



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

Case Reference : **MR/LON/00AN/OLR/2016/0690**

Property : **Flat 93 Talgarth Mansions,
Talgarth Road, London W14 9DF**

Applicant : **Leonardo Monzon**

Representative : **Mr. Roger Nelson BA (Hons) FRICS**

Respondent : **Brickfield Properties Limited**

Representative : **Mr. C Hain of counsel**

Types of Application : **Lease extension**

Tribunal Members : **Judge LM Tagliavini
Miss M Krisko FRICS**

**Date and venue of
Hearing** : **13 August 2016
10 Alfred Place, London WC1E 7LR**

Date of Decision : **19 September 2016**

DECISION

Decisions of the tribunal

- A. The tribunal finds that the premium payable for the lease extension of the subject property is £43,736 (forty three thousand seven hundred and thirty six pounds).
- B. The tribunal finds that clause 3.10.5 of the old lease is to be included as a term of the new lease in an unmodified form.

The application

1. This is an application made pursuant to section 48 of the Leasehold Reform, housing and Urban Development Act 1993 seeking the tribunal's determination of the premium payable for the grant of a new extended lease and the terms to be included.

The premises

2. The premises comprise a two bedroom flat on the second floor of a purpose built Edwardian mansion located on the south side of Talgarth Road (A4) in the London Borough of Hammersmith and Fulham. The flat is held on a term of 99 years from 29th September 1984 with 67.92 years remaining as at 28/10/15 (the valuation date) with a rising ground rent of £75 per annum until 28th September 2017, £150 per annum for the next 33 years and £300 per annum for the residue of the term.

The issues

3. The only issues remaining for the tribunal's determination are:
 - (i) Relativity and existing lease value under the Act.
 - (ii) Whether clause 3.10.5 requires modification to include an express administration fee for the purpose of a new lease..

The hearing and evidence

The Applicant's case

4. Mr. Nelson spoke to his valuation report dated 1st September 2016 on behalf of the Applicant preferring to rely on a selection of two comparable properties (Nos. 84 and 73) out of a list of five he identified as giving the best and most reliable evidence from which relativity could be ascertained, being taken from sales in 2012 and 2013 at

Talgarth Mansions and consistent with the subject property. Mr. Nelson asserted that a relativity of 88.7% providing a premium to extend the lease in accordance with Schedule 13 of the 1993 Act is £36,289 (thirty six thousand two hundred and eighty nine pounds). Mr. Nelson relied upon the approach previously taken by tribunals and the guidance given in *Arrowdale v Coniston Court (North) Hove Limited* LRA/72/2005. Mr Nelson also told the tribunal that no adjustments for condition had been necessary for either the subject or the comparable properties. He used an average of the two sales to come to the existing leasehold value then deducted 1.5% for No Act Rights giving a relativity of 88.7%.

5. Mr. Nelson had no instructions in respect of any modification or exclusion to clause 3.10.5 and simply relied on the written submission that any increased administrative fee should be £30.00 and not the £50.00 sought by the Respondent.

The Respondent's case

6. Mr. Shapiro BSc (Est Man) FRICS FCI Arb spoke to his valuation report dated 9/9/16 on behalf of the Respondent. He told the tribunal that he had followed the guidance set out in *The Trustees of the Sloane Stanley Estate v Munday; The Trustees of the Sloane Stanley Estate v Largesse* and *Aron v Wellcome Trust Limited*, LRA 20, 21 & 35/2015 and had relied on the Savills 2015 Enfranchisable graphs to produce a figure for relativity of 85.7%. Mr. Shapiro asserted that he had not relied on comparables as he regarded them to be out of date and not accurately indicative of the relativity that applies to this transaction. Mr. Shapiro therefore relied upon the relativity of 85.75% producing a premium of £43,736 (forty three thousand seven hundred and thirty eight pounds). Mr Shapiro pointed out to the tribunal that had Mr Nelson used an average per square foot value for all his comparables, his existing lease value would have been lower, nearer his own.
7. Mr. Hain submitted that section 57(6) of the 1993 Act applied and permitted the tribunal to exclude or modify a term of the existing lease for the purposes of the grant of a new lease if:

(a) it is necessary to do so in order to remedy a defect in the existing lease;

(b) it would be unreasonable in the circumstances to include, or include without modification, the term in question in view of changes occurring since the date of the commencement of the existing lease which affects the suitability on the relevant date of the provisions of that lease.

8. Mr. Hain submitted that clause 3.10.5 of the existing lease requiring the payment of “*a reasonable registration fee no being less than £12 for each such document*” required a modification to increase the sum to £50 for each document to reflect inflation.

Reasons for the decisions of the tribunal

9. The tribunal prefers the evidence of Mr. Shapiro to that of Mr. Nelson and finds that Mr. Nelson reliance on just two comparable properties from a list of five is unreliable and without proper justification. Consequently, the tribunal preferred the approach of Mr. Shapiro, which in the absence of reliable comparable properties used the Savills 2015 Enfranchisable graph as a method of establishing relativity, which indicates that Mr. Nelson’s figure of 88.7% is too high. Consequently, the tribunal accepts Mr. Shapiro’s figure of £43,736 (forty three thousand seven hundred and thirty six) as being the premium payable.
10. The tribunal is not persuaded that clause 3.10.5 of the existing lease requires modification as it the tribunal’s view that it adequately provides for a reasonable sum to be charged as a registration fee, which can be increased to take account of inflation i.e. it can not be less than £12 but can be more than this sum per document.

Signed: Judge LM Tagliavini

Dated: 19 September 2016