

MIDLAND RENT ASSESSMENT PANEL

Ref:- BIR/00CN/OAF/2009/0026

Leasehold Reform Act 1967**DECISION of LEASEHOLD VALUATION TRIBUNAL
On Application under Section 21 of the Leasehold Reform Act 1967**

Applicant: Mr Manilal Mavji Chitodra
Respondent: Ramon Corporation Limited
Re: 38 Gough Road, Greet, Birmingham B11 2NG
Date of Tenants Notice: 28th January 2009
Application dated: 6th April 2009
Heard at: The Tribunal's Offices in Birmingham
On: 13th July 2009

APPEARANCES:

For the Tenant: Mr. A. Brunt of Anthony Brunt & Co, Valuers
For the Landlord: No attendance
Written Submissions from Rich & Carr Freer Bouskell,
solicitors

MEMBERS OF THE LEASEHOLD VALUATION Tribunal:

Dr A. J. VERDUYN (Chairman)
Mr A.P.J. SHEMITT FRICS

Date of Tribunals decision: 24th July 2009

DETERMINATION

Conveyancing costs of £425, to which Value Added Tax can be added plus reasonable disbursements under Section 9 (4) of the Leasehold Reform Act 1967, shall be payable.

REASONS FOR THE TRIBUNAL'S DECISION

1. On 28th January 2009 Anthony Brunt & Co, valuers, for Mr Manilal Mavji Chitodra (the 'Applicant') served a Notice of Claim (the 'Notice') on Ramon Corporation Limited (the 'Respondent') to acquire the freehold of 38 Gough Road, Greet, Birmingham (the 'Property') under Part 1 of the Leasehold Reform Act 1967 (the '1967 Act').
2. On 6th April 2009 Anthony Brunt & Co submitted an application to the Leasehold Valuation Tribunal for a determination as to the price payable for the freehold of the Property under Section 9 of the 1967 Act.
3. All issues were subsequently agreed between the parties save for the costs payable by the Applicant under Section 9(4) of the 1967 Act, which reads:

“(4) Where a person gives notice of his desire to have the freehold of a house and premises under this Part of this Act, then unless the notice lapses under any provision of this Act excluding his liability, there shall be borne by him (so far as they are incurred in pursuance of the notice) the reasonable costs of or incidental to any of the following matters:—

(a) any investigation by the landlord of that person's right to acquire the freehold;

(b) any conveyance or assurance of the house and premises or any part thereof or of any outstanding estate or interest therein;

(c) deducing, evidencing and verifying the title to the house and premises or any estate or interest therein;

(d) making out and furnishing such abstracts and copies as the person giving the notice may require;

(e) any valuation of the house and premises;

but so that this subsection shall not apply to any costs if on a sale made voluntarily a stipulation that they were to be borne by the purchaser would be void.”

4. A hearing to determine those costs was held on 13th July 2009 with Mr Brunt attending on behalf of the Applicant. The Respondent did not attend, but made submissions through its solicitors, Rich & Carr Freer Bouskell, in a letter dated 10th July 2009.
5. The Respondent’s solicitors wrote that the application was unnecessary, since they were only awaiting the Applicant’s undertaking to pay conveyancing and valuation costs at the time that it was made, after which the valuation could have been undertaken and matters agreed. The Applicant was, it seems, intending to put his advisors in funds in March 2009. They contend that £300 plus VAT for valuation and £500 plus VAT and disbursements for conveyancing were reasonable, but that the application had prompted further work in telephone calls and letters taking total costs to £980 plus VAT. They accordingly seek £600 plus VAT on top of £500 plus VAT and disbursements for conveyancing.
6. Mr Brunt in his report had contended for £325 plus VAT for conveyancing.
7. In submissions, Mr Brunt stated that he believed the Respondent’s valuer had been instructed after the application. The Respondent’s valuer had visited the Property in late May 2009. Mr Brunt argued that the Tribunal ought to draw the conclusion that the valuation was a response to the application and a cost of the application. It would, consequently, be irrecoverable under Section 9(4A) of the 1967 Act, which reads:

“Subsection (4) above does not require a person to bear the costs of another person in connection with an application to the leasehold valuation tribunal.”

8. The Tribunal directed Mr Brunt to a relevant passage from Hague on Leasehold Enfranchisement at 6-39: *“The costs for which the tenant is liable are: (a) the landlord’s valuation costs. Often the landlord’s valuer, as well as providing the landlord with a valuation, conducts the negotiations on the purchase price. The*

negotiating costs of the landlord are not payable by the tenant, and the valuer should accordingly charge a separate valuation fee (which is recoverable) and a separate negotiating fee (which is not)."

9. Mr Brunt contended that the valuation fee ought to be disallowed as related to the application, and in accordance with practice in the Midlands Leasehold Valuation Tribunal, where valuations after application are usually treated as costs of the proceedings. In respect of solicitors' costs, he accepted that freeholders were free to choose their solicitors, but it was for the tenant to draft the transfer and he had had quotations as low as £250 plus VAT, with most in the range £325 to £375 plus VAT. He also pointed to a recent Tribunal decision in which a specialist firm, Blackhams, had sought £600 plus VAT, but been awarded £450 plus VAT.

10. The Tribunal makes the following determinations:

- (i) There is no jurisdiction in the Tribunal to award "wasted costs" or legal costs in the application at all. In the absence of jurisdiction it cannot accede to the Respondent's request for an award reflecting the time spent consequent upon the application. The Tribunal also considers that the Applicant was entitled to make the application in assertion of his legal rights. Insofar as there may have been a refusal by the Respondent to act pending an undertaking in costs, the Respondent was not entitled to such an undertaking before acceding to right of leasehold enfranchisement. The Respondent is protected as to its costs by a lien in any event.
- (ii) In respect of solicitors' costs, the 1967 Act allows for "reasonable costs of and incidental to the conveyance". The Tribunal accepts that the freeholder has a free choice in the selection of conveyancer, and it takes the view that to restrict the Respondent's solicitors to between £325 and £375 plus VAT would be unduly restrictive. Similarly, the Tribunal takes the view that £500 plus VAT significantly exceeds the market rate for the work. In the circumstances, the Tribunal considers that the highest

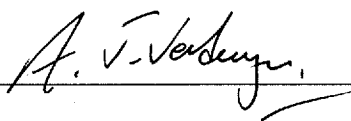
reasonable costs of and incidental to the conveyance in this case is £425 plus VAT and disbursements.

- (iii) In respect of the costs of the surveyor, the letter from the solicitors to the Respondent shows that the valuer engaged in negotiation, and the evidence is also that the inspection was significantly after the application was made. There is no division of his fee between valuation (which is recoverable, so long as not a cost of the proceedings before the Tribunal) and negotiation (which is irrecoverable). In circumstances where the valuation does seem to have been in response to the application, and no breakdown is offered between potentially recoverable and irrecoverable costs, the Respondent has not made out its case for the costs that it has asserted or any costs at all.

DETERMINATION

11. The Tribunal determine that the costs payable by the Applicant under section 9 (4) of the 1967 Act amount in total to £425 plus VAT and disbursements. No costs shall be recovered in respect of valuation.

Signed



Dr. A. J. Verduyn – Chairman Dated **27 JUL 2009**