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**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : BIR/00CT/OAF/2014/0033

Property : 6a Priory Road, Edgbaston,
Birmingham B5 7RH

Applicants : Ms S M Smith

Represented by Mr. A W Brunt FRICS
of Anthony Brunt and Co

Respondent : WEL(No1) Ltd

Represented by Stevensons Solicitors

Date of Application : 15th July 2014

Type of Application : Section 9(4) Leasehold Reform Act
1967

Tribunal : Mr. R T Brown FRICS
Mr. P J Hawksworth
Mr D Douglas

**Date and venue of
Hearing** : 5th September 2014
Priory Court, Bull Street,
Birmingham

Date of Decision : 14 NOV 2014

DECISION

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1. The Tribunal determines the legal costs of the Freeholder at £594.00 plus VAT (if applicable) plus reasonable disbursements of £3.00 for Land Registry Fee and £1.72 postage and the valuation fee payable at £475.00 plus VAT (if applicable).

REASONS

Introduction

2. The Applicant is the leaseholder of the property described above under a long lease and applied to the Respondent for the purchase of the freehold under section 9(1) of the Act.
3. This Application initially sought determination of the premium to be paid and the legal and valuation fees payable. At the date of the hearing, Mr Brunt confirmed that the premium had been agreed and the only matter outstanding was the legal costs and valuation fees payable
4. Directions were issued on 22nd July 2014.
5. The usual method of assessment of the fees payable by the lessee are those which would be payable by the freeholder *"if the circumstances had been such that he was personally liable for all such costs"*.
6. If the freeholder (the Respondent in this case) is registered for VAT purposes, he will be able to recover the VAT on those fees because those services will have been supplied to the freeholder, not the lessee (Applicant in this case). Therefore, if this is the case in this instance, no VAT will be payable by the Applicant on the valuation fee.

The Law

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

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) 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...

Hearing

8. A hearing was held at the First-tier Tribunal (Property Chamber) (Residential Property), Priory Court, Bull Street, Birmingham and attended by Mr Brunt. The Respondent was neither present nor represented.
9. In view of the nature of the application the Tribunal has set out the Respondent's case first.

Respondent's Case

10. Messrs Stevensons, in their submission to the Tribunal, say that they enclose an invoice from the Valuer (Bureau Property Consultants) in the sum of £525.00 plus VAT.
11. The appropriate rate for a qualified licenced conveyancer with 10 years qualification is £185.00 per hour plus VAT.
12. Only estimates can be given as the matter is not complete.
13. In this case the matter is more complex because:
 - a) It is transfer of part
 - b) Properly drafted easements are required
 - c) Ongoing obligation on the Freeholder to maintain the un-adopted estate roads and amenity areas for which a service charge will be payable by the Applicant.
14. The Tribunal is asked to make a determination to the effect that legal costs under section 9(4) are £869.50 plus VAT, £3.00 for Land Registry and postal fees of £1.72.
15. Estimates of the time and costs are given below (summarised from the detailed schedule provided to the Tribunal):

	Time	Minutes	Cost £
a	Receive and consider Notice	24	74.00
b	Obtain and study Freehold and leasehold title (2 separate)	6	18.50
c	Obtain and study Leasehold	12	37.00
d	Prepare and serve notice in reply etc	18	55.50
e	Prepare and serve request to deduce title/response	18	55.50
f	Brief valuer	18	55.50
g	Receive valuer report and brief client	18	55.50
h	Prepare/issue counter notice	18	55.50
i	Prepare draft transfer and issue	60	185.00
j	estimate agree form of transfer prepare engrossment	60	185.00
K	explain to client and obtain execution	18	55.50
l	Completing	12	37.00
		282	869.50

Applicant's Case

16. Mr Brunt explained that he had negotiated the acquisition of the Freehold and Head leasehold Interests with Mr Evans of Bureau Property Consultants.
17. Mr Brunt relying on 'fixed price' comparisons said in his experience the proper valuer's fee should be £450.00 plus VAT and legal costs of £475.00 plus VAT. At the hearing he revised his estimate of the valuer's fee to £475.00 plus VAT.
18. The legal work is not complex. In recent times the increasing pressure on professional fees has resulted in a fall. In his own business Mr Brunt obtain legal cost quotes for clients on a regular basis giving him a good idea of the level of legal costs.
19. Mr Brunt noted the valuer did not inspect the property personally but that it was inspected on his behalf by a family member who lives locally saving approximately 5-6 hours driving from Cardiff.
20. As to Stevenson's schedule he commented as follows:
 - a) 24 minutes is too long and 12 minutes would be sufficient bearing in mind that the Freeholder owned both interests.
 - b) Agreed
 - c) Agreed
 - d) This would be on a template and 12 minutes would therefore sufficient
 - e) 12 minutes sufficient
 - f) If recoverable 6 minutes sufficient
 - g) Not recoverable
 - h) Not recoverable (see Hague 5th Edition P177 at 6.43)
 - i) Questions 60 minutes but relies on judgement of Tribunal
 - j) Questions 60 minutes but relies on judgement of Tribunal
 - k) Question 18 minutes- what is there to explain this apart from 'please sign here'?
 - l) Relies on the judgement of the Tribunal

The Tribunal's Deliberations

21. The Tribunal considered all the written and oral evidence submitted by the parties in reaching its conclusions.
22. The Tribunal concludes on the evidence before it that the valuer's fee should be £475.00 plus VAT being in line with its own experience and previous decisions for this type of work and on there being no specific evidence to justify a departure from this level of fee.
23. As to legal costs, the Tribunal concluded that some of the specifics times provided by the Respondent were higher than might be considered reasonable. After considering both Stevenson's itemised schedule and Mr Brunt's 'fixed fee' approach (which generally it prefers) the Tribunal

determined the proper legal costs for this type of transaction should be £594.00 plus VAT (based on £185 per hour which is not in dispute) plus reasonable disbursements of £3.00 for Land Registry Fee and £1.72 postage.

Appeal Provisions

24. If either party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

Robert Brown
Chairman

14 NOV 2014