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

Case Reference : **CAM/22UH/OLR/2013/0132**

Property : **22 Cunningham Rise, North Weald,
Essex CM16 6JR**

Applicant : **Wendy Gillian Brown**

Representative : **Foskett Marr Gadsby & Head LLP**

Respondent : **St Jude Investments Limited**

Representative : **None**

Type of Application : **To determine the terms of the new
lease and to determine the
'appropriate sum' to be paid into
court – section 51 Leasehold
Reform, Housing and Urban
Development Act 1993**

Tribunal Members : **Judge John Hewitt
Mr Stephen E Moll FRICS**

Date of Determination : **7 January 2014**

Date of Decision : **15 January 2014**

DECISION

Decisions of the Tribunal

1. The Tribunal determines that:
 - 1.1 the terms of the new lease to be granted to the Applicant are those set out in the draft lease attached to this Decision; and
 - 1.2 the appropriate sum to be paid into court pursuant to section 51(5) of the Leasehold Reform, Housing and Urban Development Act 1993 (the Act) is the sum of £9,500.00.
2. The reasons for our decisions are set out below.

Procedural background

3. On 23 May 2013 the Applicant commenced court proceedings – Claim No. 3CM00506 – in which she sought a vesting order pursuant to section 50 of the Act on the footing that she wished to exercise the right to a new lease and her landlord – the Respondent – was a missing landlord.
4. By order drawn and dated 2 September 2013 District Judge Hodges ordered, amongst other matters, that a vesting order be granted and that the matter of valuation be referred to the Leasehold Valuation Tribunal.
5. By virtue of the Transfer of Tribunal Functions Order 2013 SI 2013 No.1036 the functions of the Leasehold Valuation Tribunal for areas in England were transferred to the First-tier Tribunal (Property Chamber) with effect on 1 July 2013.
6. The application to the Tribunal is dated 29 October 2013. The Tribunal has been provided with copies of:

The claim form filed with the court;
The order dated 2 September 2013;
A draft of the lease contended for by the Applicant;
A witness statement of Katherine Juliet Gadsby; and
An expert valuation report prepared by Mr Peter Gunby MRICS
7. At the request of the Applicant the Tribunal agreed to determine the application on the papers and without an oral hearing pursuant to Rule 31.
8. On 7 January 2014 the Tribunal members had the benefit of an internal and external inspection of the subject property and of external inspections of 28 and 30 Cunningham Rise which Mr Gunby relied upon as comparable properties and transactions assisting him with his valuation.

The statutory basis on of our determinations

9. Section 50 of the Act makes provisions to enable a lessee to exercise the right to a new lease where the landlord is a missing landlord. The

section enables the court to make a vesting order in appropriate circumstances.

10. Section 51 of the Act sets out supplementary provisions relating to vesting orders made under section 50. Section 51 of the Act is reproduced in the Schedule to this Decision. In essence the section requires the Tribunal to determine the terms of the new lease to be granted and to determine the appropriate sum which is to be paid into court. Section 51(5) provides that the appropriate sum is to be the aggregate of three component parts.

Terms of the new lease

11. We were provided with a draft new lease prepared by the Applicant's solicitors. We were satisfied that the draft was compliant with Land Registry requirements and that it was in a form which complied with the several requirements of the Act.
12. We approve the draft lease, a copy of which is attached to this Decision for ease of reference, and we determine that the new lease shall be granted in the terms of the draft and reflecting a premium to be paid of £9,500.00.

The appropriate sum

13. We were provided with an expert valuation report prepared by Mr Peter Gunby MRICS. The report is dated 21 October 2013 and states that Mr Gunby carried out an inspection of the subject property on 18 September 2013.
14. We were satisfied that the report complies with the requirements of Rule 19.
15. We considered that the report was fairly and evenly balanced with some aspects erring in favour of the Respondent.
16. The report struck a chord with the experience and expertise of the members of the Tribunal. We had no difficulty in accepting Mr Gunby's adoption of a deferment yield of 5% based on the decision in *Sportelli*, and his adoption of a capitalisation rate of 7%.
17. We considered that 9 Cunningham Rise was not an overly helpful comparable transaction because it took place as long ago as May 2007. However we do consider that his comparables of 28 and 30 Cunningham Rise are very helpful as they are much more recent and they are of sales of leases with 67 years unexpired of properties which are very similar in size, design and layout, and with similar amenities of garden space and a demised parking space as the subject property, such that no adjustments are required to be made.
18. We note Mr Gunby's evidence as to the graphs of relativity he has relied upon. We find that his approach is well within the tolerance open to an expert valuer. The relativity of 90.5% which he arrives at is also

supported by the transactions concerning 28 and 30 Cunningham Rise and thus we accept his evidence on this point.

19. Mr Gunby's computation is set out on page 12 of his report. The arithmetic is not always quite accurate in every respect but we are satisfied that his valuation which he rounded up to £9,500.00 is a fair and reasonable valuation, which we readily accept.
20. The lease provides for the payment of a service charge and a ground rent. The Respondent landlord is a missing landlord and we were told that no services have been provided by the Respondent and that no demands for ground rent have been made for a number of years.
21. Further by reason of section 166 Commonhold and Leasehold Reform Act 2002 a tenant of a long lease of a dwelling is not liable to make a payment of rent unless the landlord has given him a notice relating to the payment and the date on which he is liable to make the payment. The notice must be compliant with section 166 and be in the prescribed form provided for in the Landlord and Tenant (Notice of Rent) Regulations 2004.
22. We were told that no demands for service charges and rent have been given by the Respondent to the Applicant such that as at the date hereof there are no other amounts or estimated amounts due to the Respondent from the Applicant within the meaning of section 51(5)(c) of the Act.
23. In the circumstances we determine that the appropriate sum to be paid into court is the sum of £9,500.00.

Judge John Hewitt
15 January 2014

The Schedule

Leasehold Reform, Housing and Urban Development Act 1993

51.— Supplementary provisions relating to vesting orders under section 50(1).

- (1) A vesting order under section 50(1) is an order providing for the surrender of the tenant's lease of his flat and for the granting to him of a new lease of it on such terms as may be determined by the appropriate tribunal to be appropriate with a view to the lease being granted to him in like manner (so far as the circumstances permit) as if he had, at the date of his application, given notice under section 42 of his claim to exercise the right to acquire a new lease of his flat.
- (2) If the appropriate tribunal so determines in the case of a vesting order under section 50(1), the order shall have effect in relation to property which is less extensive than that specified in the application on which the order was made.

(3) Where any lease is to be granted to a tenant by virtue of a vesting order under section 50(1), then on his paying into court the appropriate sum there shall be executed by such person as the court may designate a lease which—

- (a) is in a form approved by the appropriate tribunal, and
- (b) contains such provisions as may be so approved for the purpose of giving effect so far as possible to section 56(1) and section 57 (as that section applies in accordance with subsections (7) and (8) below);

and that lease shall be effective to vest in the person to whom it is granted the property expressed to be demised by it, subject to and in accordance with the terms of the lease.

(4) In connection with the determination by the appropriate tribunal of any question as to the property to be demised by any such lease, or as to the rights with or subject to which it is to be demised, it shall be assumed (unless the contrary is shown) that the landlord has no interest in property other than the property to be demised and, for the purpose of excepting them from the lease, any minerals underlying that property.

(5) The appropriate sum to be paid into court in accordance with subsection (3) is the aggregate of—

- (a) such amount as may be determined by the appropriate tribunal to be the premium which is payable under Schedule 13 in respect of the grant of the new lease;
- (b) such other amount or amounts (if any) as may be determined by such a tribunal to be payable by virtue of that Schedule in connection with the grant of that lease; and
- (c) any amounts or estimated amounts determined by such a tribunal as being, at the time of execution of that lease, due to the landlord from the tenant (whether due under or in respect of the tenant's lease of his flat or under or in respect of any agreement collateral thereto).

(6) Where any lease is granted to a person in accordance with this section, the payment into court of the appropriate sum shall be taken to have satisfied any claims against the tenant, his personal representatives or assigns in respect of the premium and any other amounts payable as mentioned in subsection (5)(a) and (b).

(7) Subject to subsection (8), the following provisions, namely—

- (a) sections 57 to 59, and
- (b) section 61 and Schedule 14,

shall, so far as capable of applying to a lease granted in accordance with this section, apply to such a lease as they apply to a lease granted under section 56;

and subsections (6) and (7) of that section shall apply in relation to a lease granted in accordance with this section as they apply in relation to a lease granted under that section.

- (8) In its application to a lease granted in accordance with this section—
- (a) section 57 shall have effect as if—
 - (i) any reference to the relevant date were a reference to the date of the application under section 50(1) in pursuance of which the vesting order under that provision was made, and
 - (ii) in subsection (5) the reference to section 56(3)(a) were a reference to subsection (5)(c) above; and
 - (b) section 58 shall have effect as if—
 - (i) in subsection (3) the second reference to the landlord were a reference to the person designated under subsection (3) above, and
 - (ii) subsections (6)(a) and (7) were omitted.


Foskett Marr
Gadsby & Head
Solicitors

DATED _____

2013

(1) ST JUDE INVESTMENTS LIMITED

-and-

(2) WENDY GILLIAN BROWN

LEASE

**BY WAY OF EXTENSION OF THE EXISTING TERM
OF**

**22 CUNNINGHAM RISE NORTH WEALD
EPPING ESSEX CM16 6JR
AND CAR PARKING SPACE**

Foskett Marr Gadsby & Head LLP
106-108 High Road
Loughton
Essex IG10 4HN
Tel: 01992 578642
Ref: AP/Brown/37285/1

The Prescribed Clauses

<p>LR1. Date of Lease</p>	
<p>LR2. Title number(s)</p>	<p>LR2.1 Landlord's title number(s) EX 398474</p> <p>LR2.2 Other title numbers EX292751</p>
<p>LR3. Parties to this lease <i>Give full names, addresses and company's registered number, if any, of each of the parties. For Scottish companies use a SC prefix and for limited liability partnerships use an OC prefix. For foreign companies give territory in which incorporated.</i></p>	<p>Landlord ST JUDE INVESTMENTS LIMITED</p> <p>Tenant WENDY GILLIAN BROWN of 22 Cunningham Rise North Weald Essex CM16 6JR</p> <p>Other parties None</p>
<p>LR4. Property <i>Insert a full description of the land being leased or Refer to the clause, schedule or paragraph of a schedule in this lease in which the land being leased is more fully described.</i></p> <p><i>Where there is letting of a part of a registered title, a plan must be attached to this lease and any floor levels must be specified.</i></p>	<p>In the case of a conflict between this clause and the remainder of this lease then, for the purposes of registration, this clause shall prevail</p> <p>All those premises know as 22 Cunningham Rise North Weald Epping Essex CM16 6JR and car parking space and as more fully described in the Lease dated 19th December 1983</p>
<p>LR5. Prescribed statements etc. <i>If this lease includes a statement falling within LR5.1, insert under that sub-clause the relevant statement or refer to the clause, schedule or paragraph of a schedule in this lease which contains the statement.</i></p> <p><i>In LR5.2, omit or delete those Acts which do not apply to this lease.</i></p>	<p>LR5.1 Statements prescribed under rules 179 (dispositions in favour of a charity), 180 (dispositions by a charity) or 196 (leases under the Leasehold Reform, Housing and Urban Development Act 1993) of the Land Registration Rules 2003.</p> <p>This Lease is granted under Section 56 of the Leasehold Reform Housing and Urban Development Act 1993</p> <p>LR5.2 This lease is made under, or by reference to, provisions of:</p> <p>Not applicable</p>
<p>LR6. Term for which the Property is leased <i>Include only the appropriate statement (duly completed) from the three options.</i></p> <p><i>NOTE: The information you provide, or refer to, here will be used as part of the particulars to identify the lease under rule 6 of the Land</i></p>	<p>The term is as follows:</p> <p>189 years from 25th December 1981</p>

Registration Rules 2003	
LR7. Premium <i>Specify the total premium, inclusive of VAT where payable.</i>	
LR8. Prohibitions or restrictions on disposing of this lease <i>Include whichever of the two statements is appropriate.</i> <i>Do not set out here the wording of the provision.</i>	This lease does not contain a provision that prohibits or restricts dispositions.
LR9. Rights of acquisition etc. <i>Insert the relevant provisions in the sub-clauses or refer to the clause, schedule or paragraph of a schedule in this lease which contains the provisions</i>	LR9.1 Tenant's contractual rights to renew this lease, to acquire the reversion or another lease of the Property, or to acquire an interest in other land None LR9.2 Tenant's covenant to (or offer to) surrender this lease None LR9.3 Landlord's contractual rights to acquire this lease None
LR10. Restrictive covenants given in this lease by the Landlord in respect of land other than the Property <i>Insert the relevant provisions or refer to the clause, schedule or paragraph of a schedule in this lease which contains the provisions.</i>	None
LR11.1 Easements granted by this lease for the benefit of the Property <i>Refer here only to the clause, schedule or paragraph of a schedule in this lease which sets out the easements.</i>	The Rights and Easements referred to in Clause 6 of this lease incorporating all those Rights and Easements as set out in clause One of the Original Lease dated 19 th December 1983 as referred to in Clause 1.1 of this lease
LR11.2 Easements granted or reserved by this lease over the Property for the benefit of other property <i>Refer here only to the clause, schedule or paragraph of a schedule in this lease which sets out the easements.</i>	The Exceptions and Reservations referred to in Clause 6 of this lease incorporating all those Exceptions and Reservations as set out in Clause One of the Original Lease dated 19 th December 1983 as referred to in Clause 1.1 of this lease
LR12. Estate rentcharge burdening the Property <i>Refer here only to the clause, schedule or paragraph of a</i>	None

<p><i>schedule in this lease which sets out the rentcharge</i></p>	
<p>LR13. Application for standard form of restriction <i>Set out the full text of the standard form of restriction and the title against which it is to be entered, If you wish to apply for more than one standard form of restriction use this clause to apply for each of them, tell us who is applying against which title and set out the full text of the restriction you are applying for.</i></p> <p><i>Standard forms of restriction are set out in Schedule 4 to the Land Registration Rules 2003.</i></p>	<p>None</p>
<p>LR14. Declaration of trust where there is more than one person comprising the Tenant <i>If the Tenant is one person, omit or delete all the alternative statements.</i></p> <p><i>If the Tenant is more than one person, complete this clause by omitting or deleting all inapplicable alternative statements.</i></p>	<p>The Tenant is more than one person. They are to hold the Property on trust for themselves as joint tenants</p> <p>OR</p> <p>The Tenant is more than one person. They are to hold the Property on trust for themselves as tenants in common in equal shares</p> <p>OR</p> <p>The Tenant is more than one person. They are to hold the Property on trust</p>

THIS SURRENDER AND LEASE is made the day of 2013
BETWEEN

(1) ST JUDE INVESTMENTS LIMITED ("the Landlord") and

(2) WENDY GILLIAN BROWN of 22 Cunningham Rise North Weald Epping Essex CM16
6JR ("the Tenant")

NOW THIS DEED WITNESSES as follows:

1. DEFINITIONS

1.1. In this deed:

1.1.1. "the Original Lease" means a lease dated 19th December 1983 and made between Moody Homes Limited (1) Robert Douglas Hallawell and Sandra Anne Noon (2) for a term of 99 years from 25th December 1981 ("the Term")

1.1.2. "the Premises" means the premises described in and demised by the Original Lease and known as 22 Cunningham Rise North Weald Epping Essex CM16 6JR and car parking space (first floor maisonette)

1.1.3. "the New Term" means a term of 189 from 25th December 1981

1.1.4. "the Act" means the Leasehold Reform Housing and Urban Development Act 1993

1.1.5. "the New Rent" means a peppercorn rent and payable in the manner and on the same days as provided in the Original Lease

2. RECITALS

2.1. The unexpired residue of the term created by the Original Lease is now vested in the Tenant

2.2. The reversion immediately expectant on the termination of the Original Lease is now vested in the Landlord

2.3. This is a new Lease for the purposes of Section 1 of the Landlord and Tenant (Covenants) Act 1995

2.4. The Tenant in exercise of the Tenant's rights under Chapter II of Part 1 of the Act has required the Landlord to grant to the Tenant a new lease of the Premises and the Landlord has agreed to do so on the terms set out below

2.5. This Lease is granted pursuant to Section 56 of the Act being a new Lease made in substitution of the Original Lease

2.6. In consideration of the sum of _____ Pounds (£ _____) it has been agreed between the parties to this deed that the Original Lease shall be surrendered and a new Lease of the Premises shall be granted to the Tenant in substitution for it as appears below

3. **RELEASE AND SURRENDER**

In consideration of the demise contained below the Tenant surrenders the Original Lease to the Landlord

4. **FIXTURES**

The Landlord agrees that the Tenant's fixtures in or upon the Premises shall not vest in the Landlord on the execution of this deed and that the Tenant shall have the same rights in them after execution of this deed as if they had been annexed to the Premises after execution of this deed

5. **DEMISE**

In consideration of the sum of _____ Pounds (£ _____) receipt whereof the Landlord hereby acknowledges and in consideration of the surrender of the Original Lease the Landlord with limited title guarantee demises to the Tenant the Premises TO HOLD the Premises to the Tenant for the New Term at the New Rent TOGETHER WITH the rights granted by the Original Lease and EXCEPTING AND RESERVING to the Landlord matters excepted and reserved by the Original Lease YIELDING AND PAYING the rent reserved by this lease

6. **INCORPORATION OF COVENANTS**

This Lease is made upon the same terms and subject to the same covenants conditions and provisions in all respect as those contained in the Original Lease (except as to the rent and term of years granted and modifications herein) and shall be read and construed as if those covenants conditions and

provisions were set forth verbatim in this deed with such modifications only as are necessary to make them applicable to this demise instead of the demise created by the Original Lease and the parties to this Lease

7. MUTUAL COVENANTS

The Landlord and the Tenant covenant with the other to observe and perform the covenants conditions and provisions made applicable to this demise by clause 6 of this deed which are or ought to be observed or performed by each of them

8. SUB-TENANTS

No long lease created immediately or derivatively by way of sub-demise under this lease shall confer on the sub-tenant as against the Landlord a right under Chapter II of Part 1 of the Act to acquire a new lease

9. REDEVELOPMENT

The Landlord may, (a) at any time during the period of 12 months ending on 24th December 2080 and (b) at any time during the period of five years ending on 24th December 2170 apply to the court under section 61 of the Act for an order for possession of the Premises on the ground that for the purposes of redevelopment he intends to demolish or reconstruct, or to carry out substantial works of construction on the whole or substantial part of any building in which the Premises is contained, and that he could not reasonably do so without obtaining possession of the Premises, and the provisions of that section and of Schedule 14 to the Act shall accordingly apply

10. THIRD PARTIES

It is not intended that any term of this lease shall be enforceable by any third party under Section 1 of the Contracts (Rights of Third Parties) Act 1999

11. EXECUTION

This Lease is to be executed for the purposes of Chapter 1 of Part 1 of the Act. It is hereby declared that the same covenants of title shall be implied

herein as if the Landlord was granting this Lease of the Property with
Limited Title Guarantee

IN WITNESS whereof the parties hereto have executed this Deed the day and year
first above written

EXECUTED as a Deed by
the Officer of the Court
nominated to execute this
deed in accordance with the
Order of the Court dated
2nd September 2013
in the presence of

Witness

Name

Address

Occupation

EXECUTED as a Deed by
WENDY GILLIAN BROWN
in the presence of

Witness

Name

Address

Occupation