

Leasehold Reform Act 1967

DETERMINATIONS OF LEASEHOLD VALUATION TRIBUNAL

On an application under s.21 1967 Act to determine the price payable on enfranchisement by the tenant under s.9(1) 1967 Act

Determination of reasonable costs under s.9(4) 1967 Act

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| <u>Applicant Tenants:</u> | Paul Clifford Heeks and Gloria Jean Heeks |
| <u>Respondent Freeholder:</u> | Geneva Investment Group Ltd (formerly MS Investments Limited) |
| <u>Property:</u> | 29, Ryton, Belgrave, Tamworth, Staffordshire B77 2NL |
| <u>Date of Tenant's Claim to acquire the Freehold:</u> | 19 August 2004 |
| <u>RV on 31 March 1990:</u> | £210 |
| <u>Applications dated:</u> | 5 November 2004 |
| <u>Heard at:</u> | The Panel Office |
| <u>On:</u> | 24 February 2005 |
| APPEARANCES: | |
| <u>For the Tenant:</u> | Mr J Moore, Midland Valuations Limited |
| <u>For the Freeholder:</u> | No appearance but written representations from DMH Stallard, Solicitors |

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 Paul Clifford Heeks and Gloria Jean Heeks are the **Tenants** by a 99 year lease from 25 March 1970, at fixed ground rent of £30 pa, of the dwelling house and premises at 29, Ryton, Belgrave, Tamworth, Staffordshire B77 2NL (the '**Property**'). The **Freeholder** is Geneva Investment Group Ltd (formerly MS Investments Limited). By a notice (the '**Notice**') dated 19 August 2004 (the '**Date**') the Tenants claim to acquire the freehold under the Leasehold Reform Act 1967 (as amended) (the '**Act**'). By applications dated 5 November 2004 the Tenants apply to us: (a) to determine the price payable on the acquisition of the freehold of the Property under s.9(1) of the Act – the price payable is now agreed by the parties; and (b) the Freeholder's reasonable costs under subs.9(4).
2. As the only issue for our determination is the subs.9(4) costs, we have not inspected the Property as an inspection does not assist us. A hearing was held on 24 February 2005.
- 5 **Mr J Moore**, Midland Valuations Limited appeared for the applicant Tenants. The Freeholder did not appear and was not represented at the hearing but its solicitor, **DMH Stallard** ('**DMH**'), made written representations; including a contention that the Freeholder had no knowledge that the Tenants had made an application to the LVT for a determination of costs. The LVT's file shows that the Freeholder was notified, by correspondence dated 9 November 2004 with a copy of the application, that the LVT had received an application for a determination of costs and its Directions, 15 November 2004, referred to the Tenants' application for a determination of reasonable costs. Accordingly, we do not accept that the Freeholder had no knowledge of the application.

Costs to be borne by the Applicant under subs.9(4) and (4a) the Act:

- 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 Mr Moore submits "legal costs" should be limited to:

£275 plus VAT, if applicable, for subs.9(4)(b) conveyancing costs; DMH says £350;
£25 for subs.9(4)(a), (c) and (d) costs; DMH says £528.64 (£621.15 including VAT).
- 10 Mr Moore says £275, for conveyancing costs, is consistent with the general level of solicitors' fees for this

type of work; plus disbursements for obtaining office copy entries. DMH estimates its conveyancing costs at £350.

- 11 We find Mr Moore's evidence persuasive and accept his figure (£275).
- 12 As to non-conveyancing legal costs, DMH says the Freeholder has incurred £528.64 and refers us to three copy bills lodged with us: £363.07 dated 27 October 2004, £166.43 dated 22 December 2004 and £91.65 dated 31 January 2005 (totalling £621.15 including VAT, £528.64 excluding VAT). Mr Moore says the Freeholder's notice in reply (to the Tenants' Notice 19 August 2004) 19 October 2004, under para 7(1) Part II Schedule 3 of the Act, admits the Tenants' claim and we have no evidence that any enquiries were made on behalf of the Freeholder between the two dates but accepts £25 is a reasonable amount for subs.(a) investigations resulting in the Freeholder's notice in reply. He submits we should attribute no evidential weight to the three copy bills because we cannot draw a reasonable inference that they are evidence of costs incurred by the Freeholder.
- 13 We find the three copy bills are not sufficiently particularised to have any significant evidential weight to persuade us that the costs fall within subs.9(4)(a), (c) and (d): they refer to 'Purchase of freehold - 29 Ryton, Professional charges, Disbursements and VAT'. Accordingly, we find the amount of the subs.9(4)(a), (c) and (d) costs is £25:

"Valuation costs":

- 14 DMH says the Freeholder instructed Parsons Son & Basley ('Parsons') to value the Property and produces a copy of its valuation, clearly marked in accordance with the Act and dated October 2004, and invoiced to the Freeholder for £250 plus VAT. Parsons' valuation refers to, and takes account of, an external market appraisal of the value of the leasehold interest in the Property prepared by E Breakwell MRICS, e.surv Ltd, Chartered Surveyors and dated 1 October 2004. DMH also claims, in addition, £420 as valuation costs incurred by the Freeholder; evidenced by the copy invoice (marked 'paid 14 October 2004') from Homebuyers UK Limited (tr/as National Homebuyers) ('Homebuyers') - the invoice refers to 'Survey for 29 Ryton'. Mr Moore says Homebuyers' report is a survey, not a valuation, and does not fall within subs.9(4)(e), which is restricted to 'valuation(s)'. He accepts Parsons' valuation costs were incurred in pursuance of the Notice but its valuation is a desk-top valuation only as the report says the Property was not inspected; and it was not reasonable for the Freeholder to instruct a valuer in Brighton (Parsons on the South coast) - it would have been reasonable to instruct a local valuer, with local knowledge which would have avoided any costs being incurred from e.surv Ltd. Mr Moore submits a reasonable amount for valuation costs incurred is £150 but accepts that, if an inspection of the Property had been made, a reasonable amount would have been £250.
- 15 We find and hold Homebuyers' survey is not a valuation within the meaning of subs.9(4)(e) and the costs incurred by the Freeholder for it are not payable by the Tenants.
- 16 We accept Mr Moore's contention that reasonable valuation costs are those that would have been incurred from a local valuer, which leads to find that any costs incurred from e.surv Ltd are not reasonable; we also accept that a reasonable amount is £150, reflecting that no inspection was made.

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 Tenants is:
- (a) £25 (Twenty five pounds) for subss. 9(4)(a), (c) and (d), plus VAT if appropriate, as the reasonable or incidental costs; and
 - (b) In so far as subs.9(4)(b) conveyancing costs are incurred and are to be incurred by the Freeholder, a sum not exceeding £275 (Two hundred and seventy five pounds) plus actual disbursements, if any, incurred in obtaining office copy register entries, plus VAT if appropriate, as the reasonable or incidental costs; and
 - (c) £150 (One hundred and fifty pounds) for subs.9(4)(e) valuation costs.

Date:

T F Cooper
CHAIRMAN

A handwritten signature in black ink, appearing to be 'T F Cooper', with a stylized flourish at the end.