

Leasehold Reform Act 1967

DETERMINATION OF LEASEHOLD VALUATION TRIBUNAL

On an application under s.21(1)(ba) 1967 Act to determine the amount of any costs payable under s.9(4) 1967 Act

Applicant Tenant: Mr Gulam Nawaz

Respondent Freeholder: Cressingham Properties Limited

Property: 96, Fifth Avenue, Bordesley Green, Birmingham B9 5RD

Date of Tenant's Claim to acquire the Freehold: 28 September 2004

Application dated: 10 December 2004

Listed for hearing at: The Panel Office

On: 24 February 2005

APPEARANCES:

For the Tenant: None but written representations from Ms A Bates, Sydney Mitchell, Solicitors

For the Freeholder: None but written representations from Mr D W S Fell, Director

Members of the Leasehold Valuation Tribunal:

Mr T F Cooper BSc FRICS FCI Arb (Chairman)
Mr W H Hatcher MA Solicitor
Mrs E Everett

Date of Tribunal's decision:

Background:

1 Mr Gulam Nawaz is the **Tenant** by a 70 year lease from 24 June 1972 of the dwelling house and premises at 96, Fifth Avenue, Bordesley Green, Birmingham B9 5RD (the '**Property**'). The **Freeholder** is Cressingham Properties Limited. By a notice (the '**Notice**') dated 28 September 2004 (the '**Date**') the Tenant claims to acquire the freehold under the Leasehold Reform Act 1967 (as amended) (the '**Act**'). By an application dated 10 December 2004 the Tenant applies to us to determine the Freeholder's reasonable costs under s.9(4). A hearing was listed for 24 February 2005; neither party attended nor was represented, his/its representative having notified the Tribunal no appearances would be made but written representations are made and have been served.

2 Written representations are made by: **Ms A Bates**, Sydney Mitchell, Solicitors, for the Tenant; and **Mr D W S Fell**, Director of the Freeholder.

3 To ensure both parties have a reasonable opportunity to present their cases and meet the opposing case, we allowed further time, after the date listed for the hearing, for further written representations. That procedure has been completed.

Our jurisdiction:

4 Mr Fell refers us to the Freeholder's notice in reply (8 November 2004) to the Tenant's Notice, in which the Freeholder does not admit the Tenant's claim on the grounds that the Notice is not valid. Mr Fell says that, as the Notice is not valid, we should consider our jurisdiction to proceed as a preliminary matter. Ms Bates says the Notice is valid and, in any event, our jurisdiction is to determine costs, not the validity of the Notice as only the court can determine the validity.

5 It is common ground that a second notice ('**Second Notice**') dated 17 January 2005 from the Tenant, claiming to acquire the freehold, has been served, rather than pursuing the Notice (28 September 2004) through the court. However, irrespective of the Second Notice, this application to us is to determine costs solely consequent on the Notice. We accept that we cannot determine our jurisdiction conclusively; only the court can do that, but we should decide whether to proceed or not. A pre-condition, in subs.9(4), for us to determine an amount(s) payable is 'Where [the Tenant] gives notice of his desire to have the freehold'. Ms Bates maintains the Notice is valid. We find and hold that there is a real prospect that the Tenant, in his Notice, has given 'notice of his desire' and we do have jurisdiction; and any alleged failure by the Tenant or prejudice to the Freeholder does not, on the facts before us, persuade us not to proceed.

Costs payable by the Tenant:

6 Subs.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) the reasonable costs of or incidental to any of the [matters in subs.(4)(a) to (d) as to "legal costs" and in subs.(4)(e) as to "valuation costs"]; but [subs.9(4)] 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.'

7 Subs.9(4A), added by s.176 Commonhold and Leasehold Reform Act 2002, Sch. 13 para 2, provides:

'[A person is not required] to bear the costs of another person in connection with an application to a [LVT].'

8 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.

Legal costs:

9 It is obvious to us that no subs.9(4)(b) 'conveyancing' costs will be incurred because it is not suggested that the Second Notice is not valid and it will be relied on by the Tenant - any question of reasonable 'conveyancing' costs will be a matter related to the Second Notice, not the Notice.

10 As to subss.9(4)(a), (c) and (d) costs: Mr Fell submits, by reference to a time and costing sheet and Part 1 The Schedule *The Leasehold Reform (Enfranchisement and Extension) Regulations 1967* (the '**Schedule**'), that reasonable costs incurred are:

- | | |
|---|-----|
| (i) Receiving and inspecting the Notice
(accepted in principle by Ms Bates but £20 is reasonable) | £30 |
| (ii) Preparing and serving Freeholder's notice under Condition 1 of the Schedule
requiring deposit
(not accepted in principle by Ms Bates) | £30 |
| (iii) Preparing and serving Freeholder's notice under Condition 2 of the Schedule
requiring title and statutory declaration
(accepted in principle by Ms Bates but £20 is reasonable) | £30 |
| (iv) Receiving and verifying title
(accepted in principle by Ms Bates but £20 is reasonable) | £30 |
| (v) Serving Freeholder's Condition 10 of the Schedule default notice
in respect to Condition 1
(not accepted in principle by Ms Bates) | £30 |

11 Ms Bates says (ii) above is not reasonable because it does not fall within 'any investigation by the [Freeholder] of the [Tenant's] right to acquire the freehold' (per subs.9(4)(a)). We agree and disallow this item.

12 As to (v) above, Ms Bates says her office sent the statutory deposit (Condition 1) and responded to the statutory declarations (Condition 2) by first class post 13 days after the date of the Freeholder's notices of request under Conditions 1 and 2 (to Part I The Schedule *Regulations 1967*). As Condition 1 allows the Tenant 14 days to respond, it was premature for the Freeholder to give a default notice on the fourteenth day after the Condition 1 notice. Accordingly, as the deposit should have been received by the Freeholder on the fourteenth day (the day after first class posting), the costs of the Freeholder's default notice are not reasonable. Ms Bates questions whether the 'giving of a notice' is the day it is posted or the day it would be received in the normal course of posting, submitting that, whichever it is, it should be applied consistently to notices and responses to and from the parties. We agree that corresponding dates should be consistent. We hold that the 'giving of a notice' is the date it is posted or the date of personal delivery. It necessarily follows that we find the Freeholder's default notice was premature and was not reasonable. We disallow this item.

13 In accepting (i), (iii) and (iv) above in principle, Ms Bates says the amounts should reflect that the work was

carried out in-house by a company which, together with associated companies, has substantial holdings of freehold ground rents. We hold and find that in determining the amount of reasonable costs we shall assume a competent Freeholder, or its adviser, familiar with the procedure and that Mr Fell's in-house costs should represent some reasonable discount from what would otherwise have been paid to an outside contractor. We find the amount for each of the items (i), (iii) and (iv) is £20, namely £60 in total.

Valuation costs:

- 14 Mr Fell claims a valuation fee of £280; saying that, after receipt of the Notice, the Freeholder's surveyor, making every effort to carry out a subs.9(4)(e) valuation, attended at the Property on three separate occasions but was refused entry by the Tenant; after which the surveyor made an exterior inspection, obtained evidence of three separate comparables and made appropriate calculations for the valuation. Mr Fell refers us to an alleged history of the Tenant's failure to pay the ground rent (including issuing court proceedings for recovery) and his failure to respond to communications.
- 15 Ms Bates says no valuation fee is payable by the Tenant as we have no evidence that a valuation was carried out in pursuance of the Notice. She says the Tenant is adamant that no one has called at the Property purporting to be a valuer for the Freeholder. She accepts that some one may have inspected the exterior but it is not evidence that a valuer actually produced a valuation and that valuation costs have been incurred. In any event, says Ms Bates, as the Freeholder contests the validity of the Notice, it is not realistic to suggest that a valuation would be undertaken in pursuance of a contested notice.
- 16 We find the alleged history of the Tenant's conduct does not assist us, because whether a valuation was carried out was not conditional on the conduct of the Tenant. Mr Fell does not name the valuer who, he says, carried out a valuation and no written valuation has been produced to us. While a valuer may have inspected the exterior and we accept that it is possible to carry out a valuation in pursuance of the Notice without an interior inspection, we find an exterior inspection alone (the evidence of Mr Fell) is not sufficient evidence to support his contention that a subs.9(4)(e) valuation has, in fact, been carried out. We also accept Ms Bates' contention that a valuation is not consistent with Mr Fell contesting the validity of the Notice. We find that no valuation, within the meaning of subs.9(4)(e), has been carried out.

Our determination of the subs.9(4) costs:

- 17 We find and hold that the amount of the subs.9(4) costs payable by the Tenant are:
- (i) £Nil for subs.9(4)(b) conveyancing costs;
 - (ii) £60 (Sixty pounds) for subss. 9(4)(a), (c) and (d) costs, plus VAT if appropriate, as the reasonable or incidental costs;
 - (iii) £Nil for subs.9(4)(e) valuation costs.

Date:

T F Cooper
CHAIRMAN

