



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : LON/00AN/OCE/2014/0273

Property : 62, Milson Road, London W14 0LB

Applicant : Anthony Mark Arnott (flat3) and
Jose and Ruth Garcia (flat 2)

Representative : Mrs S Osborne of TWM Solicitors
LLP

Representative : Mr C Scrivener BSc(Hons)MRICSof
Tibbatts & Co. Ltd chartered
surveyors

Respondent : Worldwide Projects Limited

Representative : SDRosser & Co, solicitors

Type of Application : S24 Leasehold Reform, Housing
and Urban Development Act 1993

Tribunal Members : Tribunal Judge Dutton
Miss M Krisko BSc(Est Man)FRICS

**Date and venue of
Hearing** : 24th February 2015 at 10 Alfred
Place, London WC1E 7LR

Date of Decision : 24th February 2015

DECISION

DECISION

The Tribunal determines that the price payable for the freehold of 62 Milson Road, London W14 0LB is £19,300.

The Tribunal finds that the Respondent has acted unreasonably under the provisions of rule 13 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 (the Rules) and is ordered to pay the Applicant the sum of £1,080 including VAT for solicitors costs and £810 including VAT in respect of surveyors fees. Such sum should be offset against the price payable for the freehold or any statutory costs which the Landlord may seek.

The Tribunal approves the Transfer subject to the inclusion of the Transferees address in box 6 and the amendment to the execution clause at box 12 as set out in the draft attached to the Respondent's solicitor's letter dated 20th February 2015.

BACKGROUND

1. By an application dated 10th February 2015 the Applicants sought a determination of the terms of acquisition, by way of collective enfranchisement, in respect of 62 Milson Road, London W14 0LB (the Property).
2. An initial notice had been served on the Respondent dated 13th May 2014 offering a proposed purchase price of £15,500 with an additional sum of £500 for appurtenant property, being the cellar and front garden. By a counter-notice dated 16th July 2015 the Respondent admitted the Applicants right but challenged the price payable and the rights to be acquired. The counter-notice put forward a sum of £22,500 for the freehold and £2,500 for the appurtenant property and proposed that the rights to be granted should be only those comprised or appurtenant to the Landlord's title. Here, essentially ended the Respondent's involvement in the process.
3. Directions were issued on 11th November 2014 requiring amongst other matters, the exchange of valuation calculations, a meeting of surveyors and exchange of statements of agreed facts and reports, the latter by 20th January 2015.
4. The matter was listed for hearing on 24th February 2014. On the evening before, the case officer attempted to make contact with the Respondent's solicitors and in a message was told that the Respondent would accept the Tribunal's finding on the price to be paid. The Respondent did not attend the hearing and had not provided a valuation or proffered an expert to discuss the case with the Applicant's valuer, Mr Scrivener.
5. On 20th February 2015 S D Rosser & Company, the solicitors for the Respondent wrote to the Applicant's solicitors, TWM Solicitors LLP returning the transfer with a minor amendment to the execution clause, which was accepted and saying "*Whilst writing we are curious as to why, when an offer was put forward to settle this matter in September and we confirmed substantially our clients' acceptance of this offer, you apparently ignored this and had proceeded to Tribunal*"
6. It should be noted that by an open letter dated 2nd February 2015 TWM, on behalf of the Applicants, had proposed a sum of £18,800 for the property, together with statutory costs.

HEARING

7. The hearing took place on 24th February 2105. The Applicants were in attendance with Mr Henderson one of the owners of the non-participating flat. They were represented by Mrs Osborne from TWM and Mr Scrivener. We were able to consider the papers before the hearing and in particular read Mr Scrivener's report dated 16th February 2015.
8. The report gave details as to the flats, including their layout and size. All have an unexpired term of 90.11 years from the valuation date of the 13th May 2014 with a fixed ground rent of £50 per annum. As to the deferment rate he suggested 5% based on the principles set out in the case colloquially known as Sportelli and a capitalisation rate of 7% for the reasons set out at paragraph 6 of his report.
9. As to the freehold vacant possession values he had relied on comparable properties in the locality which he had set out in a helpful table. This was subject to a minor change to reflect the existence of a cellar under flat 1 which did not appear to be demised to that flat, but which could only be used by the ground floor property. This led him to conclude that a square footage sum of £900.55 should be applied to the square footage applicable to each flat. This gave rise to rounded values for the three flats of £450,000 for flat 1 on the ground floor, £435,000 for flat 2 on the first floor and £470,000 for the third flat.
10. Applying these elements to the valuation process, their being no marriage value to consider, led him to the conclusion that the price to be paid for the Property should be £18,805 with a further sum of £500 for the appurtenant property, which subject to rounding gave a value of £19,300.
11. On the question of the transfer Mrs Osborne told us that she agreed the proposed amendment made by the Respondent's solicitors in their letter of 20th February 2105 and confirmed that the address for the Applicants to be inserted in the Transfer would be the Property address.
12. Turning to the question of costs Mrs Osborne produced a costs schedule, which had been sent to the Respondent's solicitors claiming a sum of £6,465 plus VAT for both her firm's costs and those of Mr Scrivener. She told us that she was the fee earner who had the conduct of the case and that her charge out rate was £200 per hour. She had apparently qualified in 2013 but had been a licensed conveyancer before then. For the reasons set out below it is not necessary to recount all that was said about the costs. She was of the view that the Respondent had acted unreasonably in that it had not engaged with the Applicant's and had failed to adhere to the directions issued by the Tribunal. She told us that the rates charged, both by her firm and by Mr Scrivener had been agreed with the Applicants.

FINDINGS

13. Dealing firstly with the price to be paid for the freehold. We found Mr Scrivener's report helpful and realistic. We have no quibble with the deferment or capitalisation rates he suggests. His comparables seem appropriate, being geographically and chronologically close to the

Property and the valuation date, except perhaps for the price for flat 3 which was in 2011. The valuation process has been accurately followed to give the price of £18,805 and the additional sum of £500 is acceptable. It should be remembered that the Respondent has not provided any contrary evidence to us. We find that the price payable for the freehold of the Property should be £19,300.

14. We approve the terms of the transfer as drafted subject to the inclusion of the Applicants' address at 62 Milson Road and the amendment of the execution clause as put forward by the Respondent's solicitors.
15. As to costs we have carefully considered the submissions made. The Respondents have been supplied with details of the costs and have raised no issues. We bear in mind that the provisions of rule 13(1) (b) and must consider whether the Respondent has acted unreasonably in defending or conducting the proceedings. It seems to us that the Respondent has had the opportunity of responding to the claim for costs. Originally a schedule was sent to S D Rosser on 12th February 2015, but is not referred to in the letter written on 20th February, or at all.
16. We find that, in these circumstances, it is appropriate to make an order for costs against the Respondent under the provisions of rule 13. The Respondent has failed to engage with the Applicant and has ignored the directions issued by this Tribunal. The parties were close on the question of values and it seems to us that this is a case that cried out for a settlement. The letter from Rosser & Co dated 20th February refers to an offer made in September. We were told that it was close to the open offer made on 2nd February 2015, which we were told was not responded to. We find that had the Respondent properly engaged with the Applicant and had adhered to the directions issued by this Tribunal there was every likelihood that the case could have been settled and attendance at the hearing avoided. We do not consider that the costs incurred by the Applicants prior to 10th February 2015 are payable by the Respondent. They were costs incurred in processing the claim. However, once the open offer was made on 2nd February 2015 we find that the Respondent's continued failure to engage and to comply with the directions is unreasonable within the meaning of the rules.
17. We are prepared to deal with this matter on a summary basis in accordance with rule 13(7)(a). We are prepared to accept the hourly rates claimed. However, as we have said above, it does not seem to us that the Respondent should be responsible for the costs leading up to the hearing. It is for the Applicants to make an application and to produce a valuation in accordance with the directions, which they have done. It might be argued that if the Respondent had engaged, the preparation of a full report could have been avoided. However, Mr Scrivener would have to consider the elements that make up the total sum he considered payable. It is only the preparation of the report that could be considered wasted. As to the time spent in preparing for the hearing these commence on 10th February 2015. The first item is the preparation of the costs schedule. We were told that the time is recorded electronically. It should be a simple task to print off the time sheet, extrapolate such items as incoming mail and produce a schedule

- of costs. The time claimed is 1.5 hours which we find to be excessive. We allow 30 minutes, giving a fee of £100.
18. In respect of the preparation of the trial bundle it seems to us that this is straight forward. We accept that a submission was included. However, the documents to be included are standard and the copying would be undertaken by a non-fee earning person. We consider that 1.5 hours is more than sufficient for this element and allow £300
 19. The attendance at the hearing was 1.5 hours and we consider that 2 hours travel at half rate should be sufficient. To charge the full rate for travel we find is excessive. Accordingly for travelling to and attending the hearing we allow £500. This gives a total of £900 plus VAT at 20% giving a total of £1,080 for solicitors' costs.
 20. As to the Applicant's expert fee as we said at paragraph 16 above we find that the vast bulk of the fee of £2,500 would have to be incurred, whether the Respondent engaged or not. We do accept that it might have been possible to avoid a fee for the preparation of the formal report but we consider that to be no more than one hours work giving a fee of £225. We allow the 1.5 hours attendance and one hour travel, given that the firm is based in Wimbledon, again at half rate. This gives a total attendance fee of £450, which if added to the report fee of £225 gives total surveyors costs to be paid by the Respondent of £675, plus VAT at 20% giving a total of £810
 21. We find that the sum of £1,890 is payable by the Respondent in respect of the Applicants' costs and that, for the purposes of practicality, this sum should be offset against the price payable for the freehold, or any statutory costs that the Landlord may seek to recover.

Tribunal Judge Andrew Dutton

24th February 2015