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MIDLAND RENT ASSESSMENT PANEL

Case Nos: BIR/00CN/0C6/2003/0039
(Applicant R King, 5, Hilary Drive)
BIR/00CN/0C6/2003/0037
(Applicant A Wigley, 6, Hilary Drive)

Leasehold Reform Act 1967

Housing Act 1980

**CONSOLIDATED DETERMINATIONS OF THE LEASEHOLD VALUATION TRIBUNAL
ON REASONABLE COSTS - SECTION 9(4) LEASEHOLD REFORM ACT 1967**

Applicant Tenants: Ronald King (no. 5, Hilary Drive)
Anne Wigley (no. 6, Hilary Drive)

Respondent Freeholder: Joyce Beryl Taylor

Properties: Nos. 5 and 6, Hilary Drive, Walmley, Sutton Coldfield, West
Midlands B76 2SW

Date of Tenants' Notices: 3 March 2003

Applications dated: 6 May 2003

Heard at: The Panel Office

On: 1 July 2003

APPEARANCES:

For the Applicant Tenants: Mr G R Ritchie of Margetts and Ritchie Solicitors

For the Respondent Freeholder: Mr P J Taylor FRICS

Members of the Leasehold Valuation Tribunal:

Mr T F Cooper BSc FRICS FCI Arb (Chairman)
Mr D R Salter LLB
Miss B Granger MBE

Date of Tribunal's decision:

15th July 2003

Background: By applications (the '**Applications**') dated 6 May 2003, **Mr G R Ritchie** of Margetts and Ritchie Solicitors of Birmingham, on behalf of Ronald King (no. 5, Hilary Drive) and Anne Wigley (no. 6, Hilary Drive) (the '**Applicants**') as the purchasing tenants of the freehold interests in nos. 5 and 6 (respectively), Hilary Drive, Walmley, Sutton Coldfield, West Midlands B76 2SW (the '**Properties**'), applies to us to determine the reasonable costs payable by the Applicants to the freeholder, Joyce Beryl Taylor (the '**Respondent**') under section 9(4) of the Leasehold Reform Act 1967 (as amended) (the '**Act**'). Mrs Taylor is represented by **Mr P J Taylor** FRICS, Mrs Taylor's husband. Mr Ritchie and Mr Taylor agree that the evidence and submissions, and our determinations, should be consolidated, as all the relevant facts are the same for each of the Properties.

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 Applicants served notices of claim (the '**Notices**') dated 3 March 2003 to acquire the freehold interests in the Properties.

The prices payable by the Applicants to the Respondent have been agreed.

The issues outstanding for our determinations are the amounts of the Respondent's subsection 9(4)(a), (b), (c) and (d) legal costs and the Respondent's subsection 9(4)(e) 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 determinations exclusive of vat, save that vat shall be added at the appropriate rate if applicable.

The parties' contentions: For each of the two Properties: Mr Ritchie says that the ss. 9(4)(a) to (d) legal costs should be £150, Mr Taylor says £300; and that the ss. 9(4)(e) valuation costs should be £125, Mr Taylor says £250.

The main submission: Mr Ritchie says that, because the two properties are opposite each other in the same road, the leases are identical, the price payable has been agreed as the same, the Notices and the Applications are the same, the Respondent is the same and her solicitor is the same for both of the Properties and the two cases have been, and are being, dealt with concurrently, these circumstances have had a significant impact on the amount of work incurred, or to be incurred, as the work for one house is effectively repeated for the second house. Mr Taylor accepts that there is one surveyor (himself) and one solicitor acting for the Respondent in both cases but says that these circumstances do not support Mr Ritchie's contention.

On the issue of ss.9(4)(a) to (d) legal costs: The title to each of the Properties is registered. Mr Ritchie does not accept Mr Taylor's contention that £300 is a standard fee for this type of a single transaction; Mr Ritchie says that £200 is a reasonable fee for a single uncomplicated transaction (which this is in respect of each Property) but, because the two Properties are two concurrent matters, a reasonable fee for each one would be £150. In support of his contention that £200 is reasonable for a single transaction, he refers us to a fee note from a well known firm of Birmingham solicitors at £250 for a not dissimilar transfer but which was significantly more complex than for each of the two Properties. He introduces copies of the draft transfers as evidence that they should be regarded as of the minimalist variety, pointing out that they are not complex and there are no fresh covenants. The fact that the Respondent's solicitor has, in correspondence to Mr Ritchie, treated each case separately is, says Mr Ritchie, not persuasive as correspondence has been effectively duplicated. He says that we should recognise that he obtained the office copy entries, not the Respondent's solicitor, and points out that there is no requirement for contracts for sale; the transactions are straight transfers as the Notices are the contracts.

Mr Taylor says that he has personal knowledge, as direct evidence, that three other solicitors have, in the last 12 months, each charged £300 for not dissimilar transactions.

It is clear that, without evidence of an agreement between the parties in respect of ss. 9(4)(a) to (d) legal costs, we should determine a single amount for each of the Properties as being reasonable to have been incurred and to be incurred in respect of the conveyancing which is still to be undertaken.

We have no direct evidence of legal costs actually incurred or to be incurred in respect of each of the two Properties. We have Mr Ritchie's submission that the going rate is £200 for a single transaction, supported

by evidence of £250 for a more complex transaction and Mr Taylor's evidence of £300 for not dissimilar transactions. Weighing the evidence as a matter of judgment, we find that the legal costs (ss.9(4)(a) to (d)) for a single transaction in the circumstances of the two Properties would be £250. However, in taking account of the wording of ss.9(4), we hold that, in our determination of the 'reasonable costs of or incidental to [the matters in ss.9(4)(a) to (d) so far as they are *incurred* (our emphasis) in pursuance of the Notice]', we should recognise that, in the coincidental circumstances of the two Properties, it would be unjust to ignore the uncontested fact that the circumstances impact on the amount of work 'incurred'. Whilst the total of two Properties, at £250 each, is £500, we find that, reflecting our decision to reflect the work incurred which would include conscious decisions whether or not the transactions were complicated or not and the similarity of the two transactions, the reasonable legal costs incurred/to be incurred for each of the Properties is £200. We accept Mr Ritchie's evidence that he has obtained office copy register entries and, therefore, we should not determine that the Applicant shall bear the Respondent's solicitor's actual (if any) disbursements for the copies.

On the issue of ss.9(4)(e) valuation costs: In cross-examination Mr Taylor says that he carried out two valuations (one for each of the Properties) but they are identical and, when pressed by Mr Ritchie, he accepts that he repeated his first valuation for the second valuation but checked its accuracy. Accordingly, says Mr Ritchie, a reasonable fee incurred for each of the Properties is $\frac{1}{2}$ of a reasonable fee had there been only one property; and, as £250 is a reasonable fee for a single property, the valuation costs for each of the two Properties is £125 [$\text{£}250 \div 2$]. Mr Taylor effectively says that the valuations of each of the two Properties should be treated separately and the reasonable cost for each is £250. He refers us to the former Rydes Scale fees, previously applicable, but now discontinued, for surveyors' fees on compulsory acquisition of interests in property; saying that there is no precedent for reducing the amount of the fee for each property when there are similar properties. As an example, he says that it cannot be right that, if there were ten similar properties, the reasonable fee for each of the ten properties would be one tenth of the fee for a single property. Mr Ritchie says that the example given is not helpful to us because, in the cases before us, there are two Properties, not ten and we should have primary regard to the 'reasonable costs incurred', which, on the evidence of Mr Taylor, is a total of £250.

On the contested application by Mr Taylor to introduce, without prior disclosure, his document detailing his breakdown of recorded time and charges, we ruled the document admissible as Mr Ritchie had a fair opportunity, at the hearing, to consider it and it might assist us, subject to the weight to be attached to it. Mr Taylor says that his breakdown total of £675.56 (including disbursements and mileage totaling £35.56) supports his contention of £250 for each of the two Properties. Mr Ritchie stresses that the valuation(s) prepared by Mr Taylor comprise one document only (a letter to Mr Ritchie), with the heading referring to both of the Properties and a single valuation applicable to both of the Properties.

It is common ground that £250 is a reasonable valuation cost incurred for a single property; so, we take no account of Mr Taylor's breakdown (at £675.56 for both Properties). The question is: as Mr Taylor admits that the two valuations are the same [repeated subject to checking] and provided as one valuation in one document, should the reasonable costs incurred take account of the repetitive work done by Mr Taylor? Mr Taylor says 'No', Mr Ritchie 'Yes'. For the reasons that we have given, in our decision on the reasonable legal costs incurred (centring on the meaning of 'incurred' and coincidental circumstances), we find that we take account of the repetitive work done. However, we do not accept that the reasonable cost for a single property (£250) should be merely divided equally between the two Properties; we find that it cannot be said that, despite their similarities, Mr Taylor would not have considered the possibility of a difference between the two Properties which might affect a valuation of the price payable for each - indeed, he would have a duty to consider the possibility. We find that the additional work reasonably done to consider the possibility is relatively nominal and find it is £30. This results in the reasonable valuation costs incurred for each of the Properties of £140 [$\text{£250 (common ground for a single transaction) plus } \text{£30 (additional work) = } \text{£280} \div 2 \text{ (Properties) = } \text{£140.}$]

Conclusion: As our final determination on s.9(4) of the Act:

- (a) Ronald King (no. 5 Hilary Drive) shall bear the Respondent's s.9(4) costs as follows:
- (i) In so far as such costs are incurred by the Respondent freeholder, a sum not exceeding £200 (Two hundred pounds) plus vat if appropriate, as the Respondent's reasonable costs of or incidental to ss.9(4)(a) to (d) costs incurred and to be incurred.
 - (ii) £140 (One hundred and forty pounds) plus vat if appropriate, as the Respondent's reasonable costs of or incidental to ss.9(4)(e) costs incurred.
- (b) Anne Wigley (no. 6 Hilary Drive) shall bear the Respondent's s.9(4) costs as follows:
- (i) In so far as such costs are incurred by the Respondent freeholder, a sum not exceeding £200 (Two hundred pounds) plus vat if appropriate, as the Respondent's reasonable costs of or incidental to ss.9(4)(a) to (d) costs incurred and to be incurred.
 - (ii) £140 (One hundred and forty pounds) plus vat if appropriate, as the Respondent's reasonable costs of or incidental to ss.9(4)(e) costs incurred.

Date: 15th July 2003

T F Cooper
CHAIRMAN