RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL

Property	:	**Diamond Waters, 218 Brighton Road, Lancing BN15 8LJ**
Applicants	:	**(1) Alexander Robert Bonetti (2) Robert Paul Bonetti (3) Greta Ann Bonetti**
Respondent	:	**Diamond Waters Widewater Limited**
Case number	:	**CAM/00ML/OC6/2008/0001**
Type of Application	:	**To determine the costs payable on enfranchisement (Section 33 of the Leasehold Reform and Urban Development Act 1993 ("the 1993 Act")**
Tribunal	:	**Bruce Edgington (Lawyer chair) David Brown FRICS MCI Arb**

DECISION

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1. The Applicants' legal costs in dealing with the matters set out in Section 33 of the 1993 Act are limited to £1,128.00 plus VAT and HM Land Registry fees of £30.

2. The Applicants' reasonable valuer's fee is £350.00 plus VAT.

Reasons

Introduction

3. On or about the 2nd November 2007, the Respondent served an Initial Notice under Section 13 of the 1993 Act seeking collective enfranchisement of the property. On or about the 10th January 2008, the Applicants served a Counter-Notice agreeing to the enfranchisement.

4. On or about the 9th May 2008, the Respondent served a notice on the Applicants withdrawing the Initial Notice.

5. Written representations have been received from the parties who have agreed to this matter being dealt with by way of paper determination i.e. without an oral hearing. As neither the **Leasehold Valuation**

Tribunals (Procedure) (England) Regulations 2003 nor the **Leasehold Valuation Tribunals (Procedure) (Amendment) (England) Regulations 2004** allow for parties to 'agree' to a paper determination, 28 days' notice was given pursuant to Regulation 5 of the Amendment Regulations of the Tribunal's intention to deal with this matter on paper on the 14th August 2008. At the same time, it was pointed out that either party may apply for an oral hearing but neither has.

The Law

6. When lessees use the enfranchisement provisions, they become liable to pay the landlords' *"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;
(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) any valuation of any interest in the specified premises or other property;
(e) (not applicable)"

(Section 33(1) of the 1993 Act)

7. The method of assessment of legal fees is 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)

8. The **Civil Procedure Rules 1998** ("CPR") use, in connection with detailed assessments of costs, the expression 'indemnity basis' as opposed to 'standard basis'. 'Indemnity' costs are, broadly, the same as solicitor and client costs. It is therefore relevant to consider the difference between the two.

9. CPR part 44.4(2) states that in respect of costs assessed on the 'standard' basis, a court will:-

"*(a) only allow costs which are proportionate to the matters in issue; and*
(b) resolve any doubt which it may have as to whether costs were reasonably incurred or reasonable and proportionate in amount in favour of the paying party."

10. On the other hand, part 44.4(3) states:-

"Where the amount of costs is to be assessed on the indemnity basis, the court will resolve any doubt which it may have as to whether costs were reasonably incurred or were reasonable in amount in favour of the receiving party."

11. In this case, this is an important distinction because there are issues raised casting doubt on whether various letters and telephone calls were reasonably incurred by the Applicant's solicitors.

The Issues

12. The Applicants' solicitors have prepared a statement of costs showing profit costs of £1,517.50 plus HM Land Registry fees of £30 and VAT. The valuation fee is said to be £950 plus VAT.

13. Points of dispute have been prepared by the Respondent's solicitors which are short and cover 6 items relating to profit costs, 1 item relating to the land registry fee and an objection to the valuer's fee.

Conclusions

14. Before dealing with the detailed points of objection, it is necessary for the Tribunal to consider the level of fee earner and the rates claimed. These are not specifically challenged but have to be considered as the Tribunal's task is to consider whether the costs incurred as a whole are reasonable.

15. The Applicants' solicitors are Dean Wilson Laing who are situated in Brighton. The schedule of costs states that 2 fee earners are used but does not state their qualifications or experience. It refers to grades of fee earner of 1 to 4. These grades are not used by the courts in assessing costs and the Tribunal therefore has no idea what they mean.

16. It is this Tribunal's view that enfranchisement is a highly specialised area of work and would normally warrant the attention of what the courts refer to as a Grade A fee earner i.e. a solicitor with more than 8 years' post qualification experience including at least 8 years' litigation experience. The starting point for hourly rates allowed in the county court for a Grade A fee earner in the Brighton area was £195 until 31st December 2007 and £203 thereafter.

17. Claire Whiteman appears to be the senior fee earner dealing with this case and she claims £205 per hour for all the work from 9th November 2007 until 9th May 2008. Assuming, as the Tribunal does, that she is a Grade A fee earner, £205 per hour is reasonable.

18. However, another (grade 3) fee earner is also used namely Emily Fitzpatrick. There is no explanation as to why 2 fee earners are needed for this fairly straightforward matter. One would not have expected a Grade A fee earner to deal with the conveyancing following

either an agreement or a Tribunal decision about the terms of the transaction, but the matter had not reached that stage. Thus, the use of 2 fee earners is puzzling and must have involved some duplication of time.

19. Turning to the detailed objections, they can conveniently be set out as follows. 1 unit amounts to 6 minutes of time:-

(1) letters to the Applicants: a total of 14 units are claimed and the Respondent objects to this and says it should be 4. The solicitors say that the letters were written over the period of 7 months and are reasonably incurred. There are, of course, 3 Applicants and there is normally at least 1 letter which takes more than 1 unit. 1 or 2 letters a month does not seem to be that excessive. There is doubt about whether all these letters were reasonable but such doubt is resolved in favour of the receiving party.

(2) letters to the other side: a total of 9 units are claimed and the Respondent says that it should only pay for the letters between the service of the Initial Notice and the Counter-Notice. The Applicants' solicitors say, rightly, that they are entitled to their costs up to the withdrawal of the Initial Notice. Claim allowed in full.

(3) letters to expert: 12 units are claimed. The objection is "same arguments as before". The Tribunal is unclear as to exactly what this means. The solicitors refer to the fact that there were 2 valuer's reports and some clarification was needed in view of the time gap. They then concede in part and reduce their claim to 5 units. As only the second valuer's fee is allowed (see below), it would be reasonable to seek clarification because there has been a considerable saving to the Respondents. 5 units are allowed.

(4) letters to others: 4 units are claimed and objected to as there is no indication as to whom they were sent. The claim is withdrawn.

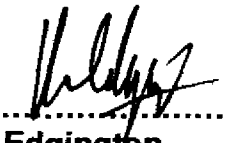
(5) telephone attendances on client: 25 units are claimed i.e. 2½ hours over and above the 1 hour 24 minutes of time spent in writing letters claimed as above. The objection is that this time was spent before the Initial Notice or after the Counter-Notice and that 45 minutes on telephone calls would be reasonable. As has been said before, the correct cut off point is the withdrawal of the Initial Notice, not the Counter-Notice. Having said that, it is difficult to understand how so much time could reasonably have been spent with the client on this relatively straightforward case by a Grade A fee earner. It would be reasonable to assume that one of the 3 clients would have been the spokesperson for routine instructions. The letters have been allowed as claimed but the time spent on telephone calls is excessive. 12 units are allowed.

(6) telephone attendances on expert: 3 units are claimed which does not seem to this Tribunal to be excessive. Allowed as claimed.

(7) HM Land Registry fees: The only objection is that the fees of £30 were incurred prior to the service of the Initial Notice. This is denied by the Applicants' solicitors who say that the fees were incurred in January 2008. Any doubt is resolved in favour of the Applicants. Allowed as claimed.

(8) valuer's fee: The position here is that there was a valuation in early 2007 and fees of £600 were incurred in March 2007 i.e. before the Initial Notice was served. The second valuation fee, incurred after the service of the Initial Notice was only £350. Both fees are claimed on the basis that the second fee is very much less that it would have been but for the earlier valuation and if that had not happened then the fee would have been £950. The objection to the first valuation is upheld. Section 33 of the 1993 Act says quite specifically that the only costs claimable are those *"...incurred in pursuance of the notice..."*. In this case, fees incurred in March 2007 could not possibly be incurred in pursuance of a notice served some 8 months later. The fee of £350 is conceded by the Respondent and is reasonable.

20. 19 units have been either conceded or deducted and these will all be deducted at the Grade A rate. This slight adjustment downwards takes account of the point made before about the duplication involved in the use of 2 fee earners. Thus the deduction from profit costs is £389.50 leaving a balance of £1,128.00.



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Bruce Edgington
Chair
25th September 2008