

**Y TRIBIWNLYS EIDDO PRESWYL
LEASEHOLD VALUATION TRIBUNAL**

Reference: LVT/0059/02/16

In the Matter of 15,Arnold Gardens, Sandy Cove, Kinmel Bay, Clwyd, LL18 5NH. |

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 Mr JE and Mrs I Noon

RESPONDENT Hold Manor Limited

AMENDED ORDER

The amount of reasonable costs payable by the Applicant in respect of the costs of enfranchisement relating to 15, Arnold Gardens, Sandy Cove, Kinmel Bay, Clwyd, LL18 5NH in accordance with section 9(4) of the Leasehold Reform Act 1967 is £1803.00 inclusive of vat and disbursements.

REASONS

1. By an application to the tribunal dated 25th February 2016, the Applicants, through their representative, Surveyor Gary Hallas FRICS, sought a determination as to the reasonable costs payable to the Respondent for the enfranchisement of 15, Arnold Gardens, Sandy Cove, Kinmel Bay, Clwyd, LL18 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 application indicated that the parties had provisionally agreed a sum of £12,900 subject to contract for the applicants' purchase in the property, a single residential dwelling. In fact confirmation that this was the actual price agreed was received from the parties representatives by e mails of the 4th and 7th March 2016 respectively.
4. Mr Hallas, by e mail of 2nd March 2016 to the Respondent's solicitor Katie Cohen of Bircham Dyson Bell LLP, offered the sum of £1,000 plus VAT for the conveyancing costs inclusive of the valuer's fees. By e mail to Mr Hallas of 3rd March 2016, Katie Cohen accepted that the valuation fee of £500 plus VAT was reasonable but stated that *"...£500 plus VAT and disbursements to cover conveyancing costs is ludicrous, unreasonable and not acceptable. To consider fully the validity of your client's statutory claim to acquire the freehold, report to my client and instruct the valuer, prepare the conveyance and complete amounts to more than £500 plus VAT."*
5. Katie Cohen further offered as a compromise an "all in" figure of £1500 plus vat and disbursements to cover both the legal and valuation fees "reasonably and properly incurred". It was made clear that this would involve writing off a considerable amount of time if accepted. Whist the tribunal has not seen any correspondence or e mail specifically rejecting this offer, the fact that this

application has been made to the tribunal infers that the compromise offer was not accepted.

6. Katie Cohen sent a letter to the tribunal dated 15th March 2016 (copied to Mr Hallas) which contained a detailed breakdown of the work undertaken, the time engaged, the hourly rate charged and the grade of the fee earning member of staff who undertook the work. This totalled 318 minutes at 6 minute units, or 5 hours 18 minutes. The hourly rates charged were £350 for a Partner, £300 for a consultant, £250 for a solicitor and £200 for a paralegal. The total claimed was £1485 plus vat, which, although not calculated, is £297, giving a total of £1782. Also added to this is the valuation fee of £500 plus vat, namely £600, and a disbursement of £3 for the Office Copy Entries. The grand total of costs, disbursements and vat therefore is £2385. The letter indicates that settlement has been attempted for £1,000 plus vat (£1,200) plus the valuation fee of £500 plus vat (£600) and disbursement of £3, namely a total of £1803. The offer in effect was to write off £485 worth of timed work.

DECISION

7. It is noted that amongst the costs claimed by the Respondent's solicitors are time spent on phone calls, letter and e mail correspondence with the Applicants' representatives with regard to chasing up information such as the deduction of title, statutory deposit and with regard to agreeing the premium payable.
8. By e mail of 29th March 2016, Mr Hallas maintained that given the North wales location of the property, the nature of the transaction, namely the transfer of the freehold interest and the relatively low property values in that area, £1,000 plus vat was reasonable for the level of work involved. He stated that matters in relation to negotiation, considering and responding to e mails and telephone calls are not necessarily direct costs in relation to the transaction and he anticipated that these costs would be borne by the parties themselves. He further pointed out that much of the evidence regarding comparables and value of the freehold interest was provided by himself.
9. Section 9(4) refers to "... *the reasonable costs of or incidental to any of the following matters-.....*"(my emphasis). Time reasonably spent on phone calls, e mails, 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. Mr Hallas suggestion that phone calls, responding to e mails and so forth with regard to negotiations are not necessarily recoverable is misplaced as these matters all clearly come within the ambit of section 9 (4).

10. The question is whether those costs are reasonable? Mr Hallas suggests solicitors' costs of £500 plus vat. This is approximately one hour and forty minutes of time spent at the consultant's rate. The lease itself is a relatively lengthy document, there was also an assignment, office copy entries and valuation report to consider prior to the negotiations. The North Wales location of the property does not mean that it will take less time to properly consider the matter. I do not consider that Mr Hallas's suggested time and amount payable is reasonable. Proper consideration of the matter by skilled professionals and the incidental work to completion would take longer than one hour and forty minutes.
11. The rate charged for the work undertaken by the paralegal is in my view unreasonable as was the time taken to draft the transfer of parts, and there was no feature of the case that has been drawn to my attention that would require the involvement of the partner. I therefore consider the fees of £1485 plus vat to be unreasonable. However, I note that the Respondent repeats the attempted settlement figure of £1,000 plus vat and disbursements and have already indicated that they are prepared to write off some time. The offer of £1,000 is a reasonable one that ought to have been accepted.
12. Accordingly I determine that the Respondents' reasonable solicitors costs for dealing with the enfranchisement of 15, Arnold Gardens, Sandy Cove, Kinmel Bay, Clwyd, LL18 5NH are £1,000 plus vat at 20% of £200, totals £1200. The disbursement of £3 for the office copies is not disputed and the surveyor's fees of £500 plus vat of £100, namely £600.00 are reasonable. The grand total payable of costs, disbursements and vat is therefore £1803.00.



Richard Payne
CHAIRMAN

DATED this 15th day of April 2016.

AMDNDED 27TH April 2016

CERTIFICATE

In accordance with Rule 18(7) of the Leasehold Valuation Tribunals (Procedure) (Wales) Regulations 2004, I certify that the amount payable by the Applicant in this matter is £1,803 inclusive of VAT and Disbursements and there was an accidental slip in the decision dated 15th April 2016 whereby the sum was wrongly recorded as £1386.00 inclusive of VAT and disbursements under the heading "Order".

For the avoidance of doubt, the figure payable is as set out in paragraph 12 of the decision, namely £1803.00 and that accidental slip is now corrected.

A handwritten signature in black ink, appearing to be 'R Payne', written in a cursive style.

**RICHARD PAYNE
CHAIRMAN
DATED THIS 27TH DAY OF APRIL 2016**