

Y TRIBIWNLYS EIDDO PRESWYL

LEASEHOLD VALUATION TRIBUNAL (WALES)

Reference: LVT/0041/11/18

Property: 88 Bryn Morgrug, Alltwen, Swansea, SA8 3DG

In the matter of an application under the Leasehold Reform Act 1967,
Section 9(4)

Tribunal Chairman: Trefor Lloyd

Applicants: Ceri Davies and Carol Davies

Respondent: Iwan Jeffreys

ORDER

The Respondent's application for determination of reasonable costs payable by the Applicants in respect of the application relating to 88 Bryn Morgrug, Alltwen, Swansea ("the Property") in accordance with Section 9(4) of the Leasehold Reform Act 1967 is dismissed.

REASONS FOR THE TRIBUNAL'S DECISION

Background

1. The Applicants applied to this Tribunal by way of an application dated 22nd November 2018 for determination of the price payable for the freehold interest of the Property. That application followed on from what appeared to be discussions and correspondence between the Applicants as leaseholders and the Respondent as the freehold owner.
2. It became apparent to the Tribunal that there was a dispute between the parties in relation to the service of the Notice under Section 5 of the Leasehold Reform Act 1967 ("the Act").
3. The position of the parties can be summarised as follows:
 - (1) The Applicants' case was that an initial Section 5 Notice was sent under cover of a letter dated 4th July 2018 addressed to a Mr David Griffiths at 11 Cathedral Road, Cardiff. The Applicants' solicitor realising the error in relation to the incorrect surname forwarded a further covering letter and Notice to the same address on the 19th July 2018 by first class post, this time upon the Applicants' case the Notice bearing the correct surname.
 - (2) Conversely, the Respondent's case is that no such Notice was received on either the 4th or 19th July and the first time the Notice came to the Respondent's attention was by way of an email from the Applicants' solicitors on the 2nd November 2018. As a consequence of that email the Respondent wrote on the 9th November

2018 confirming the earlier Notice(s) had not been received and subsequently on the 15th November 2018 advising the solicitors for the Applicants that there was a defect in the Notice and at the same time formally acknowledging receipt of the Notice as at the 15th November 2018.

- (3) Directions were laid down by the Procedural Chairman on the 20th November 2018 timetabling the matter for a Preliminary Hearing relating to the Tribunal's jurisdiction following the challenge to the Notice as advanced by the Respondents. A Preliminary Hearing was convened on the 28th March 2019 at which time Mr Green represented the Applicants and Mr Jeffreys the Respondent attended in person.
4. Having considered that the subject matter of a preliminary issue between the parties relating to service, validity of the Section 5 Notice and any potential jurisdictional issues arising required determination by two members of the Leasehold Valuation Tribunal rather than a Chairman sitting alone, consequential directions were made. Those consequential directions culminated in directions for the parties to inform the Tribunal as to whether or not the matter could proceed by way of written representations together with filing at the office and serving any written submissions relied upon.
5. The Applicants' solicitors wrote to the Tribunal by letter dated 13th May 2019 confirming that the Applicants had purchased the freehold in the Property on around the 3rd May 2019. The same letter states in the following terms:

"The proceedings before the Tribunal would, therefore appear to be otiose. There remains, however, the question of costs of those proceedings. We provide this information to save judicial time in case the Tribunal wishes to issue further directions".
6. As a consequence the Tribunal wrote to the parties on the 14th May vacating the hearing and stating the following in relation to the costs of those proceedings:

"Having reviewed the file there does not appear to be an application for a summary assessment of Section 9(4) costs made at any time. In the circumstances the Tribunal has no jurisdiction to determine Section 9(4) costs until such an application has been received".
7. The Respondent under cover of a letter dated the 15th May sent in an application for costs to be assessed. In Section 11 of the application under the heading "Additional Information" the following was set out:

"Application is for costs in relation to this matter. Please see schedule attached. An initial hearing took place on the 18th March 2019 and a further hearing was scheduled on the 16th May that was vacated by the Tribunal. The Property was transferred to the Applicants by the Respondent following a consensus that was independent and unrelated to these proceedings, however the costs of the same remain outstanding. A schedule of the same is attached hereto.

The landlord is entitled to his costs of these proceedings and an application is made for the Applicants to pay the same under Section 9(4) of the LRA 1967"

8. Attached to the application form is a document headed "Statement of Costs Summary Assessment CPR PD44 9.5" which is a standard N260 Statement of Costs Summary Assessment Form used in the County Court.
9. That form names the fee earner as I Jeffreys (being the Respondent). It details time spent on letters, emails, telephone calls, attendances on others and also attendance at hearing and waiting time. The total inclusive of VAT comes to £4,644.24. The time being charged at a grade 1 fee earner rate of £201 per hour plus VAT. No other supporting documents were received.
10. Upon receipt of this application the Procedural Chairman issued further directions dated the 16th May 2019 requiring the following to be undertaken:
 - (1) Respondent to file on the Tribunal and serve the Applicants with written submissions by the 31st May 2019 stating out in detail why it is considered the Tribunal has jurisdiction to consider the application.
 - (2) The Applicants if so advised shall have leave to file on the Tribunal and serve the Respondent with written submissions in reply dealing with the issue of jurisdiction by 12 noon on the 7th June 2019.
11. The directions also further noted that the Respondent was named as the fee earner in the Statement of Costs and that he also signed the verification in terms of "the costs stated above do not exceed the cost which the party [the gap on the form on the last page of N260 form was left blank] is liable to pay in respect of the work which this statement covers".
12. As a consequence in order to clarify matters the following additional directions were made:
 - (1) A Witness Statement verified by a Statement of Truth from senior partner/managing director with the firm T Llewellyn Jones Solicitors to be filed at the Tribunal and served on the Applicants by the 31st May 2019, such Statement to:
 - (a) Explain the nature and details of the retainer between the Respondent and T Llewellyn Jones together with exhibited thereto a copy of the Client Care Letter sent to the Respondent;
 - (b) Confirming the sum claimed in the Costs Schedule submitted with the application has been incurred and paid by the Respondent together with exhibited thereto a copy/copies of receipted invoices in respect of such sums.
13. The Respondent filed at the Tribunal office his written submissions on the 31st May 2019. Those submissions signed in the name of T Llewellyn Jones.
14. The Respondent also filed at the Tribunal a Witness Statement signed by him in his personal capacity. That Statement bearing a Statement of Truth sets out the following:
 - (1) TLJ Law Ltd trading as T Llewellyn Jones was incorporated on the 23rd March 2010 and has four directors the Respondent being one. There is no senior partner as the entity is a company and there is no appointed managing director.

- (2) He is a director of the company and acts as a solicitor for TLJ Law Ltd.
 - (3) He is a longstanding client of TLJ Law Ltd since 1997. There has been a long ongoing client relationship since that time by way of ongoing dealings over the years and the solicitor/client relationship is well established by business practice.
 - (4) The costs set out in the Costs Schedule is a real and existing liability as between himself as Respondent and the company being separate entities, the sums being owed by the Respondent as the client to the company.
 - (5) No invoice has been raised as the matter has not been concluded. On the conclusion of proceedings an invoice shall be raised for the outstanding costs.
15. The Applicants' solicitor in turn filed submissions on behalf of the Applicants on the 6th June 2019.

The Respondents Submissions

16. In summary the Respondent maintains the position that he did not receive either of the July 2018 Notices and the only Notice that was accepted was the one on the 15th November 2018. He was served with proceedings which were issued by the Tenants on the 4th November 2018 based solely on the July 2018 Notice. Those proceedings were contested and the hearing of the preliminary issue took place on the 28th March 2019 to deal with the Notice. That issue remains outstanding and no ruling nor decision has been given. The Tenants chose not to pursue the matter and there has been no application to withdraw and as such the proceedings remain live.
17. The Respondent then goes on to deal with the issues relating to the validity of the Notice and the fact it was not sent by registered delivery culminating in the submission that proceedings brought by the Applicants would have been unsuccessful and costs should be awarded in favour of the landlord.
18. It is common ground between the parties that the Property was transferred on the 3rd May 2019. The Respondent asserts this was a wholly independent and separate transaction to the proceedings and goes on to aver that as the purchase price was apparently greater than the sum offered by the Tenants (Applicants) the Applicants have not been successful and should pay costs.
19. In addition the Respondent asserts as follows:
- "Moreover, under Section 9(4) of the LRA the landlord is entitled to his reasonable costs in respect of the matter".*
20. The submissions then refer to historic discussions between the parties which in the Respondent's eyes had the offer been accepted the proceedings would not be necessary.
21. The Respondent concludes by submitting that it would be *"wholly reasonable and appropriate for the landlord to receive his reasonable costs under Section 9(4) LRA not only on the basis that there is a right to costs under the statute but because in 2014 the Tenants had an opportunity to purchase the Property at a lower price resulting in the necessary costs being incurred at this stage"*.

The Applicants' Submissions

22. On behalf of the Applicants it is submitted that the Respondent's position is "illogical". The Respondent having run a case within which he asserts the July Notice was not served results in the Applicant not having given any notice of the desire to acquire the freehold.
23. The Applicants' solicitor goes on to submit that as costs provided for by Section 9(4) are limited to costs which are incurred in pursuance of the Notice none are payable.
24. In addition the Applicants submit that the provisions under Section 9(4)(A) preclude awarding costs relating to proceedings before this Tribunal in any event.
25. Finally, the Applicants bring to the Tribunal's notice the Respondent's failure to file a Witness Statement from a senior partner/managing director other than the Respondent and the failure to exhibit any retainer letters or paid invoices.

Law

26. 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, then unless the Notice lapses under any provisions 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 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 there 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".

27. The starting point here has to be consideration of what is set out in Section 9(4) of the LRA 1967. The text has been repeated at paragraph 26 above.
28. The salient provision in relation to this matter is the fact that the sub-section requires the giving of a Notice under Part 1 of the 1967 Act. From that flows the requirement for the person serving the Notice so far as they are incurred in pursuance of the Notice to meet ***the reasonable costs of or incidental to*** matters listed in subsections (a)-(e) of Section 9(4). They relate to investigations by the Landlord as to the eligibility of the

Tenant to acquire freehold, the costs relating to conveyancing, deducing title and any valuation of the house and premises.

29. Further, Section 9(4)(A) makes it clear that section 9(4) cannot require a person to bear the costs of another in connection with an application to the Leasehold Valuation Tribunal.
30. Nowhere in the information provided does the Respondent detail costs incurred in relation to the matters in sub sections 9(4)(a)-(e) Indeed, by his own submissions the Respondent says that the sale on the 3rd May 2019 is totally independent of these proceedings. In addition, nowhere is there any reference to any valuation fees having been paid.
31. Despite this the Respondent seeks the entire costs of the proceedings before this Tribunal as opposed to the matters allowed for under section 9(4). As referred to above by virtue of Section 9(4A) the Tribunal has no jurisdiction to award such costs.
32. Whilst for the reasons set out below I need not consider whether or not the Notice is defective at all material times in these proceedings the Applicants have asserted the Notice is valid. That being the case in my view they are estopped from denying that Section 9(4) costs are payable [see *Scottish Widows Fund & Life Assurance Society v Abbas (unreported, Lon/ENF/259/98 LVT)*].
33. All I need to look at is the matters in respect of which reasonable costs can be ordered against the Applicants in the circumstances of this case. As aforesaid those matters are set down between Sections 9(4)(a) to (e) inclusive. The Respondent does not address any of these points and indeed by reference to his submissions that the 3rd May 2019 sale is wholly independent clearly points in my view to the fact that none of the matters listed in the aforesaid sub-sections (a) to (e) were incurred as a result of the Notice.
34. In the usual course of events it is customary for this Tribunal to for example direct that a valuation report is obtained and of course in such circumstances the reasonable cost of that valuation would be recoverable. In this instance that has not occurred.
35. The provisions in the Act do not provide for payment of the Respondent's costs of the proceedings before it [see Section (9)(4A) as referred to above] nor do they enable me to award costs on the basis of the Applicants' conduct which appears to be part of the basis upon which the Respondent advances his case for costs by virtue of reference to having had to pay a greater sum than offered and also failing and/or refusing to accept earlier offers in respect of the transfer of the freehold in 2014.
36. In the circumstances I am of the view that the Costs Schedule as presented does not entitle the Respondent to any costs which can be said to be reasonable costs of or incidental to any of the matters set down in sub-section 9(4)(a) to (e) and in the circumstances I dismiss the application.
37. Further, in relation to the issues raised by the Respondent in respect of what appears to be conduct on the part of the Applicant this Tribunal has no power to award costs upon that basis nor indeed award costs upon the basis of any perceived success.
38. Accordingly, as a consequence of my findings above there is no need for me to consider the quantum of any costs.

39. Finally, whilst I note what is submitted on behalf of the Applicants in relation to the Respondent's failure to fully comply with all the directions set down on the 16th May 2019 in terms of what was said by the Respondent in his Witness Statement in relation to the relationship between himself and T Llewellyn Jones, as I have come to the conclusion as set out in paragraph 37 above I need not consider this aspect of the case any further.
40. Accordingly, and for the reasons as set out above I dismiss the Respondent's application for a determination of costs in this matter.

Dated this 18th day of June 2019

A handwritten signature in black ink, appearing to read 'T. Lloyd Jones', written over a horizontal line.

CHAIRMAN