

There is hope outside marriage

On 10 December 2008 the House of Lords gave judgment in respect of a group of 5 appeals which have become known, collectively, as the Sportelli appeals¹. The issue raised in the appeals was whether, as a matter of law, landlords are entitled to have “hope value” taken into account in the valuation of their interests under the Leasehold Reform Act 1967 (“the 1967 Act”) and the Leasehold Reform, Housing and Urban Development Act 1993 (“the 1993 Act”).

Part of the price to be paid by a tenant to acquire a new lease or the freehold under these Acts, is “marriage value”. In simple terms, this is the additional value that can only be realised by the tenant who, in consequence of his purchase, is able to coalesce (or “marry”) his lease with the landlord’s freehold. The aggregate of the values of each separate interest is less than the value of the single merged interest and that difference is called “marriage value”.

If the tenant is not in the market at the time of the sale, there will be no realisation of marriage value and the price will not include it. However, valuers have long recognised that, even if the tenant is not in the market, there is still the prospect, or hope, of a future sale to the tenant. This prospect of a future realisation of marriage value is called “hope value”.

What their Lordships decided was that:

1. Hope value exists in the real market.

Although it might be characterised as “deferred contingent marriage value”, hope value is not the same as marriage value because

- It is paid by the third party investor and not by the tenant
- It therefore forms part of the landlord’s investment value

2. Where there is an assumption that the tenant is not buying or seeking to buy, that excludes him from the market, not only on the valuation

date, but also at all times thereafter; i.e. he will never be in the market.

3. Hope value is subsumed in marriage value. Where marriage value is payable, hope value is not.

4. Accordingly

- Hope value is not payable in a freehold valuation under section 9(1) of the 1967 Act – the tenant is excluded from the market
- Hope value is not payable in a freehold valuation under section 9(1A) of the 1967 Act – the tenant pays marriage value
- Hope value is not payable in an extended lease valuation under schedule 13 of the 1993 Act – the tenant pays marriage value, and
- Hope value is not payable in a freehold valuation under schedule 6 of the 1993 Act in relation to the participating tenants (who pay marriage value) but is payable in relation to the non-participating tenants (who do not).

Although at first blush this might appear something of a defeat for landlords, the reality is very different. In those cases where it was held that the landlord cannot recover hope value, he will receive marriage value. It is the inability of a landlord to recover “hope value” for non-participating tenants in a collective enfranchisement claim (which was the position determined by the Court of Appeal) which would have led to considerable loss in value for

landlords. It was essential for landlords to overturn this, as otherwise tenants would be under no incentive to enfranchise collectively otherwise than by using the minimum number of participators and thereby avoiding hope value and minimising marriage value. The decision of the House of Lords redresses this unfair and arbitrary consequence.

The overall result of the Sportelli cases has been very beneficial to landlords. As earlier confirmed by the Court of Appeal, deferment rates for enfranchisement claims in Prime Central London have been reduced from 6%+ for houses and flats to 5% for flats and 4.75% for houses. Now, in addition to marriage value for the participating tenants, landlords are able to recover hope value for the non-participating tenants.

What the House of Lords did not decide was how hope value should be quantified. Although the principle of hope value has been won, the practicality of calculation remains open for debate. That will be the next task facing the valuers advising landlords in this field.



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