Differentiating hope and marriage

The distinction between marriage value and hope value has been widely interpreted

RESIDENTIAL VIEW

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The definition of "marriage value" in paragraph 4(2) of schedule 6 to the Leasehold Reform, Housing and Urban Development Act 1993 ("paragraph 4") (the "Act") looks simple enough: marriage value is the value of being able to grant oneself a long lease for no premium. However, the definition has been interpreted widely. In *Maryland Estates Ltd* v *Abbathure Flat Management Ltd* [1999] 1 EGLR 100 it was held that seven factors could be taken into account in valuing the freehold interest for the purpose of determining the marriage value, namely, the ability of the tenants to:

- extend their leases at no premium;
- vary the terms of the leases;
- effectively extinguish the ground rent;
- manage the property themselves and control management charges;
- carry out repairs at their own choosing and control costs;
- eliminate possible disputes with the landlord, and
- grant themselves new rights over the property.

Maryland followed *Sinclair Gardens Investments (Kensington) Ltd* v *Franks* (1997) 76 P&CR 147 and was followed by *Forty-Five Holdings* v *Grosvenor (Mayfair) Estate* [2009] UKUT 234 (LC). In all three cases, the tenants were set to gain a benefit on enfranchisement from the grant of new leases which went beyond the benefit of having a longer term. In *Sinclair Gardens*, new leases would have overcome the difficulty in obtaining a satisfactory system of management and in *Forty-Five Holdings*, new leases would not have contained the existing restrictions on alterations, thereby enabling the tenant to unlock the development potential of the roof space. In all three cases, it was held that the value of this benefit was recoverable as part of the marriage value payable under paragraph 4.

Hope value

In *Money* v *Cadogan Holdings* [2013] UKUT 0211 (LC); [2013] PLSCS 250, on enfranchisement, the tenants were going to obtain the benefit of being able to release a covenant restricting the use of the basement flat to that of a caretaker's flat. It was not open to the freeholder to argue that the value of this benefit should be included as marriage value under paragraph 4, as the lease of the caretaker's flat had more than 80 years unexpired. The tribunal found, however, that the value of the hope of doing a deal with the tenant for the release or modification of covenants was part of the inherent value of the landlord's interest and recoverable under paragraph 3 of schedule 6 to the Act ("paragraph 3").

In *Cravecrest Ltd* v *Trustees of the Will of the Second Duke of Westminster* [2013] EWCA Civ 731; [2013] EGILR 20, it was agreed that the property was worth more as a house than as flats. However, conversion was only possible if both the freehold and intermediate leasehold interests were held by the same person, ie these interests coalesced. As the additional value did not arise from the coalescence of the freehold and underleasehold interests, this was not marriage value under paragraph 4. The Court of Appeal held instead that this "inherent development-hope value" could be recovered under paragraph 3.

In *Padmore* v *Official Custodians for Charities (on behalf of the Trustees of the Barry and Peggy High Foundation)* [2013] UKUT 211 (LC); [2014] PLSCS 18, the tribunal found that the value of the freeholder's interest under paragraph 3 included £150,000, being the value of the hope of being able to do a deal with the tenants in order to develop the property. The freeholder did not dispute that they could have claimed this sum, but sought the larger sum of £194,000 as marriage value under paragraph 4, being the value of the ability to develop the property in the hands of the nominee purchaser.

The distinction

The cases have sought to distinguish hope and marriage value. In *Money*, the tribunal was at pains to say that the additional value was not dependent on the freehold and leasehold interests being merged, as it could have been realised by the variation of the lease to remove the restrictive covenant or by granting a new lease without the restriction. In *Padmore*, the tribunal accepted that the freeholder was entitled to recover the additional value under paragraph 4, as it could have been realised by the grant of new leases which did not restrict alterations. In reality, anyone wanting to convert a building containing two flats into a house would terminate the leases.

Wrongly decided?

Are these cases wrongly decided? When is a value hope value and when is it marriage value? Arguably, none of the cases are wrong and all follow a similar theme. In each case the particular tribunal has:

- acknowledged that the Act is badly drafted;
- had in mind that the purpose of Schedule 6 is to compensate landlords and not to give the tenants a windfall;
- identified a value that the tenants were going to receive; and
- included that value in the purchase price.

That value has been labelled hope or marriage, depending on the circumstances of the case.

The wrong approach?

Is there anything wrong with this approach? Again, arguably not when one considers what marriage value is. Take the example of a pair of Chinese vases. They are together worth more as a pair than the sum of their individual values. The amount by which they are worth more is marriage value. That value can be realised either by sale (to the person with the other vase) or by purchase (of the other vase) and the intrinsic value of each vase will be enhanced because of the hope of being able to do a deal with the other vase owner at some point in the future. These are all different ways of looking at the same value (although hope value is generally and logically less than marriage value arising by sale or purchase).

The above is reflected in schedule 6 of the Act as follows. Paragraph 4 involves valuing the freehold in the hands of the nominee purchaser, ie the holder of both the Chinese vases. Paragraph 3 is valuing the freehold in the hands of the freeholder, ie the holder of one only of the Chinese vases. If the freeholder were to receive compensation for the same value under both paragraph 3 and 4, then this would involve double-counting and be contrary to the Act. However, it does not offend the policy of the Act for the same value to be included either in paragraph 3 or paragraph 4.

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