



LEASEHOLD VALUATION TRIBUNAL

On an application to determine the costs payable under section 9(4) of the Leasehold Reform Act 1967 (the Act)

Case number BIR/00CS/OAF/2013/0021

Property 86 Queens Drive, Rowley Regis B65 9JJ

Applicants Mr J and Mrs J Beasley (Leaseholders)

Represented by Mr A Hill solicitor of Jordans solicitors

Respondents Mr D and C Acton (Freeholder)

Represented by Mr D Acton solicitor of David Acton and Co Solicitors

Date of Application 12th March 2013

Tribunal Mr R T Brown
Mr W J Martin
Mr J H Dove

Decision on Preliminary Issue

1. The Tribunal confirms its oral determination that it has exclusive jurisdiction in respect of the application to determine the reasonable costs of the Freeholder under section 9(4) of the Act under the powers given to it under section 21 (1)(ba).

Decision on Substantive Issues

2. The reasonable legal costs of the Respondent (Freeholder) payable by the Applicant (Leaseholder) in respect of the matters set out in section 9(4) of the Act for the work in respect of both Notices is **£594.00 plus VAT** if applicable and disbursements of **£34.70**.

Introduction

3. The Applicants are the lessees of the property described above under a long lease and have served notices of claim on the Respondents for the purchase of the freehold under section 9(1) of the Act.
4. This application relates to the legal costs to be paid by the Applicants pursuant to Section 9(4) of the Act as a consequence of the claim by the

Applicants to acquire the freehold of the subject property. The valuation fee is not in dispute.

5. Directions were issued on 19th March 2013.
6. By way of background, two notices of 'Tenant's Claim to acquire the Freehold or an Extended Leasehold under the Act' were served.
7. It is not in dispute between the parties that the 1st Notice dated 31st May 2012 is invalid and that an amount is payable to the Freeholder in respect of the costs incurred in dealing with the 1st Notice.

A 2nd Notice was served on 17th August 2013. The Respondents say that this Notice is also invalid.

8. The Respondents challenges the jurisdiction of the Tribunal to determine the abortive costs in respect of either Notice.
9. The issues before the Tribunal are as follows:
 - 1) To determine whether or not the Tribunal has jurisdiction to determine the amount of the costs in respect of the 1st Notice.
 - 2) If the Tribunal so determines, to determine the amount of those abortive costs involved in rejecting the notice.
 - 3) To determine, in like manner, whether the Tribunal has jurisdiction to determine the amount of the costs in respect of the 2nd Notice, and if so, to determine the amount of those costs.
10. It is not disputed by the Applicants that the Respondents are entitled to recover their proper costs in respect of both matters.
11. The parties confirmed to the Tribunal that subject to the 2nd Notice being valid the price for the Freehold had been agreed. Both submissions make reference to the valuation; those submissions are not rehearsed in this decision.
12. The Respondents also made an application for costs under paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002. However at the hearing this application was withdrawn. Similarly the evidence submitted in relation to this application has not been rehearsed in this decision.

The Hearing

13. The hearing was held at the Midland Rent Assessment Panel, Priory Court, Bull Street, Birmingham and attended by Mr Hill and Mr Acton.
14. In its deliberations given below the Tribunal considered all the written evidence submitted to it up to the date of the hearing (in accordance with Directions) and the oral evidence given at the hearing.

Preliminary Issue Reasons

The Law

15. Section 21 of The Act

21 Jurisdiction of leasehold valuation tribunals.

(1) The following matters shall, in default of agreement, be determined by a leasehold valuation tribunal namely,—

(a) the price payable.....;

(b) the amount of the rent.....

(ba) the amount of any costs payable under section 9(4) or 14(2);]

(c) the amount.....

20 Jurisdiction and special powers of county court.

(1) Subject to section 115 of the County Courts Act 1959, any jurisdiction expressed to be conferred on the court by this Part of this Act shall, unless the contrary intention appears, be exercised by the county court.

(2) Except as provided by this section and section 21 below, there shall also be brought in the county court any proceedings under this Part of this Act of the following descriptions:—

(a) proceedings for determining whether a person is entitled to acquire the freehold or an extended lease of a house and premises, or to what property his right extends;

(b) proceedings.....

Respondents' submissions

16. Mr Acton says the Tribunal has no jurisdiction to determine the issue of the abortive costs in respect of either Notice because they both stand rejected by the Respondents and the Applicants have made no application to the County Court that either Notice is in fact valid. That being the case the Tribunal has no jurisdiction to determine the amount of those costs.

17. The Respondents have made application to the County Court under Claim number 3BM01114 for the recovery of their costs as debt following the issue of an invoice dated 22nd February 2013 for the sum of £1432.76 including VAT plus Court Fees of £80.00 and solicitors costs of £80.00.

18. The Respondents' position is that the Tribunal's letter of the 28th March 2012 (in relation to another matter (BIR/00CR/OAF/2012/0025) shows conclusively that the Tribunal does not have either the power or the jurisdiction or even a discretion to determine whether or not a person is entitled to acquire the Freehold. This letter should be treated as a statement of law and read in conjunction with section 20 of The Act. The

failure on this fundamental point means that the Tribunal cannot then go on to determine the freehold price and freeholder's costs.

Applicants' Reply

19. The Applicants' position is that the Respondents' claim is under the Act, which gives the Tribunal the power to determine the costs.

The Tribunal's deliberations

20. The relevant paragraph from the letter of the 26th March 2012 is quoted:

'The tribunal's jurisdiction under section 21(1) of the Leasehold Reform Act 1967 is predicated by the existence of a valid notice of claim. Accordingly, if the notice is invalid this will mean that the tribunal lacks the jurisdiction to make the determinations sought.'

21. The Tribunal agrees with the Respondent that it does not have the jurisdiction to determine the validity of the Notice in a manner which would conclusively bind the parties. However, the Tribunal regularly makes determinations as to the validity of notices for the purposes of establishing whether, for its own purposes, it should exercise its jurisdiction. An example of this is the case relating to 28 Abingdon Road (BIR/00CR/OAF/2012/0025) which also involved the Respondents and which is referred to by Mr Acton in his submissions. In the present case the Tribunal wrote to the parties, on 10th April 2013 in the following terms:

'The Procedural Chairman has reviewed the correspondence from the parties, and has pointed out that while the Tribunal cannot determine the validity of a Notice of Claim in a way which will bind the parties [the jurisdiction to determine such matters lies with the Court], it has before it applications for the determination of the price to be paid for the freehold transfer of the subject property and associated costs allegedly recoverable from the claimant lessee.

These are matters which are within the jurisdiction of the Tribunal and on which it will make determinations, following a hearing to be held on Monday 13th May 2013....

If, in the meantime, either of the parties wishes to apply to the Court for a declaration, then they should notify the Tribunal and send to the Tribunal copies of the originating documentation (Claim Form).'

22. With regard to the letter dated 26th March 2012, notwithstanding the fact that this Tribunal concurs with what was said in that letter, the Tribunal does not in any event consider it is bound by a letter sent by a Procedural Chairman in relation to another case. Mr Acton appears to be importing a meaning into that letter to the effect that because the Tribunal does not have jurisdiction to determine the validity of a notice conclusively, neither does it have jurisdiction to determine the costs relating thereto.
23. The Tribunal rejects this argument. The jurisdiction of the Tribunal under section 21 is made clear by the title: **21 Jurisdiction of leasehold valuation tribunals**, in the same way that the jurisdiction of the County Court is identified in the title to section 20: **20 Jurisdiction and special powers of county court**. The jurisdiction of the leasehold valuation tribunal under section 21(ba) is to determine the costs relating to the

service of a notice (whether valid or invalid) which the Freeholder is permitted to recover under, in this case, Section 9(4) of the Act. The jurisdiction of the county court under section 20(2) is limited by the words '*except as provided by this section and section 21 below*'

24. It is clear from the above that the Tribunal has the exclusive jurisdiction to determine the amount of any costs arising from both of the Claim Notices, whether they are valid or invalid, but not, of course, to make an order for the payment of a debt arising therefrom.

Substantive Issues Reasons

The Law

25. Section 9 of The Act

Under section 9(4) of the Act, an enfranchising lessee is responsible for paying the landlord's '*reasonable costs of and incidental to any of the following matters, namely-*

- (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'.
26. If the freeholder is registered for VAT purposes, it will be able to recover the VAT on those fees because those services will have been supplied to the freeholder, not the lessee. Therefore, if this is the case in this instance, no VAT will be payable by the Applicants on either the legal costs or the valuation fee.

Issues

27. The issues to be considered are (2) and (3) identified in paragraph 10 above.

Applicants' Case

28. The Applicants' position is that in respect of the 2nd Notice the total proper legal costs (for the matters referred to in section 9(4) (a) to (d) are in his submission £400.00 which allowing for an above inflation uplift follows the Tribunal's previous decisions.
29. In his oral submissions to the Tribunal in respect of the 1st Notice Mr Hill said that Mr Acton is very experienced in these matters and it should not have taken more than 10 minutes to identify that the 1st Notice was invalid. Further because under that notice the matter will not proceed to completion less work will be involved and accordingly the fee should be no more than £250.00 to £300.00.

Respondents' Case

30. Mr Acton says he prepared and submitted a bill of costs (£1,432.96 including disbursements and VAT) on 2nd February 2013. Mr Acton remains of the view that because the notice is invalid the matter of the costs will be determined by the County Court.
31. As with any other legal matter, the amount of time spent depends entirely upon the circumstances relating to the particular property concerned and cannot, as Mr Hill suggests, be the same in every case. The 'broad brush' approach is therefore inappropriate. Mr Acton's view is in line with the LVT approach that each application should be viewed solely on its merits and facts.
32. The Applicants have based their figure at £400.00 plus VAT but with no explanation as to how they arrived at this figure.
33. Mr Acton says that printed on the bill of costs was a notice to the effect that: 'the recipient could within 28 days from receipt of same, call for the Costs to be Assessed by the Courts'. The Applicants have never challenged or in any way disputed the bill and have failed to take that opportunity so the Bill of Costs must now stand as accepted by the Applicants. A claim for same has been issued in the County Court (No 3BM01114).
34. In respect of the 2nd Notice Mr Acton referred to 28 Abingdon Road (BIR/00CR/OAF/2012/0025) where in a similar situation two notices had been served both of which stood rejected and the Tribunal had determined a sum of £620.00 plus VAT and disbursements of £34.00.
35. As a grade A solicitor the current Outer Birmingham City Centre rate is always £208.00 per hour plus VAT and disbursements.
36. The time spent based on a quick head count is as follows:

Letters in: 15 x £20.80 per item £312.00

Letters out: 18 x 20.80 per item £374.00

Attendances 4 hours at £208 per hour £832.00

A total of £1,518.00 plus VAT and disbursements of £34.78.

The Tribunal's Deliberations

37. The Tribunal considered all the written and oral evidence submitted by the parties in reaching its conclusions.
38. This Tribunal is not bound by decisions of other Leasehold Valuation Tribunals which should not be regarded as forming any sort of precedent. Each case is considered on the evidence.
39. The Tribunal considered first the appropriate hourly rate to be applied to this type of work. Whilst not disputing that Mr Acton has the experience of a Grade A solicitor the Tribunal finds that the work involved in a

section 9 transaction is relatively straightforward and should therefore be allowed at Grade B fee earner's rates. There are no particularly complex issues in relation to this case which would justify the use of a more experienced solicitor. In questioning, Mr Acton, as a matter of expediency, accepted the lower rate.

40. The Tribunal determines that the appropriate rate for a Grade B solicitor whose office is in outer Birmingham is £177.00 per hour.
41. The Tribunal is not convinced that the amount of time required to reject a notice is as Mr Acton's bill of costs suggests. The Tribunal prefers Mr Hill's approach that a solicitor familiar with these matters would take no more than 10 minutes to identify that the notice was invalid, and that the total work should involve a cost of no more than £250.00 - £300.00. This equates to approximately 1 hour 40 minutes which the Tribunal finds to be entirely realistic for the work involved. The Tribunal therefore determines the section 9 (4) legal costs at £250.00 in respect of the 1st Notice.
42. The Tribunal finds that in rejecting the 1st Notice much of the 'ground work' for the subsequent notice has been undertaken. The Tribunal considers that, based on the evidence before it, no more than a further 2 hours is required for completing the matter (assuming it proceeds to completion). The Tribunal therefore determines the section 9 (4) legal costs at £344.00, plus disbursements of £34.78, in respect of the 2nd Notice.


Robert T Brown FRICS
Chairman

Dated..... **- 6 JUN 2013**