

**MIDLAND RENT ASSESSMENT PANEL**

Leasehold Reform Act 1967

Housing Act 1980

**DECISION OF LEASEHOLD VALUATION TRIBUNAL  
ON APPLICATIONS UNDER S21 OF THE LEASEHOLD REFORM ACT 1967**

Applicants:           **Keith Maurice Burbage**

Respondent:           **Keith Rose**

Re:                        4 Swainsfield Road, Yoxhall, Burton Upon Trent, DE13 8PT

Date of Tenants Notice:           13<sup>th</sup> June 2008

Application dated:               20<sup>th</sup> August 2008

Heard at:                The Tribunal's Offices in Birmingham

On:                        18<sup>th</sup> November 2008

APPEARANCES:

For the Tenant:                   Mr J Moore

For the Landlord:               None

MEMBERS OF THE LEASEHOLD VALUATION Tribunal:

Mr W J MARTIN       (Chairman)  
Mrs R J HIMSWORTH MRICS

Date of Tribunals decision:       18<sup>th</sup> November 2008

**DETERMINATION**

- (1)   **The Respondent's conveyancing costs under section 9(4) of the Leasehold Reform Act 1967 ('the Act') Act are £600 plus VAT**
- (3)   **The Respondent's valuation costs under section 9(4) are £300 plus VAT**

## REASONS FOR THE TRIBUNAL'S DECISION

### BACKGROUND

- 1 This is a determination of the costs payable by the Applicant to the Respondent under section 9(4) of the Act following agreement by the parties as to the price payable in respect of the freehold of 4 Swainsfield Road Burton Upon Trent, Staffordshire, DE13 8PT ('the Property') under section 9(1) of the Act.

### WRITTEN SUBMISSIONS

- 2 Mr Moore made written submissions regarding the appropriateness of an award in respect of valuation fees, as he was not convinced that any valuation has been conducted 'pursuant to the notice'. However, prior to the hearing he had agreed the valuation fee at £300 plus VAT. As this is an agreed matter the Tribunal do not intend to make a determination in respect thereof, with the exception of the observation made in paragraph 20 below.
- 3 As to the conveyancing costs Mr Moore indicated that he considers that the reasonable cost of conveying the freehold title is £325 plus VAT.
- 4 For the Respondent, Osler Donegan Taylor, solicitors, of Brighton ('Oslers') made extensive written representations by letter dated 12<sup>th</sup> November 2008, received by the Tribunal on 14<sup>th</sup> November 2008. The submissions start by reproducing the relevant parts of section 9 (4) of the Act ( their emphasis added):

*"where a person gives notice of his desire to have the freehold of a house and premises under this part of the 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 [...]
- c) deducing, evidencing and verifying the title to the house and premises or any estate or interest therein
- d) [...]
- e) any valuation of the house and premises

[...]

- 5 As to subsection (a) Oslers submit that the sum of £100 (representing half an hour's work at the partner's charge out rate of £200 per hour) is appropriate, the work entailing a perusal of the Applicant's Notice by reference to Schedule 3 of the Act.
- 6 As to subsection (b) Oslers submit that there should be the sum of £600 allowed in respect of the estimated costs on the transfer of the freehold estate and associated issues. A further 54 minutes in time, amounting to £180 is claimed for the preparation of the Counter Notice and the letter sending it to the Applicant's solicitors. Normally the costs in respect of the Counter Notice would not be charged but in this case, the Respondent found papers in his own file which indicated that the rateable value was not £83 as stated in the Applicant's Notice, but in excess of £200. On this basis the Counter Notice claimed a valuation under section 9(1C) of the Act, which would result in a substantial increase in the amount paid for the freehold. As it turned out the Rateable Value was wrongly stated, but the true figure was £60, as confirmed in writing by the Mr Moore by letter dated 30<sup>th</sup> October 2008. Because of the

potential increase, Oslers state that it is reasonable to claim for the preparation of the Counter Notice as the price is integral to the conveyance and the potential increase was so marked as to be 'incidental' to the conveyance.

- 7 As to subsection (c) Oslers claim a further £280 in respect of the preparation of notices to deduce title (18 minutes) and to pay a deposit (18 minutes), the letter sending the same (6 minutes), perusal of letter from the Applicant's solicitors enclosing leasehold office copies and plan (12 minutes) and a further 30 minutes in respect of the perusal of the lease. Oslers submit that consideration of the leasehold title sits squarely within the costs provisions of subsection (c), but if this is denied then it falls within subsection (a). The Notices are prescribed forms and as such are 'incidental' to the deducement of the tenant's title.
- 8 As to subsection (e) Oslers claim a further £790 in respect of (i) letters to the valuer giving instructions, agreeing the valuation fee, giving contact details to the valuer, (ii) to the Applicant's solicitor concerning the basis for valuation and to the valuer on the same topic, (iii) 24 minutes is claimed in respect of a perusal of the Applicant's valuation and a telephone call to the Respondent explaining it (iv) perusal of the Respondent's valuation report the confirmation of the Rateable Value in the form of an email from Mr Moore, (v) a one and a half hour meeting with the Respondent to explain the effect on the valuation basis of the email and (vi) the valuation fee itself of £150 from T W Boot and Son. Oslers state that the additional costs arising from the discussions regarding the rateable value are claimed because of the original mistake in the Notice of Claim and would not have been claimed if the Notice had been correct.
- 9 As to costs generally Oslers confirm that the fee earner with conduct of the case is a partner whose charge out rate is £200 per hour. All of the fee earners in the enfranchisement department of the firm are partners, save for one trainee. The partner concerned deals with a large number of cases for the Respondent and has done so for many years. The Respondent is in his seventies. It is entirely reasonable that the Respondent should instruct the partner concerned. The case of 1 -10 Hampden Road, London N 10 (LON/ENF/785/02) is cited in which Professor Farrand (in a case brought under the 1993 Act) said:  
*'...the Reversioner was not required to find the cheapest, or even cheaper solicitors but only, in effect to give such instructions as it would ordinarily give if he were to be bearing the costs..'*

#### THE HEARING

- 10 Mr Moore attended the hearing on 18<sup>th</sup> November 2008. Oslers had indicated in their submission that it was not cost effective for them to attend, which the Tribunal readily appreciate. Mr Moore urged the Tribunal to dismiss the representation from Oslers as out of time, as the Directions required submissions at least 14 days before the hearing. Mr Moore (and the Tribunal) received the Directions on 14<sup>th</sup> November, i.e. 4 days before the hearing.
- 11 If the Tribunal are minded to admit the submissions, Mr Moore's comments are as follows.
- 12 There is no justification for any charges in respect of the counter notice. As a widely experienced valuer operating in the Midlands area, Mr Moore finds that the norm as regards costs for the freeholder in section 9 (1) case is between £300 to £400. There are many competent solicitors operating in this field in the West Midlands as just about every house was originally sold on a leasehold basis. The main reason for the escalation of the costs is because of the suggestion by the Respondent that the rateable value was more than £200, which caused the Respondent's solicitors to issue a Counter Notice claiming a valuation under section 9 (1C). Whilst it is true that the rateable value was incorrectly shown in the Notice of Claim, the error did not invalidate the notice, and in any case the rateable value was understated.
- 13 Had the rateable value been near to £200, Mr Moore could have understood the action of the Respondent's solicitors. However, any competent valuer operating in the Burton Upon Trent area would

have known immediately that a semi-detached house such as 4 Swainsfield Road would have a rateable value of less than £200 on the relevant date and would therefore inevitably be valued under section 9 (1). Accordingly, before incurring the additional costs arising from the challenge to the basis for valuation, the Respondent's solicitors ought to have checked with the valuers appointed as to the likely outcome of the challenge.

- 14 The costs claimed in respect of section 9(4)(e) are all in relation to the valuation, which Mr Moore considers are covered by the valuation fee. Mr Moore reported that he had agreed this in the sum of £300, but that when he agreed this figure he was not aware that the sum of £150 was in fact claimed as the remuneration for Boot and Sons. He had at the time received the late submissions from Oslers but had not had time to study them in detail when he agreed the fee. With particular reference to the schedule of costs provided, it was wholly unreasonable for the Purchaser to be expected to pay for a 1.5 hour meeting between Oslers and the freeholder to discuss the effect of the valuation basis.

#### **THE TRIBUNAL'S DETERMINATION**

- 15 The Tribunal agree that it is regrettable that Osler's submissions were not received until four days before that hearing. However, they do not rule them inadmissible.
- 16 The Tribunal agree that it is reasonable for a Freeholder to instruct his usual solicitors, and that he is not obliged to shop around to obtain the cheapest quotation. This is so even if the charge out rates are higher than for local solicitors. The charge out rate of £200 per hour for a partner at Oslers is not regarded as unreasonable.
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- 17 As to section 9(4)(a) costs, the Tribunal accept that a reasonable amount of time for the investigation of the leaseholder's right to enfranchise is half an hour and accordingly determine that the sum of £100 is appropriate under this heading.
- 18 The Tribunal determine that the remaining conveyancing costs, i.e. those referred to in subsections (b) and (c) are £500. The Tribunal have received no evidence to the effect that the transfer of the Respondent's interest is anything other than a straightforward transfer of a registered title. In such a case there are no pre contract matters to consider and it is the Applicant's solicitor who prepares the Transfer. The Tribunal consider this sum, amounting to 2 ½ hours of a Partner's time is reasonable for all of the costs under subsections (b) and (c) including all 'associated issues'.
- 19 In particular the Tribunal dismiss the claim for costs in respect of the counter notice. This is specifically referred to as not to be included in *Hague on Leasehold Enfranchisement 4<sup>th</sup> Edition* at paragraph 6-39. The Tribunal do not consider it reasonable for the Applicant to have to pay the costs of additional work arising from the unfounded suggestion in the Respondent's papers that the Rateable Value on the appropriate day 'may have been higher than £200'. It is of course true that there was an error in the Notice of Claim with regard to the Rateable Value, but this did not invalidate the Notice, and indeed, the error was an overstatement of the Rateable Value. The Tribunal agree with Mr Moore that a competent local valuer experienced in enfranchisement matters would have been very well aware that a house of the type of the subject property would inevitably have a rateable value well below the £200 limit.
- 20 The Tribunal are not prepared to award any of the costs claimed in respect of section 9(4)(e) other than the sum of £300 which has been agreed by Mr Moore. In this regard they consider it somewhat unfortunate that, because of the late submissions by Oslers, he was not aware that the sum claimed in respect of Boot and Son's professional fees was only £150. The Tribunal consider that the 'incidental' costs such as instructing the valuer and communicating the access arrangements are covered by the overall sum of £300 agreed in respect of the section 9(4)(e) costs. The Tribunal dismiss the claim for the

extensive additional costs arising out of the 'discussions' concerning the Rateable Value. They accept that discovering historic Rateable Values does present difficulties in some locations, and that it is in any case for the Applicant to provide the information. However, nothing has been presented to the Tribunal which convinces them that there was any justification for acting on the assertion that because the Respondent (somehow) knew that the sum of £83 was incorrect there was reason to suppose that the correct figure was more than £200.

- 21 In reaching their determination the Tribunal had regard to the evidence and submissions of the parties, the relevant law and their own knowledge and experience as an expert Tribunal, but not any special or secret knowledge.

Signed

  
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(W. J. Martin - Chairman)

Dated

08 DEC 2008