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**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION
UNDER SECTION 91(2)(d) OF THE LEASEHOLD REFORM, HOUSING AND
URBAN DEVELOPMENT ACT 1993**

Case Reference: LON/00AJ/OC9/2012/0065

Premises: 6 Oakfields Court, 425 Uxbridge Road, London W5 3NS

Applicants: Mr Andrzej Drysch and Mrs Diana Drysch

Representative:

Respondent: London Borough of Ealing

Representative:

Date of hearing: 12 September 2012

Appearance for Applicants: Mr Andrzej Drysch

Appearance for Respondent: None

Leasehold Valuation Tribunal: Mr Martin Rodger QC,

Mr N Martindale

Date of decision: 12 September 2012

Decisions of the Tribunal

The Tribunal has no jurisdiction under section 91(2)(d) of the Leasehold Reform, Housing and Urban Development Act 1993 to consider the sum payable by the Applicants to the Respondent in respect of the costs of acquisition of the extended lease of the subject property under section 60(1) of the Act

The Application

1. The Applicants seeks a determination pursuant to s. 91(2)(d) of the Leasehold Reform, Housing and Urban Development Act 1993 ("the 1993 Act") of the sum which they were liable to pay to the Respondent pursuant to s. 60(1) of the 1993 Act in respect of the Respondent's reasonable costs incurred in connection with the grant of a new lease of the subject property which was completed on 24 November 2011.

The Facts

2. The Applicants are lessees of the subject property under a lease granted on 4 August 1997 for a term of 130 years. The Respondent is their lessor. The Applicants acquired their original interest in about January 2011 by assignment.
3. The Applicants predecessors in title served notice on the Respondent of their intention to acquire a new lease of the subject property on 16 November 2010 and, by a counter notice served on 21 February 2011 the Respondent admitted the Applicants entitlement but disputed certain of the terms of acquisition which had been proposed.
4. Terms of acquisition were subsequently agreed and on 24 November 2011 the extended lease was granted. On completion of the acquisition the Respondent requested and the Applicants paid £1,629 towards the Respondent's costs. As explained in a completion statement provided by the Respondent's legal department on 30 September 2011, this sum was the aggregate of £879 in respect of legal fees and £750 valuation fees.
5. In the summary of their case which accompanied the Application the Applicants explained:

"Whilst we queried the level of these fees at the time, in the interests of securing the extension of the lease, we paid the total amount of £1,629 without stating whether or not we accepted the level of fee, together with a premium of £1,900 to extend the term of the lease. As a consequence the extended lease was executed on 24 November 2011."

6. The Applicants subsequently considered that the costs they had paid were too high and challenged the Respondent's entitlement to the full amount, offering instead to accept liability for lower sums.
7. On 20 July 2012 the Application currently before the Tribunal was issued, by which the Applicants seek a determination under s. 91(2)(d) of the 1993 Act as to the sum which they were liable to pay to the Respondent pursuant to s. 60(1) of the 1993 Act.
8. The Respondent challenges the Tribunal's jurisdiction to entertain the Application on the grounds that, by virtue of s. 48(2) of the 1993 Act, the time within which the Applicants were entitled to raise any challenge relating to the terms of acquisition of the subject property was six months from the date of the Respondent's counter notice and had therefore expired on 21 August 2011.
9. On 15 August 2012 the Tribunal directed the determination of a preliminary issue on the issue of its jurisdiction.

The hearing

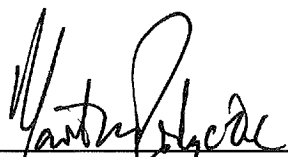
10. The Applicants appeared in person, by Mr Drysch, at the hearing on 12 September 2012. The Respondent chose not to appear and relied on its previous written representations in letters to the Tribunal dated 31 July, 9 August and 29 August 2012.
11. The Tribunal is grateful to Mr Drysch for his courteous and helpful submissions.
12. Mr Drysch confirmed at the hearing that no protest over the level of the Respondent's fees had been made at the time the acquisition was completed and that it was only later that he became aware of decisions of other Tribunals which suggested that lower levels of costs had been allowed

The Tribunal's decision

13. The Tribunal does not consider that there is substance in the grounds of objection to its jurisdiction raised by the Respondent. In the view of the Tribunal the costs to which the Respondent is entitled are not one of the terms of acquisition of the lease under section 48(1). The expression "terms of acquisition" is defined in s. 48(7) without any specific reference to costs payable under s. 60. The matters over which the Tribunal has jurisdiction under s. 91(2) lists separately terms of acquisition under s. 90(2)(a) and the amount of costs payable under s. 90(2)(d). In the Tribunal's view it has a free standing jurisdiction under s. 90(2)(d) to determine any question arising in relation to costs payable under s. 60 which is not subject to the statutory time limits for the making of applications under s. 48(2).

14. Nonetheless the Tribunal considers that it does not have jurisdiction to determine the Application for substantially the reasons advanced by the Respondent in its letter dated 29 August 2012.
15. The Tribunal's jurisdiction is to determine disputes. It is conferred by s. 91(1) of the 1993 Act expressly "*in default of agreement*". Where there has been an agreement in relation to any of the matters in section 91(2) the Tribunal no longer has jurisdiction.
16. In the present case the Respondent informed the Applicants of the sum they sought in respect of the costs of dealing with the grant of the new lease in the completion statement provided on 30 September 2011. The Applicants paid the sum requested without any protest or intimation of an intention subsequently to challenge the sum or any other reservation of their position. In those circumstances the only inference which can be drawn objectively is that the Applicants were agreeing that their liability was for the full amount claimed. At the point of acquisition the sum to which the Respondent was entitled was an agreed sum.
17. The issue of costs having been agreed the Tribunal no longer had any jurisdiction to determine it. Any entitlement on the part of the Applicants to challenge the sum, or on the part of the Respondent to claim a greater sum, had been compromised by the request and its acceptance at the point of completion.

Chairman:


Martin Rodger QC

Date:

12 September 2012