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

**Case Reference** : **BIR/00CT/OAF/2014/0002**

**Property** : **41 Odell Place, Edgbaston,  
Birmingham B5 7RG**

**Applicants** : **Mr S and Mrs C Mackay**  
**Represented by Mr. A W Brunt FRICS  
of Anthony Brunt and Co**

**Respondent** : **WEL(No1) Ltd**  
**Represented by Stevensons Solicitors**

**Date of Application** : **10<sup>th</sup> January 2014**

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

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

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

**Date of Decision** : **14 NOV 2014**

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**DECISION**

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## DECISION

1. The Tribunal determines the legal costs of the Freeholder and Head leaseholder (combined) at £745.00 plus VAT and disbursements (not in dispute) and the valuation fee payable at £475.00 plus VAT.

## REASONS

### Introduction

2. The Applicants are the lessees 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 15<sup>th</sup> January 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; however the Tribunal had the benefit of submissions from its Representative.
9. Neither the Head leaseholder nor his representative attended.
10. The Tribunal wrote to the Head leaseholder on 25<sup>th</sup> September 2014 advising them of the proceedings and asking if they wished to make submissions. No response was received.

### **Applicant's Case**

11. Mr Brunt, on behalf of the Applicants, explained that essentially the parties were in agreement as to the fees i.e.: Legal Costs £745.00 plus VAT and disbursements and Valuer's Fees £475.00 plus VAT.
12. The difficulty that had arisen related to the head leasehold interest.
13. When the Notice of Enfranchisement had been served the head leaseholder had failed to serve any notice to deal directly with the Leaseholder. This he said triggers the duty of the Freeholder to transfer the Freehold and *'to have dealings with and oversee the transfer of the intervening leasehold interest'*.
14. The price negotiated with Mr G Evans of Bureau for the premium to be paid was inclusive of both of the Freehold and Head leasehold interests.
15. Taylor Wimpey appear to be the Head leaseholder's and at completion a Version 1 completion statement was produced by their legal department which included additional items for the Head leaseholder's legal costs (£500.00) and valuation fees (£350.00).
16. Subsequently a Version 2 completion statement was produced without any fees for the Head leaseholder's advisors.
17. Given that the Head leaseholder had taken no part in the matter, Mr Brunt's concern was that his client should not be charged these additional costs and fees.

### **Respondent's Case**

18. Messrs Stevensons, in their submission to the Tribunal, say that *'It appears that the Head leaseholder has sought additional costs.....but WEL (No1) Ltd puts forward no arguments in favour of those figures being awarded by the Tribunal'*.
19. Messrs Stevensons further say that their client is not registered for VAT and accordingly VAT is payable by the Leaseholder.

### **The Tribunal's Deliberations**

20. The Tribunal considered all the written and oral evidence submitted by the parties in reaching its conclusions.
21. The Tribunal concludes on the evidence before it that no fees are payable to the Head leaseholders on account of the evidence that they do not appear to have incurred any costs or fees recoverable under section 9(4) of the Act.
22. The Freeholder's fees are agreed by the parties.

**Appeal Provisions**

23. 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