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First-tier Tribunal
Property Chamber
(Residential Property)

Case reference	:	**CAM/22UB/OC9/2013/0003**
Property	:	**Flats 1-42 Radford Court, Billericay, Essex CM12 0AB**
Applicant	:	**Radford Court Association Ltd. (in substitution for Kenneth Ian Forster)**
Respondent	:	**Norman David Wine (in substitution Ann Wine) trading as Hyra Finance)**
Date of Application	:	**11th July 2013**
Type of Application	:	**To determine the costs payable on a proposed enfranchisement (Section 33 of the Leasehold Reform and Urban Development Act 1993 ("the 1993 Act"))**
The Tribunal	:	**Bruce Edgington (lawyer chair)** **David Brown FRICS**

DECISION

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1. The parties are as stated above.

2. The reasonable legal costs of the Respondent payable by the Applicants pursuant to Section 33 of the 1993 Act are £2,000.00 plus VAT

3. The reasonable costs of valuation of the Respondent payable by the Applicants pursuant to Section 33 of the 1993 Act are £1,815.00 plus VAT.

4. If the Respondent is registered for VAT purposes then he can reclaim the VAT as an input and it is not then recoverable from the Applicant. Otherwise, VAT is recoverable at the appropriate rate on both legal fees and the valuation fee.

5. The Tribunal makes no order on the Respondent's claim for further costs arising out of the Applicant's alleged unreasonable behaviour in these proceedings.

Reasons

Introduction

6. This dispute arises from the service of 4 Initial Notices seeking collective enfranchisement of the property by qualifying tenants. In these circumstances there is a liability on the Nominee Purchaser to pay the Respondent's reasonable legal and valuation costs. In this case, there was no agreement or application to the Leasehold Valuation Tribunal, as it then was, and the Initial Notices were therefore deemed to have been withdrawn.

7. The original application for the Tribunal to determine the costs was made by Kenneth Ian Forster and cited Mrs. Ann Wine as Respondent. As is clear from the documents now filed and the correspondence, Mr. Forster was not the nominee purchaser and Mrs. Wine was not the recipient of the Initial Notice and did not serve any counter-notice. The nominee purchaser and the person upon whom the Initial Notices were served who subsequently served counter-notices have therefore been substituted as Applicant and Respondent respectively.

8. Directions were given by the Tribunal on the 25th July 2013 which included a statement that the Tribunal would be content to deal with this matter upon a consideration of the papers and written representations only (sometimes called a 'paper determination') and notice was given to the parties that a decision would not be made before 11th September 2013. It was pointed out that if either party wanted an oral hearing, one would be arranged. No such request was received.

9. There was also an application by the solicitors acting for the Respondent within the correspondence for what is sometimes called a 'wasted costs' order for the amount of £850.00 plus VAT against the original applicant, but there has been no schedule of those costs produced. The grounds of such application are that the main application "*is inappropriate and at best premature*" because the original applicant was not the nominee purchaser and he has been unable to produce any inter-solicitor correspondence because it all went to an agent.

The Law

10. It is accepted by the parties that one or more Initial Notices were served and therefore Section 33 of the 1993 Act is engaged. For the reasons set out below, the Applicant therefore have to pay the Respondent's reasonable costs of and incidental to:-

    (a) any investigation reasonably undertaken-
    (i) of the question whether any interest in the specified premises or other property is liable to acquisition in pursuance of the initial notice, or
    (ii) of any other question arising out of the notice;

    (b) deducing, evidencing and verifying the title to any such interest;

(c) *making out and furnishing such abstracts and copies as the nominee purchaser may require;*

(d) *any valuation of any interest in the specified premises or other property;*

(Section 33(1) of the 1993 Act)

8. What is sometimes known as the 'indemnity principle' applies i.e. the Respondent is not able to recover any more than he would have to pay his own solicitors or valuer in circumstances where there was no liability on anyone else to pay (Section 33(2)). Another way of putting this is to say that any doubt is resolved in the receiving party's favour rather than the paying party.

Legal fees

9. A costs schedule has been produced in accordance with the Tribunal's directions. The calculation of costs totals £3,095.40 for 9.5 hours work, but the solicitors are willing to accept £2,000. The challenge to the costs is in 3 parts. Firstly it is said that the hour rate charged of £275 is too much; secondly it is said that some of the time spent was in respect of an agreement with T-Mobile relating to income from masts fixed to the buildings and thirdly, their own solicitor only spent 8 hours on this case and their work was more involved.

10. As far as the **hourly rate** is concerned, the reduction in the total to £2,000 results in an hourly rate of £210 which is only £10 per hour more than the Applicant's solicitor. This is less than a Grade A fee earner would expect to receive (£217 per hour) in the Basildon County Court (applicable to Billericay) or Southend County Court (applicable to Westcliff-on-Sea where the Respondent was served) upon a District Judge assessing reasonable costs. This Tribunal has long considered that enfranchisement is a specialist subject which would normally attract Grade A rates. The Tribunal therefore determines that £210 per hour is reasonable.

11. As to the **T-Mobile agreement**, there is an allegation that the work had to be done relating to that agreement because of a dispute between the freeholder and the head lessee about whether the agreement should have been entered into and the recipient of income from such agreement. A similar point is being made in respect of the valuation fee. In the correspondence, there are disputes about whether meetings took place in 2006. There are copies of documents relating to such agreement.

12. When there is disputed evidence about such fundamental things as whether meetings have taken place, it places an impossible burden on the Tribunal to make any findings of fact when all parties agree that this should be a paper determination. All this Tribunal can conclude is that if the solicitors were going to give sensible advice to their clients, the debate about the income from the agreement was going to have to be resolved one way or the other.

13. Whether the work should be paid for by the head lessee, the freeholder or the Applicant does place a doubt on the claim. However, at the end of the day, this work seems to have arisen from the service of the Initial Notices and the Tribunal therefore resolves the doubt in favour of the receiving party i.e. the Respondent in accordance with section 33(2) of the 1993 Act.

14. As to whether the **hours spent by the Applicant's solicitors are less than the Respondent's solicitors**, it is very difficult for the Tribunal to assess this issue without a full breakdown from both. All the Tribunal can say, based on years of experience dealing with these cases and assessing costs, is that the hours spent by the Respondent's solicitors are a reasonable reflection of the sort of hours one could expect to be spent on a case such as this. There were, after all, 4 different Initial Notices involving 4 separate counter-notices which contained different figures and information i.e. they were not simply duplicates. This issue is therefore again resolved in the Respondent's favour for the same reason.

Valuer's fee

15. The valuer's fee claimed is £3,080 plus VAT based on 14 hours of time spent at £220 per hour. The Applicants' position is really the same as for the legal fees i.e. that this is too expensive because the hourly rate is too high, time was spent on the T-Mobile agreement and the Applicant's surveyor charged only £875 plus VAT and disbursements.

16. The valuer is Laurence Nesbitt from his own firm in Middlesex. The invoice relied upon by the Applicant is at page A45 in the bundle. It is dated 23rd January 2009 which is somewhat surprising bearing in mind that it predates the Initial Notices by some 3 years. It is also impossible to establish who the valuer is from the copy invoice. In the documents supplied by the Respondent, there is a letter from Quinton Scott, chartered surveyors, of Wimbledon dated 6th July 2012 from which it would seem that they act for the Applicant.

17. As to the **hourly rate**, £220 is a little high but as it includes expenses, the Tribunal does not consider that it is too high. The time taken to receive instructions and have a preliminary look at the documents for a surveyor of Mr. Nesbitt's experience should not have taken more than an hour.

18. As to the time spent on the **T-Mobile agreement**, the position with the valuer is different from the solicitor. On the 20th April 2012 the surveyor e-mailed the solicitor about the way in which he should value the aerials income. On the 23rd April, the solicitor responded by telling the surveyor how this should be dealt with. There was therefore no necessity for the surveyor to re-investigate this matter. A competent surveyor should have been able to ascertain the relevant information from the solicitor's instructions and by looking at the agreement to get the figures etc. It should not have taken more than 30 minutes.

19. Mr. Nesbitt refers to '50 Roman Road Ltd.' indicating that he did some research on the basis of valuation including the discount to affect risk

in the reversion but that should not have taken more than an hour. The valuation itself is a simple exercise involving capitalisation of current and future rental income, applying the yield rate and should only take a few minutes. The Tribunal considers that a maximum of 1.75 hours is reasonable for the 'phone mast valuation plus half an hour to consider the planning applications and consents and LVT decisions. These may or may not be directly connected to the 'phone mast valuation but the Tribunal considers that some time should be allowed for these matters anyway. Once again, a surveyor of Mr. Nesbitt's experience will have a working knowledge of LVT decisions at his fingertips, which is why he is entitled to a higher hourly rate than most. There is no evidence to justify 4.5 hours.

20. It also seems to the Tribunal that 3.5 hours claimed for the inspection of the common parts, outbuildings and exterior of some 4 small blocks plus some time looking at the surrounding locality is excess bearing in mind that he did not go into any of the flats. 1.5 hours should have been sufficient. Adding some travelling at half the hourly rate for a surveyor closer to the subject property, the Tribunal is prepared to allow 2 hours at the claimed rate. There are plenty of competent valuers in the Billericay area.

21. 45 minutes per block for the valuation is also excessive. That is acceptable for the first block because it would include consideration of the lease terms and setting up a valuation template. Thereafter, it would simply entail entering the rent figure onto the template for each of the other blocks and multiplying it by the same yield each time. This should take no more than a few minutes for each of the remaining 3 blocks. Total time allowed is 1.5 hours.

22. Thus the total of time reasonably spent is considered to be 8.25 hours i.e. £1,815 plus VAT if appropriate.

Additional costs

23. The main application was made after 1st July 2013 and rule 13 of **The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013** ("the rules") applies. This provides that a Tribunal can make a wasted costs order during the course of an application. It should give the party against whom the proposed order is sought, an opportunity to make representations. However, as the Tribunal is not going to make such an order, it has decided to deal with the application in this decision without asking for representations from Mr. Forster.

24. A wasted costs order can be made if a party has acted unreasonably in bringing an application such as this. In this case, it seems that Radford Court Association Ltd. was being assisted by a Mr. Jeff Gadsden, managing director of Walkers PPS Ltd., described as property managing agents. It is said by Mr. Forster that they dealt with the day to day correspondence. Walker PPS Ltd. went into liquidation on the 29th May 2012.

25. Mr. Forster has been unable to produce inter solicitor correspondence because he didn't have access to it. However, as a qualifying lessee,

Mr. Forster has a potential liability to pay the costs which are the subject of the original application. Thus the Tribunal concludes that although the application was brought in the wrong name, Mr. Forster does have an interest. He has explained why he had no access to the correspondence in question which seems logical and reasonable.

26. The Tribunal cannot find any grounds for concluding that the application was wrongly brought or that Mr. Forster has behaved unreasonably in the conduct of these proceedings. For these reasons, no order for additional costs pursuant to rule 13 is made. Additionally, although this is not the reason for the decision, there is no detail of the claim upon which the Tribunal could have made a determination in any event.

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Bruce Edgington
Regional Judge
2nd October 2013