

Real Estate
Case Law Update
Rosling King LLP



Background

The Upper Tribunal (the “**Tribunal**”) was called upon in three separate applications to determine the validity of using the Parthenia model to assess the value of premiums for lease extensions made under section 48 of the Leasehold Reform Housing and Urban Development Act 1993 (the “**Act**”).

In its lengthy decision, the Tribunal considered numerous relativity graphs and commented on them in considerable detail but was unable to endorse any. However, the most influential of these graphs was the Gerald Eve relativity graph. The Gerald Eve graph was commissioned by the Duke of Westminster and produced by the chartered surveyors Gerald Eve and John D Wood & Co. during the mid-1970s. The Tribunal acknowledged there were shortcomings of the Gerald Eve graph but regarded it as the “industry standard”.

The Tribunal was specifically requested to decide the appropriateness of using the Parthenia model to determine the value of a lease. The Parthenia model attributed a value to the individual component parts of a lease (e.g. the length of the lease) which were then added together to provide a value for the lease as a whole. The Tribunal accepted this model was approved in principle and theoretically sound, but in practice the Parthenia model failed to match market evidence and was impossible to work with. The Tribunal regarded it as a “clock which strikes thirteen.”

The Appeal

Mr Mundy appealed against the Tribunal’s decision. The Court of Appeal (the “**Court**”) explained that whether to accept or reject the Parthenia model was a question of fact rather than of law and in view of the “sustained criticism” of the Parthenia model by the experts, there was “ample evidence” upon which the Tribunal could rely upon to decide against the Parthenia model.

Counsel for Mr Mundy argued the market had been “corrupted” by the “industry standard” Gerald Eve relativity graph. The Court dismissed this allegation against the market as an “overstatement” and explained “if the Gerald Eve graph is used in real market transactions, and has influenced the performance of the market, on what legal justification can it be said that transactions in the real market (albeit influenced by the Gerald Eve graph) can be ignored? The market may not be perfect but it is still the market”.

The Decision

All of Mr Mundy’s grounds of appeal were rejected and the Court confirmed the Parthenia model should not be used in future cases.

Commentary

The decision of the Court demonstrated the Court’s tendency to favour valuation models



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based as close as possible to the market. Whilst the market may not be perfect and may behave irrationally, it was still the market and valuations should be based upon it.

Furthermore, the decision of the Court confirmed the need of a more accurate and reliable method of determining the value of a Lease. Indeed, following the invitation from the Government to the Law Commission to consider the simplification of valuations under the Act, the Court were optimistic the “holy grail will one day be found.”

For further information, please contact [Ann Ebberson](#) or the Partner with whom you usually deal.