

Y TRIBIWNLYS EIDDO PRESWYL
LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0012/07/15

In the Matter of 10, Kingsland Crescent, Barry, Vale of Glamorgan, CF63 4JQ.

In the matter of an Application under the Leasehold Reform Act 1967 sections 21(1)(ba) and 9(4).

TRIBUNAL Chairman: Richard Payne LLB M Phil

APPLICANTS Victoria Honor Louise Smith and Craig Jonathan Spickett

RESPONDENT Nigel Esterkin

ORDER

The amount of reasonable costs payable by the Applicant in respect of the costs of enfranchisement relating to 10, Kingsland Crescent, Barry in accordance with section 9(4) of the Leasehold Reform Act 1967 is **£1386.00 inclusive of vat and disbursements.**

REASONS

1. By an application to the tribunal dated 9th July 2015, the Applicants sought a determination as to the price payable for the enfranchisement of 10 Kingsland Crescent, Barry, and a determination as to the costs and other issues relating to the conveyance. In the event, all matters have been agreed save for the costs of the enfranchisement payable to the respondent by the Applicants under section 9(4) of the Leasehold Reform Act 1967 ("the Act").
2. Section 9(4) of the Act states 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,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.

(4A) Subsection (4) above does not require a person to bear the costs of another person in connection with an application to a leasehold valuation tribunal.”

3. The Applicants statement of case in relation to the legal costs was dated 8th March 2016 and prepared by their solicitors, Stevensons. They take issue with both the solicitors’ costs and the surveyors fees. The Applicants solicitors point out that they received a completion statement from the Respondent’s solicitors Morgan La Roche of Swansea on 20th October 2015. The legal costs in that statement were £350 plus vat, namely £420, with a £6 disbursement. However, by letter of 7th March 2016, the Respondent seeks the sum of £550 plus vat. The Applicant’s submit that these costs are unreasonable given the simplicity of the matter. They contend that all the Applicants’ solicitors have done is to prepare an epitome of title and a basic transfer since they were instructed around 30th August 2015 by which time the application to the tribunal had been made and the premium agreed.
4. Further, the Applicants solicitors submit that no breakdown of the Respondent’s solicitors costs has been provided, and at a rate of £200 per hour plus vat, this means that 2 hours and 45 minutes has been claimed for the work undertaken which they consider to be excessive. They point out that the transfer is a short one, and submit that, at most, 5 letters/emails should have been required between the Respondent’s solicitor, the Applicants’ solicitor and the Respondent. Stevensons contend that the maximum time that should have been spent by the Respondent’s solicitor to allow for arranging the signature of the Transfer by the Respondent and reporting to the Respondent would have been 1 hour and 45 minutes and that the Respondent’s reasonable legal costs should be reduced to £350 plus vat and disbursements of £6.00 only.
5. With regard to the surveyor’s fees, the Applicants’ solicitors note that valuation fees of £600 plus vat, namely £720 are claimed. This amount is excessive they say. They rely upon an email from the Applicants’ previous solicitor on 24th December 2014 in which there was an invoice from the Respondent’s valuer whose fee was £400 plus vat. That e mail and the invoice from Ingram Evans Care and Co, Chartered Surveyors, were exhibited to the Applicants’ statement of case. The Applicants solicitors contend that the Respondent is not entitled to this sum under the Act, that the property has already been valued and a fee paid, and that the Act does not provide for the Applicant to pay for more than one valuation and it is understood that no further valuation has been undertaken. They submit that “it must therefore follow that the Respondent is seeking to recover costs for negotiations and/or in respect of the tribunal proceedings which are disallowed under the Act.”

6. The Respondent's solicitors did not provide any formal statement of case or written argument on the costs issue. However they did write to the tribunal on 7th March 2016 including a copy of their letter of the same date to the Applicants' solicitors. This stated that "Our professional fees have increased since issuing the completion statement of 20th October 2015. Due to the delay in completion we have had to liaise and advise our client more than we would have expected should that matter have completed when the completion statement was originally issue.(sic)Our fees have increased to £550 plus vat...."

DECISION

7. The tribunal notes that within its file is a letter from the Respondent's solicitors to the Applicants' solicitors dated 14th December 2015 complaining that they had not heard from the Applicants' solicitors since receiving their letter dated 16th November 2015. The letter adds; "...Our client requires completion to take place as soon as is possible and we look forward to hearing from you with confirmation of the date upon which your client wishes to complete or alternatively, an explanation for the ongoing delay. Please note that it is likely our legal fees will now increase as a result of the delay and the revised fee quote will be provided as soon as a completion date has been agreed."
8. By e mail of 4th February 2016, Mr Andrew Rogers of Morgan La Roche wrote to the tribunal as follows: "... I confirm that the Landlord and Tenant have agreed a purchase price and transfer for the sale of the freehold reversion to the Tenant. However this has been agreed for some time and the Tenant continues to delay completion without providing a reason. Is there an application that the Landlord can set aside the proceedings in order to focus the mind of the tenant." The tribunal sent a copy of that e mail to the Applicants' solicitors when responding.
9. The tribunal is satisfied on the evidence that there was a delay on the part of the Applicants in dealing with and completing this matter and that such delay would have increased the Respondent's solicitor's costs. There is no explanation in the tribunal's papers or in the Applicants' statement of case for any delay. The key passage in section 9(4) for the purposes of this application is "... *the reasonable costs **of or incidental to** any of the following matters-....*"(my emphasis). Time reasonably spent on ongoing correspondence or otherwise in connection with any of the matters in section 9(4) (a) – (e) as set out in paragraph 2 above is properly recoverable. I reject the Applicants' solicitors submission that the Respondent is seeking to recover costs for negotiations and/or in respect of the tribunal proceedings which are disallowed. I find that the Applicants' or their solicitors delay has increased costs. It is not reasonable to suggest that costs put forward in December 2014 should remain the only costs recoverable when there has undoubtedly been ongoing work on this matter since that date. The Applicants' solicitors' estimate of five e mails/letters is also unrealistic. I therefore find that the Respondent's solicitors costs as claimed are reasonable and allowed.
10. With regard to the surveyors fees claimed, as section 9(4)(e) makes clear, reasonable costs of or incidental to the valuation of the house and premises will be recoverable. On the tribunal's file

was a letter from Mr M.L Williams of Ingram Evans Care and Co dated 2nd October 2015. This states; *"I refer to the above case and I believe that there is a disagreement over my reasonable fees. I provided a quote for my client for providing the initial desk top valuation but this case required further investigations into the lease. The lease has a rent review clause which is open to interpretation resulting in a wide differential in value. The case required research and indeed a legal opinion before I could carry out my valuation. **It required much more input than normal.** I confirm that the £800 refers only to my valuation of the leasehold interest."* (My emphasis).

11. Curiously, in the light of Mr Williams' letter, the surveyor's fees in the completion statement and under challenge are £600 plus vat, namely £720. However, given the evidence of Mr Williams that this required more input than normal and his explanation for his fees, I am satisfied that in this case they are reasonable.
12. Accordingly I determine that the Respondents' reasonable solicitors costs for dealing with the enfranchisement of 10 Kingsland Crescent, Barry are **£550.00** plus vat at 20% of **£110**, totals **£660**. The disbursement of £6 for the HMLR of £6 is not disputed and the surveyor's fees of £600 plus vat of £120, namely **£720.00** are reasonable. The grand total payable of costs, disbursements and vat is **£1386.00**.

DATED this 18th day of March 2016



Richard Payne
CHAIRMAN