

Lease Conferences



Audio for the webinar will be through your computer speakers

Audio also available by telephone:

Call

0800 051 3810

or

+44 20 3478 5289

Access code:959 530 275

For technical assistance please call Webex:

- 0800 389 9772
- Option 3
- Quote site reference: lease-advice.webex.com

Submit questions via the chat box

Disclaimer



Whilst we make reasonable efforts to ensure our content is accurate and up-to-date as at 13 July 2016, information and guidance in this webinar does not and is not intended to amount to legal advice in any particular case

No responsibility for any consequence of relying upon the webinar material or presentations of the webinar is assumed by LEASE or any of our advisers



LEASE EXTENSION-CASE LAW YOU SHOULD KNOW

Nicholas Kissen and Misba Sheikh
13th July 2016

The relevant legislation



- Leasehold Reform, Housing and Urban Development Act 1993
 - Chapter II of Part I
- Commonhold and Leasehold Reform Act 2002



The cases we will cover



- *Gray v Tayeb* (18/5/15 HHJ Coltart, Brighton County Court)
- *Cowthorpe Road 1-1A Freehold Ltd v Wahedally* (16/2/16 HHJ Dight, Central London County Court)
- *36 Harrington Gardens Headlease Limited v Cadogan* (23/10/15, Recorder Rosen QC, Central London County Court)

The cases we will cover



- *Sidewalk Properties Ltd v Twinn* [2015] UKUT 122 (LC)
- *Sinclair Gardens v Wisbey* [2016] UKUT 203 (LC)
- *Sinclair Gardens Investments (Kensington) Ltd v Ray* [2015] EWCA Civ 1247

The cases we will cover



- *Roberts v Fernandez* [2015] UKUT 106 (LC)
- *Sloane Stanley v Mundy* [2016] UKUT 0223 (LC)



Gray v Tayeb



- Service of an initial notice by email is permissible



Cowthorpe Road 1-1A Freehold Ltd v Wahedally



- What constitutes good service of a Reversioner's Notice under Section 21 of the Leasehold Reform, Housing and Urban Development Act 1993?
- A Reversioner's Notice can be rejected if there is not an original signature on it, even if it is served in hard copy form

36 Harrington Gardens Headlease v Cadogan



- Landlord was perfectly willing to complete on the lease extension
- However the tenant made a tactical application to the court under Section 48(3), to buy time
- Court held that it was not an abuse for the tenant to apply to the court in this way, but imposed terms including potential payment of interest, and paying landlord's costs

Sidewalk Properties Ltd v Twinn



- In-house costs are to be determined on the same basis as those of a private practitioner
- Court of Appeal applied the approach set out in Re: Eastwood (deceased) [1975] Ch 112
- This is so as to 'properly reimburse the appellant without yielding a profit, for the legal services it reasonably required'

Sinclair Gardens v Wisbey



- FTT wrong to conclude that certain items of the Appellant's solicitor's work could not be recovered from the Respondents under Section 60 of the Leasehold Reform, Housing and Urban Development Act 1993

Sinclair Gardens v Wisbey



- Upper Tribunal reduced the amount of costs which the landlord could claim from the leaseholder on the basis that as a Landlord dealing with 20 other applications for lease extensions within the same development, it should have negotiated, or attempted to negotiate, a fixed fee with the solicitors.

Sinclair Gardens Investments (Kensington) Ltd v Ray



- If it is concluded that a previous decision of Upper Tribunal is admissible evidence of what it decided then, in absence of guidelines laid down by Upper Tribunal itself, it is a question of what weight is to be attached to the decision by a subsequent tribunal

Sinclair Gardens Investments (Kensington) Ltd v Ray



- Court of Appeal did “not consider that the mere fact that the Upper Tribunal has not taken the formal step of proclaiming that its decision is to be treated as a “guidance case” robs it of value for a subsequent tribunal”.

Roberts v Fernandez



- Upper Tribunal (Lands Chamber)
- Decision dated 23 March 2015
- HHJ Behrens and NJ Rose FRICS

The flat in question



70 Andace Park Gardens
 133-149 Widmore Road
 Bromley
 Kent
 BR1 3DH

- One-bed flat
- 1986 lease

The key lease provisions



- 99 years from 25 March 1986
- £200 pa initial ground rent





The key lease provisions

- Subject to review every 25 years in line with RPI
- Increased to £358.68 in 2011
- Freeholder receives 1% of sale price on each assignment



Valuation date

- 8 April 2013
- Unexpired term = 71.964 years





What did the FTT decide?

- Applied 93.7% relativity
 - Graphs contained in RICS report
- Applied 5.75% deferment rate
 - Additions to Sportelli
 - 0.25% - obsolescence risk v PCL
 - 0.25% - capital values long-term growth v PCL
 - 0.25% - possible management difficulties re.s20

What did the FTT decide?



- Applied 5.5% capitalisation rate
- **Decided £10,052 premium**



Landlord's arguments on appeal



- 85% relativity appropriate
- Addition to f/h value to take a/c of onerous lease terms
 - Marriage value calculation adjusted
- No evidence to justify Sportelli departure
- Capitalisation rate reduction

What did the UT(LC) decide?



- No grounds for interfering with FTT decision on relativity
- No evidence to support adjustments to f/h value and marriage value on account of "onerous" lease terms

What did the UT(LC) decide?



- 0.25% addition to the deferment rate for risk of deterioration/obsolescence - **disapproved**
- Not enough evidence to justify increasing Sportelli rate to reflect differences in long-term capital growth

What did the UT(LC) decide?



- No justification for any adjustment to reflect increased management risk following on from s20 regulations
- Capitalisation rate increased from 5.5% to 7%

What did the UT(LC) decide?



- Appellants/landlords indicated they would accept deferment rate reduction of 0.5% from FTT 5.75% = 5.25%



What did the UT(LC) decide?

- **Valuation of £10,008**
- £44 below FTT figure
- Not appropriate to substitute
- Appeal dismissed though deferment and capitalisation rate decided by FTT were wrong



Sloane Stanley v Mundy

- Upper Tribunal (Lands Chamber)
- Decision dated 10 May 2016
- Morgan J and A Trott Frics
- Three conjoined cases
- Nine day hearing
- 70+ page judgment



The flats in question

- Flat 3,36 Elm Park Road, London SW3 6AX
 - 23 years unexpired
- Flat 11,26-28 Elm Park Road, London SW3 6AX
 - 37.71 years unexpired
- Flat 5,17 Cranley Gardens,London SW7 3BD
 - 41.32 years unexpired



Relativity as the issue

- Marriage value calculation
- Valuing existing lease in relation to f/h value
- Assumption of no 1993 Act rights



Parthenia Model

- Analysing market data from 1987 to 1991
- Hedonic regression
- *Kosta v Carnwath* [2014] UKUT 0319



What did the UT(LC) decide?

- Hedonic regression approved in principle
- Parthenia Model rejected
- Existing graphs criticised
- Gerald Eve graph as "industry standard"

What did the UT(LC) decide?



- If there is a real-world lease sale use that and deduct for Act rights using experience
- Using GE graph as cross-check
- Or use Savills 2002 with rights graph and deduct for Act rights using experience

What did the UT(LC) decide?



- If different figures produced by these methods use lowest figure
- Relativity should have fallen since both GE and Savills 2002 graph

Housing and Planning Act 2016



- Section 136 and Schedule 10
- Valuation of minor and intermediate leasehold interests





Fees introduction

- The Civil Proceedings, First-tier Tribunal and Upper Tribunal, and Employment Tribunal Fees (Amendment) Order 2016
- Intended to be laid before Parliament on 14 and 15 July 2016
- Intention that should come into force on Monday 18 July 2016



Fees introduction

- *"In the short term leasehold enfranchisement cases will be charged a £100 issue fee and a £200 hearing fee"*
- But
- *"We will....develop proposals for a graduated fee structure for leasehold enfranchisement cases for further consultation next year"*
- Government's response to 2015 fees consultation paper



Questions?

The Leasehold Advisory Service
 020 7832 2500
 info@lease-advice.org
 www.lease-advice.org
 Fleetbank House, 2-6 Salisbury Square
 London EC4Y 8JX

Next webinar: 18 July 2016



- Right to Buy - 2016
 - Who is and is not eligible
 - The RTB Forms
 - What to do if the application is turned down
 - What should be in the offer notice
 - What are the discount limits
 - The terms of the RTB lease
 - Voluntary RTB Pilot Schemes
