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LEASEHOLD VALUATION TRIBUNAL
Case no. CAM/22UE/OCE/2012/0012

Property	:	**32 Beech Avenue, Benfleet, Essex SS7 2AZ**
Applicant	:	**Joanne Clare Lee**
Respondent	:	**Ground Rents (Regis) Ltd.**
Date of Application	:	**19th April 2012**
Type of Application	:	**To determine the costs payable on enfranchisement (Section 33 of the Leasehold Reform and Urban Development Act 1993 ("the 1993 Act"))**
The Tribunal	:	**Mr. Bruce Edgington (lawyer chair) Mr. Gerard Smith MRICS FAAV Mr. Stephen Moll FRICS**

AMENDED DECISION

Pursuant to 'slip' rule

Preamble – the original decision in this case was mistakenly concluded and written on the basis that this was a lease extension enfranchisement case rather than a collective enfranchisement. As the relevant provisions as to costs are similar and the decision is the same, the Tribunal has decided to amend the decision under what has become known as the 'slip' rule.

DECISION

1. The reasonable legal costs of the Respondent payable by the Applicant pursuant to Section 33 of the 1993 Act are £1,560.00.

2. The reasonable cost of valuation of the Respondent payable by the Applicant pursuant to Section 33 of the 1993 Act is £800.

3. If the Respondent company is registered for VAT purposes then it 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 in addition to these figures.

Reasons

Introduction

4. This dispute arises from the service of Initial Notices seeking collective enfranchisement of the property. In these circumstances there is a liability on the Applicant to pay the Respondent's reasonable legal and valuation costs as defined by the 1993 Act. The enfranchisement application was deemed to have been withdrawn when the terms were agreed.

5. It was shortly before the hearing fixed for the 11th July 2012 that the parties informed the Tribunal that all terms of the enfranchisement had been agreed save for the Respondent's legal costs and valuation fee. The parties said that, in those circumstances, they did not want a hearing and were content for the Tribunal to deal with this determination on a consideration of the papers only. The Tribunal decided that this was a case which could be determined on a consideration of the papers without an oral hearing.

6. Regrettably the Tribunal's procedural regulations only allow for what is sometimes called a 'paper determination' after 28 days' notice has been given. However, it would be against everyone's wishes for there to be a delay of 28 days and the Tribunal therefore decided to leave the hearing listed and determined the matter in the absence of the parties. Much the same thing, but at least a procedure which does not fall foul of the regulations.

7. In good time for the determination, the Tribunal was provided with a helpful bundle which included the detailed schedule of costs from Tolhurst Fisher LLP with a number of reference materials and copy case reports attached and a copy of the costs schedule itself with handwritten notes against some of the entries. It transpired that Tolhurst Fisher LLP, on behalf of the Respondent, had not received the objections and they therefore submitted a further short reply with a copy of the counter-notice. They also submitted a detailed submission from their client's valuer, Paul Holford from Morgan Sloane dated 29th June 2012 which attached similar copy cases and reference materials to those already included. This appears to be in anticipation of what objection may be raised.

8. In fact the Applicant's solicitors, Palmers, confirm in their letter of the 6th July to the Tribunal that they do not object to the times claimed by the valuer, only to the charging rate of £200 per hour. They say their client's surveyor considers that £125-150 per hour "*is more appropriate*".

The Law

9. The Initial Notice was served and therefore Section 33 of the 1993 is engaged. The Applicants therefore have to pay "*...to the extent that they have been incurred in pursuance of the notice...*" the Respondents' 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;*

(e) *any conveyance of any such interest*

10. What is sometimes known as the 'indemnity principle' applies i.e. the Respondents are not able to recover any more than they would have to pay their own solicitors or surveyors 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

11. The Respondent has used Tolhurst Fisher LLP of Southend-on-Sea as its solicitors. As the Respondent company is in Southend-on-Sea, it is clearly appropriate for those solicitors to be used. The fee earner is said to be Robert Plant (a partner charging £200 per hour). £200.00 per hour is reasonable for what the courts refer to as a Grade B solicitor fee earner and this Tribunal has always considered that this type of specialist work can be dealt with by even a Grade A fee earner with a Grade C fee earner dealing with the conveyancing formalities.

12. Mr. Plant is well known to this Tribunal and is experienced in this work. The Applicant's solicitors point out, rightly, that the starting point for hourly rates in a detailed assessment for a solicitor with 7 years' post qualification experience in the Chelmsford South area, which includes Southend, is £192 per hour. A Grade A's starting point is £217 and a Grade C is £161. However, these are only starting points. In view of Mr. Plant's experience, the Tribunal considers that £200 per hour for all the time claimed and estimated for is reasonable.

13. A number of individual points are then made in the 'objections' and these are commented upon as follows:-

<u>19/9/11 and 2/11/11</u> – these are times claimed for the review of title and preparation of the counter-notice respectively. 2hrs 24 mins. is claimed and it is said that this is excessive and should be charged at 1½ - 2 hours. Tolhurst Fisher say that the time spent is reasonable and they produce a copy of the 7 page counter-notice. The Tribunal

would normally expect this work to be undertaken in 1½ hours by an experienced Grade B fee earner. However, the counter-notice is more complex than is usual and it finds that 2 hours in total should be allowed. In other words 24 minutes will be deducted which equates to £80.

Anticipated letters to opponent and client – these are 8 units each. The objection simply says, in respect of each, "*I don't think this number of letters will be sent*". The Tribunal disagrees. This is a perfectly reasonable claim as an estimate to complete a lease.

Drafting contract – this is claimed at 30 minutes and the question is raised as to "*could this be prepared by someone*", whatever that means. There are 2 schools of thought as to whether a contract is actually necessary with an enfranchisement. Section 24(4) of the 1993 Act gives either party the right to apply to the court in the event of failure to complete the transaction and some argue that a contract is simply unnecessary where full agreement has been reached, as in this case. Whoever is right about this, Section 33 only allows for the costs of 'any conveyance'. In this Tribunal's view this does not include a contract. Thus this item (30 minutes - £100) and the following one (18 minutes - £60) totalling £160 will be deducted for work undertaken on the contract. The Respondent's solicitors refer to Schedule 1 paragraph 6 of the 1993 Regulations. The Tribunal assumes that this is a reference to Schedule 1 paragraph 6 of the 1993 Act which does not mention entering into a contract. Section 24(3) mentions a contract but, as has been said, it is not a requirement and it is significant that Section 33 does not mention recovering the costs of a contract.

Letters to Bank – 2 letters are claimed with the comment "*why would you correspond with a bank?*" If, as is claimed, there is a charge over the property, it is clearly necessary to communicate with the bank as part of the completion process. The claim is allowed.

Completion statement and accounts – 36 mins. is claimed for preparing completion statements and dealing with apportionments etc. The comment is that "*client can renew reconciliation accounts on your behalf. This should take no more than 0.12 hours*". The Tribunal does not agree with this. 36 mins. may seem a little long but is not totally unreasonable and the doubt is resolved in the receiving party's favour.

Special delivery fee – the fee of £16.09 for special delivery of the counter-notice is challenged on the basis that there is no requirement to send it this way. It is true that postage costs are not normally chargeable as a separate claim but, as is said by Tolhurst Fisher LLP, the failure to serve a counter-notice in time is fatal. The time limit cannot be extended. Thus service by special delivery is reasonable and the charge is recoverable.

14. In summary, therefore, the legal costs claim is reduced by £80 + £160 = £240.00 leaving a balance of £1,800 - £240 = £1,560.00.

Valuer's fee

15. As to the valuer's charging rate, the Tribunal disagree with the assertion that the paying party has to prove "*without a shadow of a doubt*" that the Respondent would not have paid the amount claimed. That would be an impossible burden to overcome. The Tribunal must look at reasonableness and what a commercial client would pay for professional services bearing in mind its duty to shareholders.

16. As to the rate of £200 per hour, it is the experience of this Tribunal that a commercial client would expect to pay a fixed fee. If paying an hourly rate, it would be expected that this would be competitive and that travel costs would be kept to a minimum i.e. a surveyor reasonably local to the property would be instructed.

17. It is this Tribunal's experience that £200 per hour is higher than one would expect to pay for a surveyor in south Essex and that 1½ hours travel time in total is too much. Doing the best it can, the Tribunal determines that £180 is at the high end of reasonable. With a reduced travel time, the view of the Tribunal is that a commercial client would expect to pay £800 exclusive of VAT for this valuation

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Bruce Edgington
Chair
11th July, 2012
Amended 23rd July 2012