



Residential
Property
TRIBUNAL SERVICE

**LEASEHOLD VALUATION TRIBUNAL FOR THE
LONDON RENT ASSESSMENT PANEL**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION
UNDER SECTION 9[4] OF THE LEASEHOLD REFORM ACT 1967**

Reference: LON/OOAW/OC6/2007/0004

Property: 8 Wetherby Place, London SW7 4ND

Applicant: Quiltaire Limited

Respondent: Management Nominees (Reversions) Limited

Hearing dates: 13 November 2007

Members of the Leasehold Valuation Tribunal:

Mrs F Burton LLB LLM MA (Chairman)
Mr W J Reed FRICS
Mr O N Miller BSc

Date of Tribunal's decision: 12 December 2007

8 WETHERBY PLACE, LONDON SW7 4ND

BACKGROUND

1. This was an application for determination of the quantum of Landlord's statutory costs pursuant to s 9(4) of the Leasehold Reform Act 1967, following the determination by the Leasehold Valuation Tribunal of the enfranchisement price and terms of the transfer in a Decision dated 23 July 2007. The Tribunal considered the matter on the basis of the papers in the file and without an oral hearing on 13 November 2007.

2. The Respondent Landlord's Statement of Cost was contained in a letter dated 8 October 2007 from the Landlord's Solicitors to those of the Applicant former Lessee. The costs claimed pursuant to s 9(4) were broken down into the following categories:

- legal costs, and
- valuation costs

and were supported by copy counsel's invoices, copy invoice of Metropolitan Development Consultancy in relation to preparation of measured drawings, copy invoice of Maunder Taylor, Chartered Surveyors (the Landlord's valuers) and various explanations for these items contained in the letter of 8 October 2007. The Applicant's solicitors challenged practically all these costs in an undated Statement in Reply to the Respondent's Statement of Costs on the grounds that many of them were incurred in relation to a Notice of Claim dated 16 June 2006 and not to the Notice of Claim dated 1 October 2006, which had ultimately resulted in the LVT's Decision of 23 July 2007 referred to above. The Applicant's solicitors also challenged quantum in various instances. The Respondent Landlord's solicitors defended their position in a further Statement in Reply to the Applicant's undated Statement on 12 November 2007 at which time they also delivered some further relevant documents missing from the initial bundle delivered by the Applicant's solicitors.

3. The Applicant's solicitors sought to prevent delivery of these additional documents and of the Applicant's Statement in Reply. However it appears to the Tribunal that both parties are in fact in breach of the Directions issued on 20 September 2007 since those Directions provided for an agreed bundle, which clearly has not been provided. Nevertheless the second bundle arrived in time for the determination and the Tribunal has found most of the documents submitted useful in their determination albeit that it has had itself to decide which are relevant in making their determination of allowable statutory costs pursuant to s 9(4) which costs are clearly set out in that section of the 1967 Act. The Tribunal is master of its own procedure and, particularly in default of observance of Directions and whilst always remembering the principles of natural justice, makes its own determinations as to how to proceed on the basis of such information as it has before it. In the particular case the Tribunal takes the view that both sides have more than had their say on the matters in issue and will therefore proceed to determine, as is its statutory duty, the validity and amount of the Landlord's statutory costs on the basis of the material before it.

4. The Respondent Landlord has confirmed that the freehold interest in the property has now been transferred to the Applicant and that all the bills submitted for consideration for the purposes of s 9(4) have been paid.

THE ALLOWABLE COSTS

5. There appears to be some confusion in the minds of the Landlord's advisers as to which costs are allowable pursuant to s 9(4). The Act envisages the service of a Notice of Claim and refers throughout to "the" Notice. The Landlord's statutory costs set out in s 9(4) and are the costs of "the" Notice (so far as they are incurred in pursuance of *the* Notice), and any dispute as to which costs are allowable is clearly in relation to the costs of the particular Notice with regard to a particular claim, not to multiple claims if more than one has been made. The present case has been complicated by the fact that an earlier Notice of Claim was served on 16 June 2006 which the Landlord, who had recently acquired the property, expressly rejected as it had not been protected by registration. Thus the Applicants immediately served a second Notice, and it is on that Notice that the claim proceeded to determination before the LVT.. In view of the date of the valid Notice of Claim (1 October 2006)

prima facie only those costs incurred after this date are allowable. Any earlier costs disbursed in respect of the earlier Notice of 16 June 2006 must be the subject of a separate application, if at all.

LEGAL COSTS

6. The Landlord's solicitor's breakdown of legal costs is in the circumstances ill set out since it proceeds from the supposition that the costs of the first Notice of Claim are allowable which they clearly are not in pursuance of *the* Notice in the present case. It is the opinion of the Tribunal that the Landlord's solicitors must have realised that the first Notice was invalid by 13 September 2006, since at that stage in their breakdown they claim for "Research into consequences of failure of tenant to register the notice of claim at Central Land Charges Registry". Consequently the subsequent instruction of counsel in this matter, and counsel's fees, together with consideration and discussion with counsel of that opinion must be disallowed. The Tribunal considers that valid charges commence on page 2 of the breakdown with 3.3 hours for "Preparing first draft transfer inc looking into lease, previous transfer provisions and related research."

7. The Tribunal does not consider 3.3 hours for the initial work in relation to a Notice of Claim up to and including sending out the Draft Transfer (which appears to have been completed by 2 March 2007) unreasonable, especially as it was probably facilitated by the contents of the previous file. It is clear that the Applicants required reference to the previous file since there was a request for it and it was sent on 12 March 2007; the Landlord's solicitors then charge for considering amendments "revising and returning" (sent out on 22 March 2007). Thus 4.7 hours were spent on the initial work under *the* Notice. The remaining items, enquiring into insurance and ground rent arrears and considering and responding to the Applicant's solicitors' letters, further revisions to the transfer following the LVT Decision and related discussions with and instructions from the client are all routine items, save for one letter of 11 May 2007 which appears to be related to the bundle for the hearing and is therefore not a proper s 9(4) cost.

8. The Tribunal has therefore allowed 9.7 hours at a costs of £2,667.50 + VAT (a total of £3,134.31) for legal costs, considering that the matter (concerning a valuable property) was of sufficient weight for the principal solicitor to be allocated to the work.

VALUATION COSTS

9. There are two components of these costs:

- Mr Maunder Taylor's fees
- Metropolitan Development Consultancy's measured drawings.

THE DRAWINGS

10. The measured plans and drawings which appear at pages 283-5 of the bundle delivered by the Landlord's solicitors were in the opinion of the Tribunal necessary for the valuation to be done properly, although the Tribunal is of the view that the cost of fully scaled plans should not be allowed since line drawings with measurements and the gross internal areas (essential for accurate valuation) would have been sufficient. In particular the areas of the individual rooms were essential as the property was a house in multiple occupation (HMO) and particulars of each unit and its letting terms was needed to value the whole. The Tribunal is of the view that the essential work could have been done for £1150 + VAT but that the time actually spent by 2 people was over elaborate.

11. The Tribunal notes that the actual bill is dated after the date of *the* Counter Notice but that the company has relied on work done at an earlier date on which they clearly drew in order to spend the final 3 hours detailed in amending the survey plans which they had started following the first Notice of Claim. In theory, they should then have rebilled and need not have provided the dated breakdown which indicated that they had updated work done earlier. However the Tribunal considers that it would be too harsh to the Landlord to disallow all but the final hours which fall after the effective Notice of Claim since the surveyors have clearly merely reused earlier work which they have correctly allocated to a bill dated within the allowable period. The Tribunal considers that they should be allowed to draw on the surveys which they

had already made since these plans would have a value in that they could quite simply have made a charge for existing plans in their possession together with further time for updating them. In the circumstances that the Tribunal will not allow the full amount spent in any case, the LVT is prepared to make an allowance of £1150 +VAT (a total of £1,351.25) for this aspect of the valuation work without which Mr Maunder Taylor could not have completed his valuation.

FEES OF MR MAUNDER TAYLOR

12. Mr Maunder Taylor claims over £9,000 for the work done. While the Tribunal considers that this is too much in all the circumstances, it is a fact that this is a highly unusual case and the work done would neither have been straightforward nor speedy to achieve. He needed to establish all the rents for the different units within the HMO and to look at all the agreements. In this respect his assistant's 9 hours in respect of this task were all necessary as were 8 hours of Mr Maunder Taylor's time. There were 21 units plus the housekeeper's room to consider and he had to be sure there were no breaches of planning requirements. It was also necessary to consider the potential effect of the Housing Act 2004 in relation to HMOs as this was fundamental legislation.

13. However it is equally clear that s 9(4) only allows costs in relation to the value of the property and therefore any items in connection with the hearing and indeed any items after the Counter Notice are not allowed and the Applicant makes this point in their Reply to the Landlord's Statement of Costs. However the Applicant is wrong to attempt to persuade the Tribunal to disallow all of Mr Maunder Taylor's costs but the 6 hours they pick out as potentially reasonable since there was a lot of research to be done to value the HMO, which the Tribunal assesses as likely to be the 15 hours it has allowed of Mr Maunder Taylor's time (rather than the 23 he has claimed since there seems to be some duplication in his breakdown) and 15 of his assistant's. Moreover there is no evidence that any of the work billed for was in contemplation of the LVT hearing. The Tribunal considers that it is entitled to bear in mind that the subject property was not only a complex building to value but a very valuable one (with a freehold determined to be worth £1,850,000) and comprising 21 separate units involving 21 separate valuations. In comparison the Tribunal does not know what Mr

Boyle did for the £3,000 quoted as his fee to the Applicants, and the Tribunal has not seen a copy of either valuation report.

In the circumstances, the Tribunal considers that Mr Maunder Taylor's fees should be allowed at £6,000 + VAT (£4,500 for Mr Maunder Taylor and £1,500 for his assistant) a total of £7050.

DECISION

14. The Tribunal determines that the allowable Landlord's statutory costs are therefore as set out above.

Chairman..... *F. R. Burns*

Date..... 12.12.07