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LVT 96/5

**LEASEHOLD VALUATION TRIBUNAL
OF THE
WEST MIDLAND RENT ASSESSMENT PANEL**

Ref: M/LRC 279

DECISION OF LEASEHOLD VALUATION TRIBUNAL

*ON AN APPLICATION UNDER SECTION 21(1) (ba)
OF THE LEASEHOLD REFORM ACT 1967*

Applicant: Mrs J.L. Steele

First Respondent: Speedwell Estates Ltd

Second Respondent: Mrs S.J. Jones

Re: 424 Barrows Lane, Sheldon, Birmingham, B26 1QL

Date of Tenants Notice: 23rd February 2001

Application to Tribunal dated: 06th June 2001

Heard at: The Panel Office

On: Wednesday 05th December 2001

Appearances:

For the Applicant: Mr Graham Ritchie

For the First Respondent: Not Represented

For the Second Respondent: Not Represented

Members of the Leasehold Valuation Tribunal:

Mr T.F. Cooper BSc FRICS FCI Arb (Chairman)
Mr J.H. Dove
Mrs N. Jukes

Date of Tribunals decision:

25 JAN 2002

**DETERMINATION OF THE LEASEHOLD VALUATION TRIBUNAL
ON REASONABLE COSTS – SECTION 9(4) LEASEHOLD REFORM ACT 1967**

Background: By an application dated 6 June 2001, Mrs J L Steele (the '**Applicant**'), as the purchaser of the freehold and headleasehold interests in 424, Barrows Lane, Sheldon, Birmingham B26 1QL (the '**Property**'), applies to us to determine the reasonable costs payable by her to the freeholder, Speedwell Estates Limited (the '**First Respondent**') and to the headleaseholder, Mrs S J Jones (the '**Second Respondent**'), under section 9(4) of the Leasehold Reform Act 1967 (as amended) (the '**Act**')

Section 9(4) of the Act provides as follows:

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) the reasonable costs of or incidental to any of the following matters:

- (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;*

but so that this subsection shall not apply to any costs if on a sale made voluntarily a stipulation that they were to be borne by the purchaser would be void.

Para 5 of Part I of Schedule 22 to the Housing Act 1980 provides that:

The costs which a person may be required [to bear] under section 9(4) . . . of the 1967 Act . . . do not include costs incurred by a landlord in connection with a reference to a leasehold valuation tribunal.

The Applicant tenant served a notice of claim (the '**Notice**') dated 23 February 2001 to acquire the freehold and headleasehold interests in the Property.

The prices payable, and the amounts of the section 9(4)(b) 'conveyancing' costs to be paid, by the Applicant to both the First and Second Respondents have been agreed. We are not requested to determine the Second Respondent's section 9(4) 'legal' costs, only the 'valuation' costs.

The issues outstanding for our determination are the amounts of the First Respondent's section 9(4)(a), (c) and (e) costs and the Second Respondent's section 9(4)(e) costs.

Hearing: A hearing was held on 5 December 2001, at which Mr G R Ritchie of Margetts & Ritchie, solicitors appeared for the Applicant. Mr Ritchie helpfully provided a written proof of his submissions. Mr D W S Fell, the managing director of the First Respondent, made written representations but stated he wished the issues to be dealt by us in the absence of the Respondent. As a copy of Mr Fell's representations could only be made available to the Applicant at the hearing we allowed Mr Ritchie a short adjournment to consider them. Mr Ritchie included, in his proof, a letter from the valuation representative of the Second Respondent, claiming her valuation costs.

Vat: All figures we refer to are exclusive of vat. We have no jurisdiction to determine conclusively vat matters as they are a matter for HM Customs and Excise. Therefore we make our determination exclusive of vat, save that vat shall be added at the appropriate rate if applicable.

The substantive issues between the Applicant and the First Respondent:

(i) **Section 9(4)(a) and (c) costs:** Mr Ritchie, for the Applicant, contends for £40. Mr Fell, for the First Respondent, contends for £110.

(ii) **Section 9(4)(e) costs:** Mr Ritchie contends for £nil, Mr Fell £250.

In-house costs generally; The First Respondent's section 9(4)(a) and (c) costs claimed are said by Mr Fell to be in-house costs in that he carried out the work and that, on the authority of *Re Cressingham Properties Ltd* (LT) (1999) LRA/25/98, (1999) 27 EG 123, in-house costs are recoverable. Mr Ritchie distinguishes *Cressingham* from *Jones v Avon Estates (Birmingham) Limited*, Stratford-on-Avon County Court, heard at Northampton Combined Court 12 January 1996 (unreported), saying that in *Cressingham* the case proceeded in the absence of the tenant Respondent; whereas in *Jones* the Circuit Judge heard a contested case and disallowed costs. Nevertheless, says Mr Ritchie, he concedes that in the subject case we should allow in-house costs. We therefore accept that we should allow in-house costs but find and hold that the amount of in-house costs should represent some reasonable discount from what would otherwise have been paid to an outside contractor.

First issue - section 9(4)(a) and (c) costs: It is common ground that we shall determine costs inclusive of the £25.00 deposit paid.

Mr Fell, in his written representations to us, includes a 'time and costing sheet' as in-house costs, as follows:

1 Receiving and inspecting LRA notice	£25.00
2 Preparing and serving landlord's notice under condition 2 requiring title and statutory declaration	£25.00
3 Receiving and verifying title	£35.00
4 Receiving investigating and verifying statutory declaration	£25.00
Total	£110.00

Mr Fell says that the items claimed and the amounts for them are consistent with *Cressingham*.

Mr Ritchie says: that the items in Mr Fell's time sheet are proper section 9(4) costs but that all the amounts are excessive and a reasonable amount for each item is £20.00, producing a total of £80.00; that, whilst Mr Fell's time sheet does not identify the time engaged for each item, we should take into account the likely time engaged but attribute a 'lump sum' of £20.00 for each item.

However, Mr Ritchie says that, whilst £80 would be appropriate if the circumstances of this case were normal, the conduct of the First Respondent has been unreasonable and $\pounds 20 \times 2 = \pounds 40$ should be deducted from the £80 to produce £40, as the First Respondent's reasonable costs incurred. The two matters in which Mr Ritchie says that the First Respondent has been unreasonable are: (i) due to the unwillingness of Mr Fell to accept recorded delivery post (evidenced by a letter from the Henley in Arden Delivery office of the Royal Mail), which contained the Applicant's Notice, the Applicant had to effect service of the Notice by personal delivery to the First Respondent's Office in Henley in Arden; and (ii) the First Respondent failed to serve a counter notice to the Applicant's Notice within the prescribed two months.

We hold and find that decisions of this Tribunal and the Lands Tribunal on the amount of section 9(4) costs, as issues of fact, are not binding on us, save that they may provide guidance if consistent determinations have been made from which a party may be expected to derive guidance. We find that no immutable amounts have been established and each case is considered on its own merits.

Taking into account our decision in the para. 'in-house costs generally' *ante*, we accept, on the facts of this case, that a lump sum of £20 for each of the four items in Mr Fell's 'time and costing sheet', as contended for by Mr Ritchie, is a reasonable amount for the costs incurred in accordance with this first issue before us. We do not accept Mr Ritchie's contention for a £40 reduction, because (i) the conduct of the First Respondent, in not accepting recorded delivery post, has not resulted in unreasonable costs being incurred by the First Respondent (even if they had, we would have found that the difference is a negligible amount which we would disregard as a trivial amount); and (ii) the Act makes provision for the rights of the Applicant in the event that the First Respondent does not serve a counter notice after two months after the date of the Notice.

Accordingly we find that the section 9(4)(a) and (c) costs are $\pounds 20.00 \times \text{four items} = \pounds 80.00$.

The second issue - section 9(4)(e) costs: Mr Fell says that, on 30 March 2001, he instructed 'the valuer' that a formal valuation was required; that, following a full investigation of title and a Statutory Declaration, 'the Agents' were instructed and a valuation was obtained in the cost of £250, which was paid out; and that, following continuing negotiations, a further valuation was carried out by Bigwood Ltd and terms were agreed, evidenced by a letter to Mr Fell from Bigwood Ltd stating that an agreement on value had been made but with costs not agreed.

Mr Ritchie says that we have no evidence that a valuation was actually carried out and no evidence that a valuation fee was actually incurred. In any event, says Mr Ritchie, any valuation carried out was about one month after the Applicant's application to us for our determination of the Respondents' costs and on the authority of *Naiva v Covent Garden Group Ltd* (1994) EGCS 174 (CA) such costs, after the application to us, are not recoverable from the Applicant.

We hold that it is for the First Respondent to show, by appropriate evidence, that allowable valuation costs have been incurred, tested against the balance of probability. We find that, as submitted by Mr Ritchie, Mr Fell's evidence falls short of establishing his claim that allowable valuation costs were incurred. Without sight of a valuation, any fee invoice for it or evidence of a contract to incur a valuation fee in pursuance of the Notice, the evidential burden on the First Respondent to establish its claim for valuation costs is not established. On the question of whether any valuation was carried out in pursuance of the Notice or in connection with the reference to us we find that, on the evidence before us, it is more likely - recognising the timing of any valuation, one month after the Applicant's application to us - that any valuation costs incurred by the First Respondent were incurred in connection with the reference to us.

Accordingly we find that there are no section 9(4)(e) valuation costs.

The substantive issue between the Applicant and the Second Respondent - section 9(4)(e) valuation costs:

The Applicant tenant and the headleaseholder (as the Second Respondent) have agreed the amount of legal costs, leaving the question of valuation costs to be determined by us.

Mr Ritchie says that no valuation costs have been incurred. The Second Respondent, in written documents lodged with us, says £50 has been incurred.

The claim, by the Second Respondent, for £50 is part of proposed terms for the Applicant to acquire the headleasehold, as an intermediate interest. Mr Ritchie says that this intermediate interest is a 'minor superior tenancy', as defined in the Act; that the value of it is not a question of valuation, it is a prescribed calculation (the '**Calculation**') set out in the Act at para. 7 of the First Schedule; that we have no evidence that the Calculation was checked by the Second Respondent's valuer; and that the Second Respondent's solicitor should have been capable of checking it.

We accept Mr Ritchie's proposition that the Calculation is not 'any valuation' within the meaning of sub section (9)(4)(e) as a valuation, to us, implies an opinion of value. A calculation is not an opinion of value. We acknowledge that valuations include an element of calculation but not all calculations include a valuation.

Summary of our determinations on the issues:

Between the Applicant and the First Respondent:

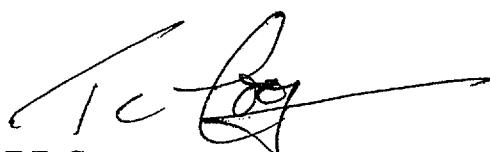
- (i) Section 9(4)(a) and (c) costs: amount to £80.00 plus vat if appropriate.
- (ii) Section 9(4)(e) costs: amount to £nil.

Between the Applicant and the Second Respondent:

Section 9(4)(e) valuation costs: amount to £nil.

Conclusion: As our final determination on section 9(4) of the Act: the Applicant shall bear the First Respondent's section 9(4)(a) and (c) costs in the amount of £80.00 (Eighty pounds) and no sum is payable for section 9(4)(e) valuation costs; no sum is payable by the Applicant for the Second Respondent's section 9(4)(e) valuation costs.

Date: **25 JAN 2002**



T F Cooper
CHAIRMAN