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BIR/00CN/OC6/2004/0048

**THE LEASEHOLD VALUATION TRIBUNAL FOR THE MIDLAND RENT ASSESSMENT PANEL**

**Leasehold Reform Act 1967, section 21(1)(ba)**

**DETERMINATION OF THE LEASEHOLD VALUATION TRIBUNAL  
ON AN APPLICATION BY THE TENANT TO DETERMINE THE COSTS TO BE  
PAID TO THE INTERMEDIATE LANDLORD**

**Re 72 Richmond Hill Road, Edgbaston, Birmingham, West Midlands B15 3SA**

**Applicant:** Mrs Sandhya Sahnna (tenant)

**Respondents:** The Trustees of the Calthorpe Edgbaston Estate (freeholder)

**Intermediate landlord:** The George Fisher Settlement

**Members of the leasehold valuation tribunal:**

Lady Wilson  
Mr I D Humphries BSc(Est Man) FRICS  
Mrs C L Smith

**Date of the tribunal's decision:** 11 December 2004

## **Background**

1. On 15 October 2004 the tribunal issued a decision determining the price to be paid by the applicant tenant to the holder of two intermediate interests, and gave the parties the opportunity to make written representations as to why any legal or valuation costs are payable to the intermediate landlord by the tenant, and, if costs are payable, the amount of those costs. Representations on the question of costs have been submitted on behalf of the intermediate landlord in the form of a letter from Mr A G Holland of Fishers dated 5 November 2004 and on behalf of the tenant in the form of a letter dated 22 November 2004 from Mr A W Brunt FRICS of Anthony Brunt & Co.
  
2. Mr Holland said that the intermediate landlord was not formally advised of the tenant's application to the tribunal nor of the hearing on 18 May 2004, and that the general principle that costs following an application to the tribunal were not recoverable did not apply. He said that his firm's file on the case included 47 letters in and 25 out. Applying what he said was his firm's normal rate of £15 for each outgoing letter and £10 for the perusal of each incoming letter gave a total of £845 plus VAT. In addition, there was a fee of not less than £300 plus VAT for general supervision. He said that his firm proposed to instruct Messrs Davisons to act in the conveyancing and anticipated that their costs would be £200 plus VAT in respect of each of the two intermediate interests.
  
3. Mr Brunt said that only matters within section 9 of the Leasehold Reform Act 1967 were payable by the tenant, and time spent in negotiation were not recoverable. There was no mention of any valuation being carried out and therefore no recoverable valuation fee. He agreed Messrs Davisons' fee of £200 plus VAT for conveyancing.

## Decision

4. By schedule 1, paragraph 1(1)(a) to the 1967 Act intermediate landlords have all the rights of the person who is “the landlord” (ie, in this case, the freeholder). Thus, by section 9(4), the intermediate landlord is entitled to be paid his reasonable costs, so far as they are incurred in pursuance of the notice of claim, of and incidental to:

- (a) any investigation by the landlord of the tenant’s right to acquire the freehold;
- (b) any conveyance or assurance of the house or of any outstanding estate or interest in it;
- (c) deducing, evidencing or verifying the title to the house or any estate or interest in it;
- (d) making out and furnishing such abstracts and copies as the person giving the notice may require;
- (e) any valuation of the property.

But, by section 9(4A), section 9(4) does not require a person to bear the costs of another person in connection with an application to a leasehold valuation tribunal.

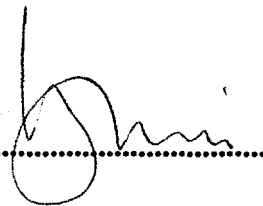
5. The reason why the intermediate landlord was not made respondent to the tenant’s application are fully explained in the tribunal’s decision of 15 October. It is not correct to say, however, that the intermediate landlord was not notified of the hearing. It was notified of the hearing by the directions of the tribunal dated 27 August 2004 and invited to submit representations in writing and at the hearing, as is also explained in the previous decision. It did not appear at the hearing, although it did make representations which were taken into account.

6. It is for the person seeking to recover costs to show what recoverable costs have actually been incurred. No costs prior to the tenant’s claim are recoverable, and only reasonable costs are recoverable. No-one can be required to pay the costs of another person in connection with an

application to a leasehold valuation tribunal, save where, by paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002, they can in limited circumstances, not applicable to the present case, be ordered to pay up to £500. It is not considered that any costs of negotiation can be recovered. It should also be borne in mind that it was the reversioner's duty to act on behalf of the intermediate landlord on all matters arising from the service of the notice of claim, as explained in the previous decision. The intermediate landlord must, however, be a party to the conveyance and must convey its interests to the claimant and is entitled to its reasonable conveyancing costs.

7. With these principles in mind, we have come to the conclusion that the only costs which the intermediate landlord has established that it can recover under section 9(4) are its reasonable conveyancing costs, which we accept as reasonable at £200 plus VAT for each of the two intermediate interests plus reasonable disbursements. We do not accept that the intermediate landlord has established that it is entitled to any other costs. It is not even contended that a valuation fee was incurred, and, indeed, the valuation of the intermediate interests was a matter of simple arithmetic in this case. The investigation of the claimant's right to acquire the freehold was a matter for the freeholder, and the intermediate landlord has not established that it incurred any costs in deducing its titles to the freeholder. There is no reason why the provisions of section 9(4A) should not operate to prevent the intermediate landlord from recovering any costs incurred by it in connection with the application. And, indeed, it would be difficult to say that the intermediate landlord's costs after the date of the application to the tribunal were reasonable because it adopted the wholly incorrect position that, since its interests were not minor superior tenancies within the meaning of the Act, the tribunal had no jurisdiction to value them.

CHAIRMAN.....



4 December 2007