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RESIDENTIAL PROPERTY TRIBUNAL SERVICE LEASEHOLD VALUATION TRIBUNAL

Property : **The Mill,
Saltcote Maltings,
Heybridge,
Maldon,
Essex CM9 4QP**

Applicants : **(1) John Noble
(2) Gaynor Ann Reynolds Noble**

Respondent : **Nigel Lempriere**

Case number : **CAM/22UK/OCE/2007/0028**

Date of Application : **23rd July 2007**

Type of Application : **To determine the terms of acquisition
and costs of the enfranchisement of the
property**

The Tribunal : **Bruce Edgington (lawyer chair)
Richard Marshall FRICS FAAV
Roland Thomas MRICS**

**Date and place of
Hearing** : **26th September 2007 at The Blue
Boar, Silver Street, Maldon, Essex
CM9 4QE**

DECISION

1. The parties having confirmed that all other matters in this collective enfranchisement are now agreed between them, the Respondent's reasonable legal costs and expenses recoverable from the Applicants are assessed at £1,977.37.

Reasons

Introduction

2. The nominee purchaser Applicants are the present owners of the leasehold title of 4 The Mill which is part of the property. The property consists of 14 dwellings numbered consecutively save for the

omission of number 13. Some (1, 4, 5, 8, 9, 10, 12, 14 and 15) have the postal description of The Mill, Saltcote Maltings and others (3, 6, 7, and 11) are described as being just Saltcote Maltings. According to the freehold title at HM Land Registry, there does not appear to be a lease in respect of number 2 recorded on the freehold title. The Applicants' solicitor assured the Tribunal that there was such a lease but agreed that it did not appear to have been registered.

3. The Applicants served an Initial Notice dated 19th February 2007 seeking collective enfranchisement of the property at the price of £550 plus £100 for some common parts. The Notice requests rights of way over and use of communal areas etc. In other words, clauses in the transfer consistent with the property being on a private estate with other properties.
4. The counter-notice is dated 26th April 2007 admitting the right to enfranchise but disputing the price offered. There are some comments about the rights requested but, in essence there is no real dispute about the framework of the transaction. The price offered by the Respondent is £15,000. The Respondent also claims a leaseback of 15 Saltcote Maltings. From the freehold title, he appears to be not only the freehold owner but also the owner of the long leasehold interest of that dwelling.

The Inspection

5. The Tribunal inspected the property from the outside in case it was necessary to resolve any dispute over easements or covenants in the Transfer. It is in a well presented development just outside the pleasant Essex market town of Maldon.

The Hearing

6. The hearing was attended by the Applicant Mr. Noble and his solicitor, Mr. Robert Plant together with the Respondent's solicitor Mr. John Clarke. At the outset, the solicitors informed the Tribunal that apart from the Respondent's legal costs, all matters had been agreed including the terms of the Transfer – to include the price – and the leaseback.
7. Mr. Clarke told the Tribunal that the terms of the leaseback had not yet been agreed by the Respondent's mortgagee. However, as this is not, strictly, a matter of 'dispute' between the parties, the Tribunal did not really have jurisdiction to deal with that issue. If the stance of the mortgagee makes it into a point of dispute between the parties at some future time, the Tribunal would consider an application to re-open the case to deal with this.
8. As to legal costs, the solicitors produced a copy of the Applicants' Points of Dispute document with the Respondent's replies endorsed

thereon. A number of concessions were made by the Respondent including an acknowledgement that costs in connection with this application are not recoverable (Section 33(5) of the **Leasehold Reform, Housing and Urban Development Act 1993** ("the 1993 Act"))

The Law

9. When lessees use the collective enfranchisement provisions, they become liable to pay the landlord's *"reasonable costs of and incidental to any of the following matters, namely-*

- (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 that 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) *(not relevant)*
- (e) *any conveyance of such interest;*

(Section 33(1) of the 1993 Act)

10. The method of assessment is on the basis of what is sometimes called the solicitor and client basis. In other words the costs to be allowed by the Tribunal are those which would be payable by the client *"if the circumstances had been such that he was personally liable for all such costs"*.

(Section 33(2) of the 1993 Act)

The Claim

11. The total claim was for £10,887.40 of which the greater part of £5,936.69 related to the costs incurred by the Respondent in connection with this application. On being challenged over this, the Respondent's solicitors, quite properly, conceded that these costs are not recoverable.
12. In respect of the remainder, the Respondent's solicitors claim a charging rate of £185 per hour which is a little over the Grade A charging rate (£183 per hour) currently being allowed in the Chelmsford North area by County Court Judges in detailed assessments of *inter partes* costs. The Applicants do not challenge this charging rate. It has certainly been the approach of Leasehold Valuation Tribunals that this work is specialised and requires a certain degree of expertise over and above normal solicitors' work. Thus rates at or slightly above Grade A are usually allowed.

13. Having said that, the reason why this is the case is because allowing the matter to be handled by a Grade A fee earner ensures that the transaction is conducted by an expert who takes less time than someone who has no experience in this field.
14. Regrettably, this has not happened in this case. Mr. Clarke acknowledged from the outset that he had not handled one of these cases before. This is why he used counsel. The Tribunal has no reason to doubt the honesty and integrity of Mr. Clarke. The Respondent may well have wanted him to do the work. The question for this Tribunal is whether the Applicants have to pay for his inexperience with this area of work.
15. The view of the Tribunal is that £185 per hour should be allowed but the claim would be assessed as if Mr. Clarke was experienced in this area of work. Therefore, there would be no allowance for the use of counsel.
16. There was also another preliminary issue raised i.e. whether the Respondent could recover VAT. The significance of this is that if he could, then the claim for costs should be net of VAT because the legal services are supplied to the Respondent and he would therefore be able to recover the VAT even though the costs were being paid by the Applicants. The Respondent says that he is not registered for VAT purposes and this is accepted by the Applicants.
17. The balance of the claim is in sections i.e. correspondence, preparation, disbursements and anticipated future costs.

Correspondence - 23 letters are claimed together with 4 telephone calls and 1.5 hours attendances. The only part challenged is the correspondence and, in the replies to Points of Dispute, the Respondent agrees that only 18 letters are chargeable. Having looked through the recipients of those letters, the Tribunal deducts letters to counsel and allows 15 letters

Preparation – objection is taken to the file review, instruction of counsel and the time spent in the preparation of a costs schedule. It is conceded that these matters are not payable. The review relates to the directions order made in this application. The Tribunal has made those adjustments and also deducted time for drafting a letter to the client. A solicitor experienced in this work should not need to draft a letter to a client. In fact the only items allowed under this heading are the 24 minutes with the client and time in drawing the counter notice and drafting the transfer i.e. 1 hour 36 minutes.

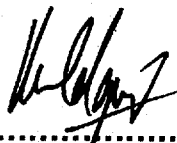
Disbursements – with no counsel's fees, the only disbursement is £68 for a process server and this is not challenged.

Future costs – the objection is that the number of letters written and the amount of time spent are excessive. 10 letters are offered and this is agreed. The telephone calls are not challenged. The amount of time with the client is challenged. The Tribunal considers that 1 hour should be more than sufficient time to explain this fairly standard form of Transfer to the client. However, a further period of 1 hour is allowed for time spent finalising and completing the transfer. This is not as much time as was stated by Mr. Clark at the hearing (3 hours) but the Respondent must understand that much of that time seems to have been spent in negotiation. No indication was given as to why it took so long to negotiate the Transfer and the Tribunal can only conclude that much of such time was born out of inexperience. It is certainly the experience of this Tribunal that these forms of Transfer are usually agreed quite quickly.

Conclusions

18. The amount allowed is therefore:-

Correspondence – 15 letters @ £18.50	277.50
Telephone calls claimed	34.00
Attendances claimed	277.50
Preparation - 1 hr. 36 mins. @ £185	296.00
Disbursements -	68.00
Future costs - 10 letters @ £18.50	185.00
Telephone calls claimed	185.00
2 hours @ £185	<u>370.00</u>
	1,693.00
VAT on £1,625 @ 17.5%	<u>284.37</u>
	<u>1,977.37</u>



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Bruce Edgington
Chair
26th September 2007