

MIDLAND RENT ASSESSMENT PANEL

Leasehold Reform Act 1967 ('the Act')

DECISION OF LEASEHOLD VALUATION TRIBUNAL

ON AN APPLICATION UNDER S21 (1) (ba) OF THE ACT

Applicant: Mr. Adalat Khan
Respondents: Mr. and Mrs. R. Pitt
Re: 24 Glenwood Road, Kings Norton, West Midlands B38 8HF
Application dated: 10th March 2005
Heard at: The Tribunal's Offices in Birmingham
On: 20th July 2005

APPEARANCES:

For the Tenant: Mr Khan of Carvill and Johnson, Solicitors
For the Landlord: Mr A. Khan in person

MEMBERS OF THE LEASEHOLD VALUATION TRIBUNAL

Mr W. J. Martin (Chairman)
Mr I. D. Humphries BSc (Est. Man) F.R.I.C.S.
Mrs. C. Smith

Date of Tribunal's decision: 20th July 2005

DETERMINATION

The sum of £250 plus value added tax and disbursements shall be payable by the Respondents in respect of the Applicant's conveyancing costs and a further £100 in respect of all other Section 9(4) costs under the Act.

REASONS FOR THE TRIBUNAL'S DECISION

Background

1. On a date in April 2003 the Respondents gave notice of their desire to have the freehold of the property, but as this notice was undated, and in an obsolete form under the relevant regulations, a further notice was served in the correct form and dated 8th April 2003.
2. On 2nd February 2004 a Leasehold Valuation determined that both of the notices were invalid following a hearing held on 30th January 2004.
3. On 22nd August 2003 the Respondents served a further notice upon the Applicant under the Act giving notice of his desire to have the freehold of the property. This notice was valid and on 29th September 2004 a Leasehold Valuation Tribunal determined the price for the freehold under section 9 (1) of the Act to be £5,756.
4. On 10th March 2005 the Applicant made the current application under section 21 (1) (ba) of the Act for a determination by a Leasehold Valuation Tribunal of the Applicant's reasonable costs under section 9 (4) of the Act. In support of his application the Applicant enclosed invoices dated 22nd June 2004 in the sum of £1995 and 18th March 2005 for £995.

Written Representations

5. The Tribunal received and considered written representations from the Applicant and Carvill and Johnson (on behalf of the Respondents).

Hearing

6. A hearing took place at the Panel Office, in Birmingham, on 20th July 2005. Mr. Adalat Khan stated that he is a qualified surveyor and produced his degree certificate to establish this. He is self employed and he has calculated the amount of his invoices on a cost of £100 per hour. The first invoice covered the cost of a full hearing, even though the decision was on a point of jurisdiction in his favour. As the first Leasehold valuation tribunal determined that a notice had been back dated he became suspicious about the property. Mr. Adalat Khan said that he inspected the property in May or June 2004 and discovered that the Respondents had made alterations to the property contrary to covenants in the lease. Mr. Adalat Khan then issued a section 146 (Law of Property Act 1925) notice. Following this there have been court proceedings, but he now accepts the price and is willing to convey the property to the Respondents.
7. Mr. Khan of Carvill and Johnson disputed that the Applicant was entitled to any costs. When Mr. Adalat Khan came to the property he did not come in his capacity as a surveyor, but as the owner. The Respondents were not aware that he was a surveyor. No surveyor's report was prepared. Mr. Khan went into the extensive history of bad relations between the

parties, alleging that the Applicant's sole aim has been to delay and prevaricate and to deny the Respondents their conveyance.

Decision

8. Section 9(4) of the Act provides:

'S 9 (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 and 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.

S 9 (4A) Subsection (4) above does not require a person to bear the costs of another person in connection with an application to a leasehold valuation tribunal'.

9. It was clear from the Applicant's submissions and his evidence after questioning by the Tribunal that the great bulk of his claimed costs were in respect of his time engaged in preparing for and attending the two Tribunal hearings. This is clearly not allowable because of Section 9(4A) of the Act.

10. None of the costs of the Applicant relating to the section 146 notice, or any court proceedings relating thereto, are allowable because these are not costs 'incurred in pursuance of the notice'.

11. The Tribunal were not satisfied that the Applicant had prepared a valuation which would be allowable under Section 9(4) (e) of the Act. It has been held that a valuation carried out in connection with an application to a Leasehold Valuation Tribunal is not recoverable: (*Covent Garden Group Ltd. v Naiva (1995) 1 EGLR 243*). Mr. Adalat Khan had told the Tribunal that the written valuations he provided for the two hearings were not prepared until near to the hearings as he did not wish to waste his time until he was certain the hearings were going ahead. The Tribunal find as a fact that the Applicant did not carry out a valuation the cost of which is recoverable under Section 9(4) (e) of the Act in respect of either of the applications to Leasehold Valuation Tribunals.

12. The Tribunal find that the Applicant is entitled to costs in connection with his investigation of the Respondents' right to acquire the freehold in accordance with Section 9(4) (a) of the Act. These costs are allowable even though the work is done 'in house' (*re Cressingham Properties Ltd. 1999 2 EGLR 117*). The Tribunal determine that a reasonable sum is £100.