

Sportelli Goes to the Lords

Is the Vesuvius of the Leasehold Enfranchisement World about to erupt again?

On 21st April 2008, Leave to Appeal to the House of Lords was granted in the Earl of Cadogan v Sportelli case.

Leave to Appeal in the case has been granted in respect of "Hope Value" only.

What is Hope Value?

To understand the concept of "Hope Value", consideration must first be given to another familiar valuation concept: "marriage value".

When a leaseholder is buying the freehold or extending their lease, he has to pay something for the value of the leasehold and freehold interests coming together i.e. the effective merging or "marrying" together of these two interests.

It is presumed the only person who will ever want to bring the freehold and leasehold interests together is the leaseholder. The leaseholder is therefore usually willing to offer a higher price than others may do and "hope value" is that "overbid" i.e. the additional payment a leaseholder would make in order to ensure that they, and no-one else, gets the freehold.

There have been different Lands Tribunal decisions at different stages which have caused amendments to be made to the relevant statutory provisions in this area of law. The Commonhold and Leasehold Reform Act of 2002 also made further amendments – but these amendments have been unclear and it was difficult to come to a firm view as to whether hope value should or should not be included as a

part of leasehold valuations. It was against this background that Sportelli reached the Lands Tribunal and the Court of Appeal.

The Land Tribunal accepted that something called "hope value" could be identified and quite possibly a price could be attached to the value of a tenant buying the property to exclude all others. However, the Lands Tribunal determined that a proper reading of the current relevant legislation meant that you could not take it into account. Hope Value, said the Lands Tribunal, should be excluded for leasehold valuations.

The Court of Appeal agreed with the Lands Tribunal that hope value had to be excluded. Their reasoning was however different.

The Court of Appeal studied in detail the construction of the various statutes. In the end it decided that for lease extensions, the Leasehold Reform Housing and Urban Development Act 1993 makes it clear Landlords are entitled to 50% of the marriage value. Therefore there cannot be an additional hope value on top of that, as that would involve double counting.

The Court of Appeal said that all hope value is, is the possibility of future marriage value hence, where the percentage is fixed, it must be excluded.

For collective enfranchisements, the Court of Appeal found it more difficult to reach a decision due to the issues relating to participating and non-participating tenants. Eventually they decided to take the same approach as for lease extensions and excluded hope value.

The Court of Appeal's reasoning was not particularly convincing – but in the end it came down to the fact that the Court of Appeal thought it made more sense to follow the lease extension model as they were particularly concerned about what would happen in respect of leases for non-participating tenants. They did not see why those who were trying to enfranchise should have to pay for those who were not.

In other words, Landlords get marriage value and nothing more as it considered hope value is double counting and effectively consigned it to the dustbin!

The Landlords in the Sportelli case however did not agree with the Lands Tribunal or Court of Appeal and sought Leave to Appeal to the House of Lords. The application was made in respect of the issue of Hope Value only.

Originally Leave to Appeal to the House of Lords was dismissed, however three different judges to those that originally heard the case disagreed. Leave to Appeal to the House of Lords was granted on 21st April 2008.

It seems this is not the end of this particular battle. The Vesuvius of the Leasehold Valuation World bubbles away under the surface. Will it be ready to erupt soon?

Contact information

Brethertons LLP Yashmin Mistry - Solicitor



Strathmore House, Waterperry Court, Banbury
OX16 4QD

Tel: (01295) 661453

Email: yashminmistry@brethertons.co.uk

