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**LEASEHOLD VALUATION TRIBUNAL
OF
MIDLAND RENT ASSESSMENT PANEL**

BIR/OOCN/OC6/2008/0002

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON AN APPLICATION UNDER S. 21(1)(ba) LEASEHOLD REFORM ACT 1967**

Applicant	Fitzalbert Charles Meikle (Leaseholder)
Respondent	City and Country Properties (Midlands) Limited (Freeholder)
Subject Property	37 Lock Drive, Stechford, Birmingham, B33 8AB and garage
Applicant's Solicitors	Hadgkiss Hughes & Beale
Respondent's Solicitors	Wallace LLP
Hearing	28 th August 2008
Appearances	Neither party present or represented
Tribunal	Mr. R Healey Mr. W J Martin Mr. D J Satchwell FRICS

11 SEP 2008

Background

1. This is an application for a determination of the landlord's reasonable costs in respect of the tenant's acquisition of the freehold under section 21(1)(ba) of the Leasehold Reform Act 1967. ("the 1967 Act").
2. The application arises out of a notice issued by the tenant's solicitor dated the 7th July 2008 for determination of the reasonable costs payable under section 9(4) of the 1967 Act.
3. The purchase price of the freehold reversion has been agreed between the parties at £2,500.00 and the landlord's valuer's fees at £300.00 plus VAT. The only outstanding item for determination is the Respondent's legal fees.

Witness statements

4. The tribunal considered a signed witness statement of Anthony John Jones on behalf of the tenant dated 14th August 2008 and two signed statements from Samantha Jane Bone on behalf of the landlord dated respectively 14th August 2008 and 26th August 2008.

Tenant's submissions contained in witness statement of Anthony John Jones

5. The tenant's argument may be summarised thus. The landlords legal costs of £2,767.50 against a purchase price of £2,500.00 are "excessive and unreasonable" with no proportionality between the two. Regard should be had to the state of the conveyancing market generally. The landlord in the present instance is unlikely to give serious consideration to the fees charged by his solicitor on account of the likelihood of the bill being in practice presented to the tenant for payment.
6. He further states that the transaction was an uncomplicated matter with low risk bearing in mind the purchase price.
7. Reference is made to instances of legal fees being awarded by the Midland Leasehold Valuation Tribunal for similar matters at prices between £325.00 and for a London solicitor of £600.00 both fees being subject to VAT.
8. The tenant considers that the grade of fee earner is too high and challenges in detail the time recorded.

Respondent's submissions contained in witness statement of Samantha Jane Bone

9. Ms Bone in her witness statement sets out the history of the matter, exhibits a copy of the notice of claim to acquire the freehold, a copy of the notice in reply to the claim, copy completion statement, details of the charge out rates by Wallace LLP as circulated to clients, a time sheet showing the breakdown of the fees of Wallace LLP, landlord's notice of request for deposit, landlord's notice of request for deduction of title and copy correspondence all of which have been made available to the tenant's solicitor.
10. Ms. Bone contends that the legal fees are reasonable and within the requirements of 9(4) of the 1967 Act.

11. Ms Bone sets out the basis of charging of Wallace LLP. The firm has acted on behalf of the landlord and other companies in the Freshwater group in relation to its enfranchisement work since 1993 amounting to several hundred cases per year.

12. Time is charged by reference to the relevant fee earners rate. Ms Bone is the landlord's solicitor of choice in respect of enfranchisement claims. She is a grade A fee earner and at the relevant time her charge out rate was £300.00 per hour. Assistance was given by a trainee, an assistant and a conveyancing partner all of whom charged at their relevant charge out rates.

13. On account of the established relationship between the landlord and Wallace LLP it is not the practice of Wallace LLP to submit a client care letter in respect of each transaction. A copy of the letter from Wallace LLP to the landlord enclosing a list of the firm's fee earners and their charges is within the exhibits. Ms Bone confirms that all work carried out for the landlord, whether payable by the tenant pursuant to section 9(4) of the 1967 Act or otherwise has been, and continues to be, charged out at the applicable charge out rates. Ms Bone considers that the charge out rates are entirely consistent with the usual charge out rates for solicitors in Central London.

14. The statement sets out the work done and refers to the time sheet detailing the work done. An explanation is given of the Land Registry fees.

15. The second witness statement of Ms. Bone is in response to that of Anthony John Jones. It may be summarised as follows. Ms. Bone considers the provisions of the 1967 Act are considered to be complex and require a fee earner who is fully conversant with the principles of it. Reference is made to a decision in the London Leasehold Valuation Tribunal of *Daejan Properties Limited – Stephen Kenneth Twin* which deals with the costs payable by a tenant pursuant to section 60(2) of the Leasehold Reform Housing and Urban Development Act 1993 ("the 1993 Act") Ms. Bone submits that the principles of this case are considered to be analogous to section 9(4) of the 1967 Act. The Tribunal acknowledged that enfranchisement law was a complicated area and in this particular case the tribunal was not persuaded that an assistant could have carried out more of the work.

16. Ms Bone also refers to the decision in *Daejan Investments Limited -v -Parkside 78 Limited (Ref; LON/ENF/1005)* which deals with the reasonableness test contained in the Leasehold Reform, Housing and Urban Development Act 1993 ("the 1993 Act") (set out in para. 20 below). Ms Bone submits "that section 33(2) of the 1993 Act is of equal application to costs payable pursuant to section 9(4) of the 1967 Act. Ms Bone refers to the statement of Professor Farrand in that decision. He considers that enfranchisement is a form of compulsory acquisition at a price which is below market value and it would be surprising therefore if freeholders were to be left further out of pocket by having to pay the incidental fees of valuers and lawyers. As to what is reasonable in this context it is provided that "any costs incurred by the reversioner in respect of professional services shall only be regarded as reasonable if and to the extent that costs in respect of such services might reasonably be expected to have been incurred by him if the circumstances had been such that he was personally liable for all such costs. In the *Daejan Investments* case the tribunal accepted that the "reasonable expectation" test had been satisfied.

17. Ms Bones does not accept the proportionality argument put forward by Mr Jones.

18. Ms Bones draws attention to a recent decision of the Midland Leasehold Valuation Tribunal – BIR/OOCN/OAF/2007/0110 – 11 Bayford Avenue Sheldon – which is referred to in Mr Jones statement. The tribunal acknowledged that the freeholder's solicitors were based in London and determined that the sum of £600.00 plus VAT - some £200 - £250 plus VAT more than in the other cases was payable in relation to the landlord's legal fees. The particular objections raised by Mr. Jones to the work done and time charged as set out on the landlord's solicitor's time sheet were not accepted by Ms. Bone.

The Law

19. The Leasehold Reform Act 1967 section 9(4) provides:-

(4) Where a person gives notice of his desire to have the freehold of a house and premises under this Part of the Act, then unless the notice lapses under any provision of this Act excluding his liability, there shall be borne by him (so far as they are incurred in pursuance of the notice) the reasonable costs of or incidental to any of the following matters :-

(a) any investigation by the landlord of that person's right to acquire the freehold ;

(b) any conveyance or assurance of the and house and premises or any part thereof or of any outstanding estate or interest therein;

(c) deducing, evidencing and verifying the title to the house and premises or any estate or interest therein;

(d) making out and furnishing such abstracts and copies as the persons giving the notice may require;

(e) any valuation of the house and premises;

but so that this subsection shall not apply to any costs if on a sale made voluntarily a stipulation that they were to be borne by the purchaser would be void.

20. Leasehold Reform, Housing and Urban Development Act 1993 Section 33(2)

Considered to be analogous and provides :-

(2) For the purposes of subsection 1 {analogous to Leasehold Reform Act 1967 section 9(4)} any costs incurred by the reversioner or any other relevant landlord in respect of professional services rendered by any person shall only be regarded as reasonable if and to the extent that costs in respect of such services might reasonably be expected to have been incurred by him if the circumstances had been such that he was personally liable for all such costs.

Determination

21. We find that as submitted by Ms. Bone that by analogy section 33(2) of the 1993 Act is applicable to section 9(4) of the 1967 Act. This provides that for the landlord's costs to be regarded as reasonable in this context they must be shown to be such as the Landlord would ordinarily agree if it were itself going to be bearing the cost of

paying the solicitors acting as it will be contractually obliged to do in so far as recovery cannot be obtained from the tenant. It is not clear whether the landlord understood this position in the present case as there is no client care letter or letter of engagement available to us.

22. We find that in our experience a person would be reluctant to incur expenditure for professional services in the sum of £2,534.00 plus VAT to receive a potential sale consideration of £2,500.00.

23. We find the comments of Professor Farrand as set out in 16 above very helpful which may be summarised that as enfranchisement is a form of compulsory acquisition it would be surprising if freeholders were to be left out of pocket with regard to their professional fees. Equally adopting the test of reasonableness that the costs incurred by the landlord must be such that might reasonably be expected to be incurred by him if the circumstances were such that he was personally liable for all such costs then it would then be surprising if statute intended the landlord to be out of pocket as would be the case if he had professional fees of £2534.00 plus VAT against a potential return of the sale consideration of £2,500.

24. We have considered the costs schedule produced by the landlords solicitor both against the requirements of section 9(4) of the 1967 Act and against the time charged for each individual attendance. As is customary time is charged in units of six minutes which conveniently make 10 units equal to one hours work. Of necessity this must be a broad brush approach. The time items considered appropriate are as follows:-

(a)	Engaged considering notice of claim	2 units
(b)	Letters, emails and telephones to client	4 units
(c)	Obtaining office copy entries	Nil
(d)	Completing requests for deposit & deduction of title	1 unit
(e)	Letter to landlord's solicitors	7 units
(f)	Telephone calls to Valuation Office	1 unit
(g)	Considering title	5 units
(h)	Approving draft transfer, amending and preparing rider	3 units
(i)	Drafting and approving notice in reply	Nil
(j)	Letters to valuer	2 units
(k)	Costs to completion	3 units
	Total allowable units	<u>28 units</u>

This translates to two hours and forty eight minutes.

25. We readily acknowledge the complexities surrounding the law relating to enfranchisement but in this particular case we accept the submission by Mr. Jones that the present case is an uncomplicated matter under the 1967 Act with little risk.

26. We accept the schedule of legal fees submitted by Mr Jones which have been determined by other tribunals and they appear to relate to matters of a similar description to the present case. They show determinations for legal fees in the region of £325.00 to £400.00 and finally a fee of £600.00 to take into account of the higher charges of a London based firm.

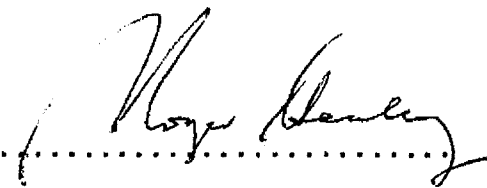
27. These figures are consistent with between two and three hours time being charged in each case.

28. In the present case we determined our approach to allowable costs would be to fix an overall average appropriate hourly rate of charge for the matter considering the various fee earners for an allowable time of two hours 48minutes taking into account the appropriate level of overheads and charge out levels of a London West End Law Practice. This would of necessity be a broad brush approach as an individual determination of each grade of fee earner appropriate to each task would be impractical. We determined that an appropriate supervisor would be a grade B fee earner supported by lower grade assistants. Having regard to our own specialist knowledge as an expert tribunal but not any secret or special knowledge and adopting a broad brush approach rather than endeavour to apportion the work between relevant grades of fee earner we have determined an average hourly chargeout rate for the current matter taking into account the appropriate grades of fee earner as would be appropriate to the task and the situation of the Law Practice.

We find that hourly charge out rate to be £222.00 per hour.

29. We find the disbursements of £65.00 to be properly made and payable.

30. We find the landlord's allowable costs are therefore determined at £622.00 (Six hundred and twenty two pounds) plus VAT plus disbursements of £65.00.



Roger Healey

Chairman