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BIR/OOCN/OAF/2005/0055

Decision

of the Leasehold Valuation Tribunal
in respect of applications for:

- (i) a determination of the price payable upon enfranchisement under Section 9 of the Leasehold reform act 1967 ('the Act'), and
- (ii) a determination of the freeholder's costs under Section 21(1)ba of the Act

PROPERTY: 8 PICKENHAM ROAD, HOLLYWOOD, BIRMINGHAM B14 4TG

Mrs. D.E. Hale

(Applicant)

and

Cressingham Properties Limited

(Respondent)

DETERMINED:

(1) On the preliminary issue: that the Assent dated 27th September 2004 operated to vest the subject property in the Applicant as personal representative and that accordingly the Applicant's notice dated 9th December 2004 is valid under Section 6A of the Act.

(2) That the price to be payable by the Applicant to the Respondent for the freehold under Section 9 (1) of the Act is £2,275.00.

(3) That the sum of £275.00 plus V.A.T. and reasonable disbursements be allowed in respect of the Respondent's conveyancing costs under Section 9 (4) (b) of the Act, and that the sum of £150.00 be allowed as the valuation fee under Section 9 (4) (e) of the Act and a further £100.00 in respect of the Respondent's other Section 9 (4) costs.

Date of Decision: **1 JUN. 2005**

REASONS FOR THE TRIBUNAL'S DECISION

BACKGROUND

1. On 9th December 2004 the Applicant served a Notice of her claim to acquire the freehold of the subject property upon the Respondent under Part 1 of the Leasehold Reform Act 1967 ('the Act'). The Applicant claimed as personal representative of her late husband, Graham Victor Hale.

2. On 28th January 2005 the Respondent served a Notice in Reply to the Applicant's Notice stating that:

'notwithstanding the terms of the Assent the Applicant is not holding the property as personal representative of the deceased but in her own capacity as owner under the terms of the will and that the Assent vested the leasehold interest in the Applicant's name personally'.

3. Section 6A of the Act provides:

6A Rights of Personal Representatives

(1) Where a tenant of a house dies, and immediately before his death, he had under this part of the Act-

(a) the right to acquire the freehold, or

(b) the right to an extended lease,

the right is exercisable by his personal representatives while the tenancy is vested in them (but subject to subsection (2) below); and, accordingly, in such a case references in this Part of this Act to the tenant shall, in so far as the context permits, be to the personal representatives.

(2) The personal representatives of a tenant may not give notice of their desire to have the freehold or an extended lease by virtue of subsection (1) above later than two years after the grant of probate or letters of administration.

3. The entitlement of the late Graham Victor Hale to enfranchisement arises from a Building Lease dated the 5th June 1957 whereby the plot of land upon which the subject

property was subsequently constructed was demised to Graham Victor Hale for a term of 99 years from the 25th December 1956 at a rent of £12.00 per annum. The Applicant's Notice of the 9th December 2004 contains the particulars required by the Act to establish that Graham Victor Hale had the right to enfranchise under the Act and that the valuation falls to be made under Section 9 (1) of the Act. These particulars are not challenged by the Respondent. Graham Victor Hale died on the 16th October 2003 and Probate of his will was granted to the Applicant on the 17th August 2004 out of the Birmingham District Probate Registry. On the 27th September 2004 the Applicant executed an Assent vesting the subject property in herself 'as Executor and Personal Representative of the late Graham Victor Hale'. The Assent is the Land Registry Form 'AS1' and in Box 10 of that Form marked 'Declaration of Trust' it is stated that 'the Transferees (sic) are to hold the property as Executor and Personal Representative of Graham Victor Hale and subject to the terms of the trusts of his Will dated the 21st August 1998'.

4. On the 16th February 2005 Anthony Brunt & Co. Valuers, on behalf of the Applicant, submitted an application to the Leasehold Valuation Tribunal for a determination as to the price payable for the freehold under Section 9 of the Act and as to the amount of the freeholder's costs under Section 21(1)(ba) of the Act. The letter of application also requested a ruling as to administration costs, but no further details of what these amounted to were provided until the hearing.

WRITTEN SUBMISSIONS

1. In reply to the Respondent's Notice in reply dated the 9th December 2004, the Applicants provided a copy of a letter sent from the Applicant's solicitors, Hadgkiss Hughes and Beale, to the Respondent's solicitors, Grove Tompkins and Bosworth, which is dated the 14th February 2005. In this letter the Applicant's solicitors give their reasons for the execution of the Assent vesting the legal estate in the Applicant. They refer to the provisions of Section 6A of the Act and note particularly that to exercise the right to enfranchise the legal estate in the property must be vested in the Personal Representatives. They refer also to Section 36(1) of the Administration of Estates Act 1925 which (inter alia) states that a Personal Representative may assent to the vesting in any person who may be entitled thereto either beneficially or as a Trustee or Personal Representative of any estate or interest in real estate to which the testator was entitled. They contrast the wording of Section 6A with that in the corresponding Section 3(A) of the Leasehold Reform, Housing and Urban Development Act 1993 which provides that:

' on the death of a person who has for two years before his death been a qualifying tenant of a flat, the right conferred by this chapter is exercisable subject to and in accordance with this chapter by his personal representatives... '.

Because Section 3(A) does not refer to the property being 'vested' in the Personal Representatives, they came to the view that the Assent was required to ensure that the Personal Representatives in this case could take advantage of Section 6(A) of the Act.