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LEASEHOLD VALUATION TRIBUNAL
OF THE
MIDLAND RENT ASSESSMENT PANEL

Ref: BIR/OOCN/OAF/2005/0025

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON AN APPLICATION UNDER SECTION 21(1) OF THE LEASEHOLD REFORM ACT 1967

Applicant:	Mrs. M.L.Barbour (leaseholder)
Respondent:	Modderose Limited (freeholder))
Subject property:	23 Barn Lane Kings Heath Birmingham B13 0SN
Application to the LVT:	21 January 2005
Hearing:	1 April 2005
Appearances:	
For the applicant:	Mr. A. W. Brunt
For the respondents:	No appearance
Members of the LVT:	Mr. A.P. Bell MA LLB Mr. S. Berg FRICS FSVA Mrs. E. Everett
Date of determination:	28 APR 2005 2005

Introduction

1 This is a decision on an application under section 21(1) of the Leasehold Reform Act 1967 ("the 1967 Act"), in respect of premises at 23 Barn Lane Kings Heath Birmingham B13 OSN ("the subject property"), on 21 January 2005 for the determination of the reasonable costs payable under section 9(4) of the 1967 Act.

Hearing

2 The hearing was attended by Mr. A.W. Brunt of Anthony Brunt & Co representing the Applicant. The Respondent did not attend and was not represented.

Representations of the parties

3 Written representations were made from the solicitors of the Respondent by letter dated 31 March 2005, which was only received by the Tribunal on the morning of the hearing in very belated compliance by the Respondent with the directions made on 28 January 2005.

4. Mr. Brunt, representing the Applicant, spoke to his proof of evidence submitted to the Tribunal under a covering letter dated 16 March 2005 by reference to the relevant subsections of section 9 of the 1967 Act.

(a) Section 9 (4) (a) - (investigation of Applicant's right to acquire the freehold)
Mr. Brunt said that he believed, in consequence of what he had been advised by the Applicant's solicitors, that the underlease title of the Applicant was not registered at the H.M.Land Registry. He produced a letter from the solicitors of the Applicant, Hadgkiss Hughes & Beale, dated 16 March 2005 which stated that they could not trace any request to deduce title. Mr. Brunt also made the point that the Respondent's solicitors had not mentioned what work they had done under this subsection, nor had any time sheets been submitted.

(b) Section 9 (4) (b) – (conveyance or assurance of the house and premises)
Mr. Brunt submitted that it was the job of the Applicant's solicitors to prepare the draft conveyance for approval by the Respondent's solicitors, although Butcher Burns in their letter of 31 March 2005 seemed to think that they would be doing this, since they referred to the "time spent in relation to the drafting of the agreement and conveyance itself". He also submitted that the costs could not extend to consideration of the Applicant's claim, nor to consideration of the correct basis of valuation under the1967 Act as suggested by Butcher Burns on page 2 of their letter of 31 March 2005. Mr. Brunt did, however, accept that the Respondent could choose its own solicitors, subject to the costs of those solicitors being reasonable. He said that he understood that the task of the Respondent's solicitors in approving the draft conveyance was not a complex or time consuming one, nor did he believe that this task required to be dealt with by a solicitor of partner status. He referred the Tribunal to four recent decisions of Midland Leasehold Valuation Tribunals where awards of costs under this

subsection had been made varying between £250 and £275. With regard to the two cases referred to by Butcher Burns in their letter of 31 March 2005 Mr. Brunt contended that in both instances the costs awarded related to complex issues under other legislation where higher costs could be justified as reasonable.

(c) Section 9 (4) (c) –(deducing evidencing and verifying the Respondent's legal costs)
Mr. Brunt said that he had been told by the Applicant's solicitors that the freehold title was registered. He was not aware that the Respondent had deduced title to the Applicant's solicitors, nor again were any details given of what had been done or any time records produced in this respect.

(d) Section 9 (4) (e) – (valuation of the house and premises)
Mr. Brunt produced a letter dated 8 December 2004 from Brenda Walker, the daughter of the Applicant, which referred to a visit by Mr.Marc Daniels to her father's property on 5 May 2004 to obtain a valuation and also a letter from Robert Aston & Company (estate agents valuers) stating that to their knowledge no further inspections had taken place since May 2004. Mr. Brunt said that the fact that the invoice of Bells Southfields Ltd for the valuation - which he had only received on the morning of the hearing - was dated 28 February 2005 caused him to have grave doubts as to whether the Applicant was required to pay these. He referred the Tribunal in this connection to his recollection that a Schedule to the Housing Act 1980 amended section 9(4) of the 1967 Act , and that this had been the subject of a court decision in Naiva v Covent Garden Group Limited. He contended that in this instance the valuation costs might have been incurred at too late a date thereby mirroring the situation in the Naïva case where the valuation costs were held to be irrecoverable. Mr. Brunt added that if the Tribunal found that the Applicant was bound to pay the Respondent's valuation costs, it was his submission that a typical fee would be between £200 and £300 if a full inspection was undertaken, with a lower fee being applicable if there was only an external inspection. He considered a claim for valuation costs of £580 was excessive. .

5. In the light of the doubt expressed at the hearing by Mr. Brunt as to the entitlement of the Respondent to the valuation costs, which the Tribunal recognise could not have been raised earlier by Mr. Brunt in consequence of not having received a copy of the invoice before the date of the hearing , the Tribunal decided that the appropriate course of action was to adjourn the hearing to seek clarification from the Respondent's solicitors, first as to the date that the Respondent gave instructions for the valuation of Bells Southfields Limited dated 28 February 2005 to be made, and secondly when this was, in fact, made in the hope that having received clarification of these factual matters the tribunal could make a ruling on the point of law raised by Mr. Brunt without it being necessary for the Tribunal to reconvene the hearing.

Decision of the Tribunal

6. The Tribunal considered carefully the representations of Mr. Brunt both in writing and at the hearing and also the written representations of Butcher Burns received prior to the hearing, and the additional information given in subsequent letter of 13 April 2005. With regard to the decision in Daejan Investments Freehold Limited –v- Parkside 78 Limited [2003] LON/ENF/1005/03 referred to the Tribunal by Butcher Burns in their letter of 31 March 2005 the Tribunal do not find this helpful since, in its view, the

decision of the Tribunal has to be based entirely on what it concludes from its own knowledge and experience is a reasonable figure for the Respondent's costs, having regard in particular to the complexity of the matter and to the evidence submitted by the parties as to the work done and the time so spent. The determination of the Tribunal under the four relevant subsections of section 9 of the1967 Act is as follows:

(a) section 9 (4) (a)

No evidence has been submitted by the Respondent as to what investigation of title has taken place regarding the Applicant's right to the freehold, nor have any time records been produced. The claim by Mr. Brunt that the leasehold title of the Applicant is unregistered has not been disputed by the Respondent. No doubt the Respondent 's solicitors will have sought to verify the applicant's right to acquire the freehold by an index map search and also the Tribunal assumes that they will have required to have sight of a certified copy of the transfer of the leasehold interest in the subject property into the name of the Applicant. No costs can be awarded in respect of the items of work referred to in (i) and (iii) as set out on page 2 of Butcher Burns' letter of 31 March 2005 (under the headings of section 9(4)(a)and 9(4) (c)) as neither subsection covers payment of costs for such items of work. The Tribunal recognises that some investigation of the Applicant's title will have been required to satisfy the Respondent that the Applicant has the right to acquire the freehold, but it is the view of the tribunal that this is not a difficult or time consuming exercise and, in the light of this finding, the Tribunal determines that a reasonable figure for the costs under this subsection is £50 plus VAT.

(b) section 9(4) (b)

The Tribunal accepts that the Respondent is not obliged to seek competitive quotations, nor if it did so to accept the cheapest quotation. Here again, however, the Tribunal are not assisted by the fact that Butcher Burns have not submitted any details of the work involved nor any time records. The Tribunal do regard it as significant that Butcher Burns refer to the Respondent's solicitors drawing the conveyance since clearly this is the task of the Applicant's solicitors. The Tribunal from their own experience believe that the task of the Respondent's solicitors will be to approve the draft conveyance with any amendments, answer standard requisitions on title, arrange for the Respondent to execute the conveyance on receipt of an engrossment from the Applicant's solicitors and then complete. The Tribunal determines that the reasonable costs of the Respondent in this respect are £350 plus VAT, after allowing a relatively modest increase in the legal costs normally awarded to reflect the entitlement of the Respondent to instruct a London firm of solicitors of its choice with higher hourly charging rates than those of Birmingham solicitors dealing with this type of work.

(c) section 9(4) (e)

Valuation costs must, by virtue of section 9(4) of the 1967 Act, be" incurred in pursuance of the notice" by the Applicant, but nevertheless, by virtue of paragraph 5 of Schedule 22 of the Housing Act 1990, "do not include costs incurred by a landlord in connection with a reference to a leasehold valuation tribunal". The Court of Appeal in Naiva –v- Covent Garden Group Limited [1994] EGCS 174 held that by the plainest language paragraph 5 of Schedule 22 of the Housing Act 1990 made clear that the costs incurred by a landlord in connection with a reference to a leasehold tribunal are not recoverable from the tenant. In

short the combined effect of these two statutory provisions is that to be recoverable the valuation costs must be incurred after the date of the tenant's notice but before the date of the landlord's application to the Tribunal. In this case the Applicant's notice was given on 26 September 2004 and the Respondent's application to the Tribunal was made on 21 January 2005 with the result that the window for the Respondent to have arranged a valuation in respect of which reasonable costs could be awarded by the Tribunal was between 26 September 2004 and 21 January 2005. Butcher Burns in their letter to the Tribunal of 13 April 2005 have disclosed that the valuers, Bell Southfields Ltd, were instructed to carry out the valuation on 7 February 2005 and the valuation itself was carried out on 13 February 2005. In the light of this information for the reasons explained above the Tribunal determines that no valuation costs are payable by the Applicant in this case.

7. By way of summary the Tribunal determines, in accordance with section 9(4) of the 1967 Act , that the Respondent is limited to the recovery of legal costs of £50.00 (plus VAT if applicable) under section 9(4)(a) of the 1967 Act and legal costs of £350.00 (plus VAT if applicable) under section 9(4) (b) of the 1967 Act

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A. P. Bell
Chairman
Dated 28 APR 2005 2005