisonette with one bedroom. It sold for £165,000 in June 2015 with a 164 year lease. Although it does not have a dining room like the subject flat it is larger. However it does not have a garden and Mr Jones considers buyers may prefer a single level living arrangement rather than split level.

- iii. Flat 1 at 21 Cameron Road – This is a two bedroom flat and is much larger than the subject property. Although the gardens are communal Mr Jones considers this property is superior to the subject property due to the two bedroom layout. It sold for £232,000 in April 2015 with a 111 year lease.
13. Having considered the three sales Mr Jones adopts a value in the region of £190,000.
14. As far as the short lease value is concerned Mr Jones has relied on the RICS Graphs of relativity for the Outer London and Rest of England. He takes an average of all five of those graphs and rounding up adopts a figure of 91%.
15. He adopts a capitalisation rate of 6.5% as he says that the capitalisation rate for a relatively low and non dynamic ground rent pattern is often between 6 and 7%.
16. He adopts a deferment rate of 5% in line with the *Sportelli* decision.
17. He produces a valuation based on the above figures to reach a premium for the lease extension of £11,700.

Lease extension premium - the tribunal's decision

18. We adopt Mr Jones' valuation and confirm that the premium payable on the grant of a new lease under the 1993 Act is £11,700

Reasons for the tribunal's decision

19. The tribunal carefully considered the contents of Mr Jones' report.
20. The relevant date for valuing the lease extension is the date of the original application to the County Court, pursuant to section 51(8)(a) of the 1993 Act. It follows that the appropriate valuation date is 28 May 2015 and this date is correctly noted in Mr Jones' report.
21. The tribunal accepts the capitalisation rate used by Mr Jones.
22. We accept Mr Jones' figure for deferment rate of 5% and relativity of 91%.
23. Accordingly we adopt the valuation of Mr Jones and conclude that the price to be paid into court for the premium to be payable on the grant of a new lease is £11,700.

Name: S O'Sullivan

Date: 15 December 2015

Appendix of relevant legislation

Leasehold Reform, Housing and Urban Development Act 1993 (as amended)

Section 26

26 Applications where relevant landlord cannot be found.

(1) Where not less than two-thirds of the qualifying tenants of flats contained in any premises to which this Chapter applies desire to make a claim to exercise the right to collective enfranchisement in relation to those premises but—

(a) (in a case to which section 9(1) applies) the person who owns the freehold of the premises cannot be found or his identity cannot be ascertained, or

(b) (in a case to which section 9(2) or (2A) applies) each of the relevant landlords is someone who cannot be found or whose identity cannot be ascertained,

the court may, on the application of the qualifying tenants in question, make a vesting order under this subsection—

(i) with respect to any interests of that person (whether in those premises or in any other property) which are liable to acquisition on behalf of those tenants by virtue of section 1(1) or (2)(a) or section 2(1), or

(ii) with respect to any interests of those landlords which are so liable to acquisition by virtue of any of those provisions,

as the case may be.

(2)Where in a case to which section 9(2) applies—

(a)not less than two-thirds of the qualifying tenants of flats contained in any premises to which this Chapter applies desire to make a claim to exercise the right to collective enfranchisement in relation to those premises, and

(b)paragraph (b) of subsection (1) does not apply, but

(c)a notice of that claim or (as the case may be) a copy of such a notice cannot be given in accordance with section 13 or Part II of Schedule 3 to any person to whom it would otherwise be required to be so given because he cannot be found or his identity cannot be ascertained,

the court may, on the application of the qualifying tenants in question, make an order dispensing with the need to give such a notice or (as the case may be) a copy of such a notice to that person.

(3)If, in a case to which section 9(2) applies, that person is the person who owns the freehold of the premises, then on the application of those tenants, the court may, in connection with an order under subsection (2), make an order appointing any other relevant landlord to be the reversioner in respect of the premises in place of that person; and if it does so references in this Chapter to the reversioner shall apply accordingly.

(3A)Where in a case to which section 9(2A) applies—

(a)not less than two-thirds of the qualifying tenants of flats contained in any premises to which this Chapter applies desire to make a claim to exercise the right to collective enfranchisement in relation to those premises, and

(b)paragraph (b) of subsection (1) does not apply, but

(c)a copy of a notice of that claim cannot be given in accordance with Part II of Schedule 3 to any person to whom it would otherwise be required to be so given because he cannot be found or his identity cannot be ascertained,

the court may, on the application of the qualifying tenants in question, make an order dispensing with the need to give a copy of such a notice to that person.

(4)The court shall not make an order on any application under subsection (1) (2) or (3A) unless it is satisfied—

(a)that on the date of the making of the application the premises to which the application relates were premises to which this Chapter applies; and

(b)that on that date the applicants would not have been precluded by any provision of this Chapter from giving a valid notice under section 13 with respect to those premises.

(5)Before making any such order the court may require the applicants to take such further steps by way of advertisement or otherwise as the court thinks proper for the purpose of tracing the person or persons in question; and if, after an application is made for a vesting order under subsection (1) and before any interest is vested in pursuance of the application, the person or (as the case may be) any of the persons referred to in paragraph (a) or (b) of that subsection is traced, then no further proceedings shall be taken with a view to any interest being so vested, but (subject to subsection (6))—

(a)the rights and obligations of all parties shall be determined as if the applicants had, at the date of the application, duly given notice under section 13 of their claim to exercise the right to collective enfranchisement in relation to the premises to which the application relates; and

(b)the court may give such directions as the court thinks fit as to the steps to be taken for giving effect to those rights and obligations, including directions modifying or dispensing with any of the requirements of this Chapter or of regulations made under this Part.

(6)An application for a vesting order under subsection (1) may be withdrawn at any time before execution of a conveyance under section 27(3) and, after it is withdrawn, subsection (5)(a) above shall not apply; but where any step is taken (whether by the applicants or otherwise) for the purpose of giving effect to subsection (5)(a) in the case of any application, the application shall not afterwards be withdrawn except—

(a)with the consent of every person who is the owner of any interest the vesting of which is sought by the applicants, or

(b)by leave of the court,

and the court shall not give leave unless it appears to the court just to do so by reason of matters coming to the knowledge of the applicants in consequence of the tracing of any such person.

(7)Where an order has been made under subsection (2) or (3A)dispensing with the need to give a notice under section 13, or a copy of such a notice, to a particular person with respect to any particular premises, then if—

(a) a notice is subsequently given under that section with respect to those premises, and

(b) in reliance on the order, the notice or a copy of the notice is not to be given to that person,

the notice must contain a statement of the effect of the order.

(8) Where a notice under section 13 contains such a statement in accordance with subsection (7) above, then in determining for the purposes of any provision of this Chapter whether the requirements of section 13 or Part II of Schedule 3 have been complied with in relation to the notice, those requirements shall be deemed to have been complied with so far as relating to the giving of the notice or a copy of it to the person referred to in subsection (7) above.

(9) Rules of court shall make provision—

(a) for requiring notice of any application under subsection (3) to be served by the persons making the application on any person who the applicants know or have reason to believe is a relevant landlord; and

(b) for enabling persons served with any such notice to be joined as parties to the proceedings.

"A"

HM LAND REGISTRY
LAND REGISTRATION ACTS 1925 TO 2002

County	:	Croydon
Freehold Title Number	:	SGL37174
Property	:	Ground Floor Flat, 9 Fairholme Road, Croydon, CR0 3PG

THIS LEASE is made on the _____ day of _____ 2015

BETWEEN

(1) **SEAN CAHILL AND MONICA CAHILL** of 9 Fairholme Road, Croydon, Surrey, CR0 3PG (hereinafter called "the Landlord") of the one part

-and -

(2) **SRINIVAS MADDIMSETTY AND ANJANI LAKSHMI SWATHI MADDIMSETTY** of 114 Kelvin Gardens, Croydon, Surrey, London, CR0 4US (hereinafter called "the Lessee") of the other part

NOW THIS DEED WITNESSETH as follows:

1. DEFINITIONS AND INTERPRETATION

In this Lease (which is a New Lease for the purposes of the Leasehold Reform, Housing and Urban Development Act 1993)

1.1 "Surrendered Lease" means the lease dated the 30 November 1984 and made between Sean Cahill and Monica Cahill of

the one part and Jermoth Alexander Shaw and Elizabeth Buchan of the other part registered at HM Land Registry with Title No. SGL420782

- 1.2 "the Term" means the term granted by the Surrendered Lease
- 1.3 "the New Term" means a term of 189 years from the 1 January 1984
- 1.4 "the Demised Premises" Ground Floor Flat, 9 Fairholme Road, Croydon, London, CR0 3PG as is more particularly described in and demised by the Surrendered Lease
- 1.5 "the New Rent" means the yearly rent of one peppercorn payable from the date of this lease (if demanded)
- 1.6 "the Landlord" where the context permits means the person for the time being entitled to the reversion immediately expectant on the determination of the New Term
- 1.7 "the Lessee" means where the context so permits includes the Lessees successors in title
- 1.8 Words importing one gender shall be construed as importing any other gender
- 1.9 Words importing the singular shall be construed as importing the plural and vice versa
- 1.10 Where any party comprises more than one person the obligations and liabilities of that party under this Lease shall be joint and several obligations and liabilities of those persons

- 1.11 Save where otherwise stated references to numbered clauses and the Schedule are references to the clauses which are so numbered and the Schedule in this Lease
- 1.12 The clause headings do not form part of this Lease and shall not be taken into account in its construction or interpretation

2. RECITALS

- 2.1 The reversion expectant on the determination of the Term is now vested in the Landlord and the said leasehold interest is now vested in the Lessee
- 2.2 The County Court at Croydon has ordered that the Landlord grants pursuant to the Leasehold Reform, Housing and Urban Development Act 1993, a lease of the Demised Premises for the New Term and the New Rent on the terms expressed in this Lease by virtue of the fact that the Landlord is missing.
- 2.3 This lease is granted under Sections 50 and 56 of the Leasehold Reform, Housing and Urban Development Act 1993
- 2.4 This is a new Lease for the purposes of Section 1 of the Landlord & Tenant (Covenants) Act 1995

3. THE DEMISE

IN CONSIDERATION of the surrender of the Surrendered Lease and the sum of [] now paid by the Lessee to the Landlord as ordered by the County Court at Croydon the Landlord with Full Title Guarantee **HEREBY DEMISES** to the Lessee the Demised Premises with the same rights exceptions and reservations as are expressed in the Surrendered Lease **TO HOLD** unto the Lessee for the New Term **SUBJECT** as mentioned in the Surrendered Lease and **SUBJECT TO** and with the benefit of the covenants on the part of the parties thereto respectively contained in the Surrendered Lease and the provisos declarations and conditions contained in the

Surrendered Lease as if the same were repeated in extenso herein other than the amendments contained in the Schedule hereto **YEILDING AND PAYING** to the Landlord the New Rent (if demanded)

4. COVENANTS

The Landlord and the Lessee **MUTUALLY COVENANT** that they will perform and observe the several respective covenants provisos and stipulations contained in the Surrendered Lease as if they were repeated in full in this Lease with such modifications as are set out in the Schedule hereto and as if the name of the Landlord was substituted for that of the landlord and in the name of the Lessee for the lessee respectively in the Surrendered Lease

5. LIMIT OF PERSONAL LIABILITY

The Landlord named in this lease limits his personal liability to breaches of that covenant for which he is responsible pursuant to Section 57(8A) of the Leasehold Reform, Housing and Urban Development Act 1993.

6. NO AGREEMENT FOR LEASE

It is hereby certified that there is no agreement for lease to which this Lease gives effect

7. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

Except as may be otherwise provided in this Lease no third party shall have or shall acquire any benefit claim or right of any kind whatsoever pursuant to or by virtue of this Lease or pursuant to or by virtue of any agreement or deed entered into in consequence of this Lease where but for this clause such benefit claim or right would exist or come into existence solely by virtue of the Contracts (Rights of Third Parties) Act 1999 or any statute amending or replacing such Act. But this clause shall not apply to nor affect any benefit right or claim of any person which exists or shall arise other than by virtue of such Act or any statute amending or replacing such Act.

IN WITNESS whereof the parties hereto have set their seals as a Deed but not delivered it until the date of it the day and year first before written

Signed as a deed by Sean Cahill
and Monica Cahill in the presence
of:

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Signature

Signature of witness

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Name

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Address

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Signed as a deed by Sean Cahill
and Monica Cahill in the presence
of:

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Signature

Signature of witness

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Name

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Address

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Signed as a deed by Srinivas
Maddimsetty in the presence of:

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Signature

Signature of witness

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Name

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Address

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Signed as a deed by Anjani
Lakshmi Swathi Maddimsetty in the
presence of:

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Signature

Signature of witness

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Name

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Address

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IN THE FIRST TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference GM/LON/00AH/OLR/2015/1561

PROPERTY: 9 Fairholme Road, Croydon, Surrey, CR0 3PG
APPLICANT: Srinivas Maddimsetty and Anjani Lakshmi Swathy Maddimsetty
REPRESENTATIVE: Comptons Solicitors
RESPONDENT: Sean Cahill and Monica Cahill
DIRECTIONS: 2015
HEARING: Paper Determination w/c 16 November 2015

OTHER INFORMATION

Date upon which the Tenant purchased the Flat	08.03.2007
The last ground rent demanded and/or paid (if known)	Not known/Not demanded
Details of other amounts that may be payable to the Missing Landlord pursuant to sub-clause 51(5)(c) of the Leasehold Reform, Housing and Urban Development Act 1993	<p>The payment date for the ground rent due under the Lease is 1st January in each year. Ground rent of £50 was payable under the Lease. It is averred that the recovery of any and/or outstanding rent that became due and payable on or before 1st January 2008 are statute barred by Section 5 of the Limitation Act 1980.</p> <p>The total due is therefore £300</p>