

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

**LEASEHOLD VALUATION TRIBUNAL for the
Eastern Rent Assessment Panel**

Ref: CAM/00KF/OC6/2004/0001

Leasehold Reform 1967 ('the Act')

HEARING: Thursday 13 January 2005

**TRIBUNAL MEMBERS: Mr John Hewitt
Mr Frank James FRICS
Mr Robert Martin**

**PREMISES: 114 Tyrone Road
Thorpe Bay
Southend on Sea, SS1 3HB**

**APPLICANT: David Edward Fuller
Debbie Ann Fuller**
Appearances: None

RESPONDENT: Thorpe Estates Limited
Appearances: None

DECISION OF THE TRIBUNAL

Decision

1. The Tribunal decides that the sums payable by the Applicant to the Respondent upon the transfer of the freehold title to the premises, pursuant to s9(4) of the Act shall be as follows:-

Under s9(4)(a) and (c)	the sum of £301.75
Under s9(4)(b)	the sum of <u>£117.50</u>
Total	£419.25
2. The Tribunal decides that the Applicant is not obliged to make any payment to the Respondent under s9(4)(e) of the Act.
3. The reasons for the decisions and findings of the Tribunal are set out below.

Background

4. The Respondent is the freeholder and the Applicant, the tenant under a long lease of the premises which comprise a house. The lease dated 11 November 1954 granted a term of 953 years from 24 June 1954 at a ground rent of £15.75 per annum.
5. The tenancy created by the lease is subject to the Act.
6. The Applicant exercised the right to acquire the freehold interest in the premises and a previous tribunal determined the terms of certain restrictive covenants to be included in the transfer which the parties were unable to agree upon.
7. The Tribunal was told that the parties were now agreed upon the terms of the transfer but could not agree the quantum of costs payable by the Applicant to the Respondent pursuant to s9(4) of the Act.
8. On 19 October 2004 the Tribunal received an application from the Applicant made pursuant to s21(1)(ba) of the Act, seeking a determination of the quantum of costs to be paid.
9. On 29 October 2004 the Tribunal gave directions for the disposal of the issues between the parties. In particular paragraphs 5 and 6 of the directions provided as follows:
 - ‘5. The Respondent shall by **4pm Friday 19 November 2004** serve on the Applicant a statement of case setting out full details of the fees and expenses claimed pursuant to s9(4) of the Act, including details of the fee earner(s) whose time is claimed.
The Respondent shall attach to the statement of case copies of all documents to be relied upon in support of the case.
 6. The Applicant shall by **4pm Friday 3 December 2004** serve on the Respondent a statement of case in reply setting out details of the costs and expenses claimed to which objection is taken and setting out what sum or sums, if any, the Applicant will accept in lieu of those claimed. The Applicant shall attach to it copies of all documents to be relied upon by the Applicant in support of its case.’
10. Both parties agreed in writing that the Tribunal should determine the application without an oral hearing, pursuant to regulation 13 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003.

The Issues

11. In response to paragraph 5 of the directions, the Respondent submitted a one and a half page letter dated 18 November 2004 in which it claimed a total of £750 plus VAT made up as to three sums
 - £250 Pier Management
 - £250 Tolhurst Fisher (solicitors)
 - £250 Tolhurst Fisher
 No supporting documents or invoices were attached to the letter. The letter suggests that Pier Management acted as agent for the Respondent, handled the administration of the notice of claim on behalf of the Respondent, gave instructions to Tolhurst Fisher on behalf of the Respondent and dealt with all queries arising in connection with the claim to the freehold.

The letter goes on to say that Tolhurst Fisher was instructed to ‘*investigate the tenant’s entitlement to serve the notice and subsequently billed the Respondent*’

£250 plus VAT for their work up to and including the service of a notice in reply. A copy of that invoice is attached.' (In fact it was not attached).

The letter also states that Pier Management 'then looked at the value of the freehold, worked out what would be a reasonable sum and liaised with both the landlord and Tolhurst Fisher in respect of the valuation.'

Despite the directions the Respondent did not provide a copy of any valuation carried out, details of the work involved in preparing any valuation or a copy of any invoice issued by the valuer to the Respondent in respect thereof.

The letter goes on to say that once the disputed covenants were determined by a tribunal the papers went back to Tolhurst Fisher for the transfer to be completed. Evidently Tolhurst Fisher said their fees for the transfer will be £250 plus VAT. No detail as to how that figure of £250 has been arrived at has been given. No invoice has yet been raised. Apparently it will be raised on completion 'as that will be deducted upon completion.' Deducted from what is not stated.

12. In response to paragraph 6 of the directions the Applicant submitted a letter dated 2 December 2004 attached to which was copy correspondence passing between the Applicant's solicitor, Beecham Fisher Ridley, and Tolhurst Fisher seeking clarification of and detail of the costs claimed by the Respondent. It seems it was unfortunate that different fee earners within Tolhurst Fisher handled this correspondence. Some errors and confusion clearly arose and this undoubtedly fuelled concerns by the Applicant that there was some double counting.

13. From the correspondence put in by the Applicant, the Tribunal found the following to be most helpful:
Invoice dated 27 February 2004 issued by Tolhurst Fisher to the Respondent
'To our professional charges in connection with acting on your behalf upon receipt of initial notice served by the leaseholders of the above property, to include all investigation into title to verify right to freehold enfranchisement, and preparation and service of counter notice

To include all care and conduct	£250.00
VAT thereon at 17 1/2%	43.45

Disbursements: Land Registry Fees	8.00
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Total	£301.75'
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Letter dated 27 July 2004 sent by Tolhurst Fisher to Beecham Fisher Ridley
'Having finally perused the file we note that the full extent of our costs have not been raised and we would therefore confirm our costs as follows

1. In respect of Sections 9(4)(a) and (c) of ...[the Act]... our costs are £250 plus VAT this being broken down as follows into 6 minute units:-

Perusing Initial Notice, Lease & Office Copy Entries	08 units
Drafting Counter Notice to include Schedule	06 units
Requesting Office Copy Entries	01 unit
Attending Landlord	04 units
Serving Notice on Tenants	01 unit

Total time 20 units = 2 hours at £130 per hour

Value of time £260.00, but say £250.00 plus VAT.

2. *In respect of Section 9(4)(b) of the Act our costs are £250.00 plus VAT, in accordance with Law Society guidelines which you already have agreed.*

3. *In respect of Section 9(4)(e) of the Act, Pier Management's fees are £250.00 plus VAT.'*

No breakdown of the figure of £250 for the preparing the transfer is given. There is included in the documents a draft transfer in form TP1. It is the view of the Tribunal relying on its experience and expertise in these matters that preparation, checking of the draft transfer provided ought not take a reasonably competent conveyancer any more than 24 minutes. A further 18 minutes would be justified to cover sending the draft to the other side, obtaining execution of the engrossment and holding it ready for completion.

The Applicant objects to the fees claimed by Pier Management on the basis that it is a company connected to the Respondent and what is claimed is in effect an administration fee. The Applicant asserts that no valuation was in fact carried out and that the Respondent accepted their offer of a sum 10 times the ground rent, albeit that it originally sought £3000. The Applicant also asserts that no visit was made to the premises for the purpose of valuation.

The Law

14. As far as is material to this application s9(4) and (5) of the Act provide as follows:-

'(4) Where a person gives noticeunder this Part of this Act...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) ...

(e) any valuation of the house and premises;

but so that...'

(5) The landlord's lien (as vendor) of the house and premises for the price shall extend:-

(a) ...

(b) to any sums for which the tenant is liable under subsection (4) above;'

15. Paragraph 6-39 of Hague on Leasehold Enfranchisement: 4th Edition (2003) emphasises that the costs must be incurred in pursuance of the notice, but may include not only sums expended but foregoing an advantage that the landlord might otherwise have had. Also allowed are reasonable internal costs borne by a landlord which carries out tasks in-house. See *Re: Cressingham Properties Limited* [1999] 2 EGLR 117. Costs of tribunal proceedings are not allowed,

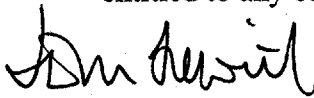
see s9(4A) of the Act. Valuation costs in tribunal proceedings are not recoverable, see *Covent Garden Group Limited v Naiva* [1995] 1 EGLR 243.

Findings

16. The Tribunal was hampered in its assessment of the costs to which the Respondent is entitled because the Respondent did not comply with paragraph 5 of the directions and did not supply any documents or detailed information to justify the sums it sought.
17. However the Applicant has put into evidence correspondence passing between the respective solicitors and this helpfully includes some letters from the Respondent's solicitors which does provide some information and detail and this is helpful to the Tribunal.
18. The Tribunal finds that the Respondent's costs under s9(4)(a) and (c) are set out in the invoice dated 27 February 2004 referred to in paragraph 13 above. The Tribunal finds that a detailed breakdown of those costs was set out in the letter dated 27 July 2004 also referred to in that paragraph. The Tribunal finds that the costs were incurred and are reasonable in amount. In the light of the experience and expertise of the members of the Tribunal in this area the amount of work claimed to have been carried out is in the bracket that it to be expected by a reasonably competent practitioner. The hourly rate of £130 is again within a reasonable bracket for such a practitioner in Southend in early 2004.
19. The Respondent has not given any breakdown to justify the proposed charge of £250 plus VAT under s9(4)(b). Plainly the transfer has been prepared and approved. The Respondent will have incurred a liability to its solicitors in respect of it. The Respondent will be entitled to require payment of the sum which the Tribunal determines on completion and it entitled to the usual unpaid vendors lien for the purchase price and this extends to cover all costs payable by the tenant, see s9(5) of the Act.
In the absence of any detail from the Respondent to support its claim to £250 plus VAT the Tribunal applies its experience in these matters. An hourly rate of £130 is considered to be within the range of reasonableness. The Tribunal cannot see how a claim to nigh on two hours can possibly be justified. The Tribunal has seen the draft transfer. As noted in paragraph 13 above the Tribunal considers that no more than approximately 42 minutes could reasonably be justified on the work covered by s9(4)(b) of the Act. Accordingly the Tribunal finds that £100 plus VAT is reasonable for this item. Hence an award of £117.50 is made.
20. The Respondent also claims £250 plus VAT under s9(4)(e). This subsection is the reasonable costs of a valuation. This is sum is claimed to cover the work of Pier Management. The assertions made by the Respondent to justify the fee of Pier Management go much farther than simply providing a valuation. It is said that Pier Management acted as the Respondent's agent. No evidence to support this was given. The Tribunal has no evidence as to whether the Respondent and Pier Management are connected in any way. Work done in-house or by a connected company is lawfully recoverable, sees *Cressingham*, but has to be explained and justified. The Respondent has failed to explain and justify it. No information as to the basis on which Pier Management undertakes work for the Respondent has been given. No invoice issued by Pier Management to the Respondent has been produced. No valuation issued or

prepared by Pier Management has been provided. No information as to who carried out any valuation has been given. The Tribunal accepts the evidence of the Applicant that no visit was made to the premises for the purpose of valuation. The Tribunal considers it reasonable to conclude that no valuation as such was in fact carried out. Whilst the Tribunal accepts that Pier Management may have made some arithmetical calculations about price, it finds it more likely than not that these were made for the purpose of negotiations it was conducting on behalf of the Respondent. Valuers fees for negotiations are not recoverable under s9(4). The Tribunal therefore finds that no valuation fee is payable by the Applicant. In any event as the Respondent has failed to comply with directions and has failed to put in any evidence to justify the amount of the valuation fee claimed, the Respondent has precluded the Tribunal from making any meaningful assessment.

21. For the reasons set out above the Tribunal finds that the Respondent is not entitled to any costs under s9(4)(e) of the Act.



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John Hewitt
Chairman
20 January 2005