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

Case Reference : **BIR/OOCN/OAF/2015/0061c**

Property : **98 Cambridge Road, Birmingham B13
9UG**

Applicant : **Merianda Accamma Belliappa**

Representative : **Anthony Brunt and Co Chartered
Surveyors**

Respondent : **Arthritis Research UK**

Representative : **HLW Keeble Hawson LLP**

**Type of
Application** : **Determination of costs under section
21(ba) of the Leasehold Reform Act
1967 for a determination of reasonable
costs payable under section 9(4) of the
1967 Act ("the 1967 Act")**

Tribunal Members : **Robert Brown FRICS (Chairman)
Paul Hawksworth**

**Date and venue of
Hearing** : **On papers submitted**
**Tribunal Hearing Rooms, City Centre
Tower, 5-7 Hill Street, Birmingham B5
4UU**

Date of Decision : **1 April 2016**

DECISION

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DECISION

1. The Tribunal determines that a valuation fee of £475 plus Value Added Tax (VAT) if the latter is applicable is payable.

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 1967 Act. The Notice of Tenant's claim was dated the 21st September 2015. The landlord's Notice in Reply was dated the 6th October 2015. The tenant then, acting through a Surveyor (Mr Brunt) made an application ("the Application") to the FtT on the 8th December 2105 for a determination regarding the proper price payable for the freehold.
3. This Application also sought a determination of the associated legal and valuers' fees. The Tribunal is informed the premium and legal costs (£500.00 plus VAT and minor disbursements) are agreed and the only matter outstanding is the determination of the valuation fee (if any) payable.
4. The Respondent seeks a fee in the sum of £475.00 plus VAT. The Applicant says no fee is payable as the valuer was not instructed until after the application was submitted to the Tribunal and should, therefore, be considered to be *'in connection with a reference to the Tribunal'*.
5. Directions were issued on 30th December 2015. The Tribunal wrote to the parties inviting submissions in respect of Mr Brunt's statement dated 15th February 2016 and Keeble Hawson's letter of 23rd February 2016 by no later than 16.00 on 10th March 2016.
6. 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"*.
7. 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 the freeholder is VAT registered, no VAT will be payable by the Applicant on the valuation fee. If the freeholder is not VAT registered, however, then VAT on fees will be payable by the Applicant.
8. The documents below have been received and considered by the Tribunal,
9. From the **Applicant**: Application, letter and enclosures dated 8th December 2015, Letter and report dated 15th February 2016 and letters dated 23rd February and 4th March 2016. Email dated 9th February 2016.
10. From the **Respondent**: Letters dated 4th January, 23rd February and 16th March 2016.

The Law

11. 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

12. The Parties were agreed the matter could be considered on the papers submitted rather than by way of an oral hearing. In the circumstances the Tribunal saw no reason to direct an oral hearing.

Applicant's Case

13. Mr Brunt in his statement, which accompanied his letter of the 15th February 2016 says that no valuation fee is payable because the Freeholder (Respondent) did not instruct a valuer until after the application to the FtT had been made. He contends, therefore, that the instruction was only in reference to the Tribunal matter and, therefore, the Respondent is not entitled to recover a fee for its surveyor's valuation.
14. In his letter of the 23rd February 2016 Mr Brunt explains that from his point of view the valuer instructed was Rupert David and Co. However, he encloses a copy of an open email from Robert Riley of Rupert David and Co dated 22nd January 2016 confirming that they have been instructed by Arthritis Research UK in the matter and would like to call on the Applicant on either 26th January or 2nd February 2016.
15. In his letter of 4th March 2016 Mr Brunt also refers to another email (not produced) from Mr Riley dated 3rd February 2016 in which he says: *'If I can firstly very quickly say clarify the position from my own perspective in saying that I have only been brought into the case very recently without any previous involvement at all'*

16. Following the Tribunal's further direction Mr Brunt submitted that in their letter of 1st December the Respondent said that the surveyors fee would be £650.00 plus VAT. This is not the same as saying that a valuer had been instructed or that it was Mr Riley.
17. Keeble Hawson say in their letter of the 23rd February that a valuer was instructed well in advance of the date of the application to the FtT. Issued on 8th December 2015. They contend that a valuer was instructed on 19th November 2015. They say that an email was sent to Mr Brunt on 1st December 2015 (seven days before the application) advising that a valuer had been instructed and the amount required for the valuer's fee.
18. Following the Tribunal's further direction Keeble Hawson disclosed a letter of instruction dated 19th November 2015 to a firm of valuers Messrs Berrys and an email (dated 7th December 2015) from the latter in reply which states that: '*Leasehold enfranchisement is a complex area and not out particular area of expertise*'. The letter goes on to recommend speaking "with Bob Riley of Rupert David surveyors..."

The Tribunal's Deliberations

19. The Tribunal considered all the written evidence (summarised above) submitted by the parties in reaching its conclusions.
21. Valuation costs must, by virtue of section 9(4) of the 1967 Act be "incurred in pursuance of the notice" i.e. the Notice of tenant's claim. By virtue of paragraph 5 of Schedule 2 of the Housing Act 1990 such costs "do not include costs incurred by a landlord in connection with a reference to a leasehold valuation tribunal".
22. The Court of Appeal in *Naiva v Covent Garden Group Ltd* (1994) EGCS 174 held that the effect of paragraph 5 above was that the costs incurred by a landlord in connection with a reference to a leasehold valuation tribunal are not recoverable from the tenant.
23. The combined effect of Section 9(4) and paragraph 5 of Schedule 2 of the statutes referred to above is that, to be recoverable, the valuation costs must be incurred after the date of the notice of claim, but before the date of the application to the Tribunal.
24. In this case the period referred to above starts with the notice of claim dated 21st September 2015 and terminates with the date of the application i.e. 8th December 2015. For ease of reference we refer to this period as the Valuation Window. Did, therefore, the Respondent incur valuation costs within that Window? If so, they are recoverable, if not, they are not recoverable.

- 25 It is clear from the correspondence disclosed by Keeble Hawson that a valuer, Messrs Berrys, was instructed by them on the 19th November 2015 which is well within the Valuation Window. The letter of instruction required Berrys to provide valuation advice and negotiate the premium and gave guidance as to how the valuation fee must be reasonable.
- 26 For reasons which are not clear, Messrs Berrys, appear not to have acted on the letter until a telephone conversation took place with Keeble Hawson sometime during the week prior to the 7th December 2015. By email dated the 7th December 2015, Messrs Berrys stated that they did not feel competent to act and advised the engagement of Mr Riley. By the time Mr Riley became involved, however, the Valuation Window had closed.
- 27 The Tribunal consider, however, that the fact that the letter of instruction was written to Messrs Berrys within the Valuation Window is sufficient to indicate that that the Respondent did not seek a valuation or incur valuation costs in connection with a reference to a tribunal. At the time the letter of instruction was written no reference to a tribunal was in existence. If Berrys had responded differently and on receipt of the letter of instruction had produced the requested valuation in the two weeks or so before the Valuation Window expired, then in no circumstances could the valuation costs be said to have been incurred in connection with a reference to a tribunal. The fact that there was, through no apparent fault on the part of the Respondent or defect in the letter of instruction, a significant delay in the obtaining of that valuation, such that by the time it was obtained, the Valuation Window had closed, should not prevent a reasonable valuation fee from being recoverable.
- 28 Thus, as the letter of instruction was issued within the Valuation Window and before the application to the Tribunal was made, any subsequent valuation deriving from that letter, must have been obtained in connection with the tenant's Notice of Claim not in connection with a reference to the Tribunal. A valuation fee is, therefore payable. It would have been an entirely different matter, however, if the letter of instruction to Berrys had been issued after the 8th December 2015 i.e. after the Valuation Window had expired.
- 29 As to the amount of the valuation fee, the Tribunal considers that £475 plus VAT if applicable is reasonable and accordingly orders the Applicant to pay that amount in addition to the agreed premium and legal fees.

Robert Brown

Chairman

- 1 APR 2016

Appeal Provisions

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case which application must:-
 - a. be received by the said office within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
 - b. identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking
2. If the application is not received within the 28-day time limit, it must include a request for an extension of time and the reason for it not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.