RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL

Properties	:	**35 and 36 Newlands Road and Garages at 36 and 38 Newlands Road, Billericay, EssexCM12 0QG**
Applicants	:	**(1) Mohammed Manzoor Ahmed** **(2) Aswad Shiraz Manzoor**
Respondents	:	**(1) Edward John Hodbay** **(2) Michael Paul Hodbay**
Case number	:	**CAM/22UB/OC9/2009/0004**
Date of Application	:	**29th July 2009**
Type of Application	:	**To determine the costs payable on service of notice of enfranchisement (Section 60 of the Leasehold Reform and Urban Development Act 1993 ("the 1993 Act") and Section 9(4) of the Leasehold Reform Act 1967 ("the 1967 Act"))** **To order that each party pay the other an amount in legal costs caused by the alleged unreasonable behaviour of the other (Paragraph 10, Schedule 12 of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act"))**
The Tribunal	:	**Mr. Bruce Edgington (lawyer chair)** **Mr. David Brown FRICS MCI Arb**

DECISION

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1. The reasonable costs of the Respondents' solicitors following the service of the notices under the 1967 Act are £396.75.

2. The reasonable costs of the Respondents' solicitors following the service of the notices under the 1993 Act are £920.00

3. The reasonable valuer's fees incurred by the Respondents are £215.00

4. Thus the total payable by the Applicants to the Respondents in respect of legal and valuer's fees is £1,399.50.

5. The Tribunal makes no award of costs pursuant to paragraph 10 of Schedule 12 of the 2002 Act.

Reasons

Introduction

6. This application follows a rather lengthy and acrimonious history between the parties which appears to have started amicably enough when, in 2006, the Applicants sought to extend their leases by agreement.

7. There are 4 separate properties involved in which the Applicants, either individually or together, own leasehold interests. The Respondents are the freehold owners. It has been agreed that the costs arising from the service of the various notices of intended enfranchisement will be dealt with together as one application. It has also been agreed that the costs of dealing with the garages should be included even though there must a question mark about whether garages which are separate and subject to separate leases would be included within the definition of a 'flat' under the 1993 Act.

8. The negotiations for the original voluntary lease extensions broke down. The reasons are completely irrelevant for the purposes of this application. The only relevant matter arising from this is that the Applicants paid the Respondents costs and expenses arising from this abortive work because they had given an undertaking that they would do so. There is an issue as to whether some of the work undertaken, and paid for, by the Applicants is now being claimed again.

9. A letter written by the Applicants' solicitors to the Respondents dated 23rd July 2008 enclosed notices under the 1967 Act seeking to enfranchise the properties.

10. The Respondents' solicitors acknowledged receipt on the 30th July and immediately made the point, rightly, that the notices were defective as the 1967 Act does not apply to the leasehold extensions wanted.

11. A further letter written by the Applicants' solicitors to the Respondents dated 9th September 2008 enclosed notices under the 1993 Act and counter-notices were served acknowledging the right of the Applicants to enfranchise.

12. Matters proceeded to completion and this application has been made to assess the Respondents' costs incurred.

13. On the 28th and 29th October respectively the Respondents' solicitors and then the Applicants' solicitors made accusations that they or their clients had each been unreasonable and they wanted an order for costs.

The Law

14. It is accepted by the parties that notices seeking to enfranchise were served and therefore Section 9(4) of the 1967 Act and Section 60 of the 1993 Act are engaged. The Applicants therefore have to pay the Respondents' reasonable costs of and incidental to:-

Under the 1967 Act:-

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

(Section 9(4) of the 1967 Act)

Under the 1993 Act:-

(a) any investigation reasonably undertaken of the tenant's right to a new Lease;
(b) any valuation of the tenant's flat obtained for the purpose of fixing the premium or any other amount payable by virtue of Schedule 13 in connection with the grant of a new lease under section 56;
(c) the grant of a new lease under that section

(Section 60(1) of the 1993 Act)

15. 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.

16. The Applicants' solicitors have provided a bundle of documents and both parties have agreed that the issues between them should be decided by the Tribunal following a consideration of the documents rather than an oral hearing. Both parties were told that the matter would be so determined on or after 19th October 2009 unless a hearing was requested before then. No such request was received.

17. It was an argument over what had or had not been agreed about what should go into the bundle which produced the applications for costs which are both said to be made pursuant to paragraph 10 of Schedule 12 of the 1993 Act. In fact Schedule 12 to the 1993 Act has no paragraph 10. The Tribunal therefore assumes that both solicitors intended to refer to the 2002 Act.

18. The 2002 Act gives a Tribunal the discretion to award one party costs of up to £500 where another party has behaved "*...frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.*" This is sometimes compared with the wasted costs order provisions in the Civil Procedure Rules.

The Respondents' Claim for Legal Costs under the 1967 Act

19. The Respondents' solicitors' statement of costs records that the work was undertaken by Mr. David Fracker, a solicitor with 42 years of experience dealing with residential property, particularly leases and work under the 1993 Act.

20. His work was not time recorded but 10 letters were sent and there were 2 telephone calls. There were additional letters to the Applicant's

solicitors about non payment of these costs. Counsel was instructed and charged £587.50. The solicitors claim £300 plus VAT for their own profit costs for each property making a total of £600 plus VAT and there appear to be no further disbursements.

21. The points of dispute raised by the Applicant's solicitors say that these costs are not recoverable under either the 1967 or the 1993 Act. Alternatively, they say that £300 is excessive and there was no need to instruct counsel.

22. The response from the Respondents' solicitors says that they are entitled to these costs and that they are reasonable. For the first time, it gives their charging rate (£230 per hour) and, in respect of the charge for counsel's fees, says that "...we needed to be absolutely certain that the applicants' solicitors had made a mistake."

The Respondents' Claim for Legal Costs under the 1993 Act

23. Once again, these costs were not time recorded. An additional fee earner became involved namely Hayley Samuels, a trainee solicitor who qualified in July 2009. At the relevant time, she was charged at the rate of £130 per hour.

24. It is said that Mr. Fackler sent 29 letters and had 9 telephone calls, Miss. Samuels sent 6 letters and had no telephone calls. It is estimated that 4 hour 30 minutes time was spent on the 4 separate lease extensions for the 2 maisonettes and the 2 garages. A total of £800 plus VAT is claimed.

25. The points of dispute say that all the documentation had been completed and agreed and paid for prior to the 28th July 2008. Therefore the amount claimed is excessive.

26. The response is that over 2 years had passed and the solicitors say that they would be negligent if they did not review the whole matter again. Further, they say that the voluntary arrangement did not involve the service of notices or the need to check entitlement to enfranchise. Curiously they then attach a further statement of costs dealing only with correspondence and telephone calls which comes to £952 which they then round down to £800 or £400 per property.

Valuer's fees

27. The solicitors' statement of costs does not deal with valuer's fees but there is a letter from a Mr. David Parish FRICS of Gates Parish & Co. which shows that he is a very experienced chartered surveyor who claims £1,000 plus VAT at a charging rate of £200 per hour.

28. There is a breakdown of this charge into 1 hour for the valuation and reporting to the solicitors thereon plus 4 hours for correspondence, communications with the Applicants' surveyor and the consideration and preparation of correspondence.

29. The objection says that the charging rate is excessive and should be £140 per hour. No justification is given for this rate. Furthermore it is

said that 45 minutes should have been enough for the valuation and the remainder of the fee claimed is irrecoverable under the Act or, alternatively, is excessive.

30. The response is that Mr. Parish is experienced and efficient and that his rates have not been challenged before. It is further asserted that Section 60 of the 1993 Act does cover negotiations and incidental work in addition to the valuation.

Wasted Costs

31. The application for costs from the Respondents' solicitors is in a letter to the Tribunal dated 28th October. This points out that there appeared to be difficulties over what was or what was not agreed as to the bundle to go before the Tribunal. They say that the Applicants' solicitors did not include 6 letters and copies of 2 sections of legislation in the bundle and they then send copies to the Tribunal. They claim unquantified costs because the Applicants' solicitors have "behaved unreasonably by leaving correspondence out of the bundle...(and)...have attempted to prejudice the Respondents' case by not providing a full bundle for approval"

32. The Applicants' solicitors wrote the next day referring to the Respondents' application and saying "In light of the Respondents (sic) conduct, which has been endemic throughout, we request that this letter also be treated as an application to the Tribunal for a discretionary costs award pursuant to (the 1993 Act) our costs of the application to the Tribunal being limited to £300.00 plus VAT". There is no information as to how this figure is quantified.

Conclusions

33. For assessing solicitors' costs on an *inter partes* basis in the county court, a Grade A fee earner is a senior solicitor with more than 8 years' post qualification experience in litigation and a trainee solicitor is a Grade D fee earner. Higher rates can be allowed to Grade A fee earners for substantial and complex litigation which this is not, in this Tribunal's view. In 2008, the hourly rates being awarded to solicitors in Romford in detailed assessments were as follows:-

Grade A	£203
Grade D	£110

34. In 2009, the equivalent rates were:-

Grade A	£213
Grade D	£116

35. These rates are not mandatory, particularly when one is assessing on an indemnity basis. However, they are helpful as a starting point for assessment.

36. In the experience of this Tribunal, enfranchisement work is a specialised area of work and Grade A rates would normally be allowed save for the conveyancing aspects of the matter where one would

expect the matter to be handled by a Grade B or even a Grade C fee earner with appropriate supervision.

37. Both rates claimed are higher than the normal rates that would be awarded. Nevertheless, they are not grossly so and the Tribunal finds that they are reasonable in the circumstances.

38. However, when paying a Grade A rate, a client would expect the work to be undertaken by a senior solicitor who is an experienced specialist. A solicitor experienced in this area of work should have been able to take responsibility for rejecting the notices served under the 1967 Act without the assistance of counsel.

39. Furthermore, the time claimed for the work undertaken as a result of the 1967 Act notices is also excessive. It is clear from the correspondence that Mr. Fackler took the immediate decision that the notices were defective because they were served under the wrong Act. He made his clients' position clear and that should have been the end of the matter. The Tribunal therefore allows some time to consider the notices, undertake some research, report to the clients and send the letter denying the right to enfranchise. A total of 1½ hours should have been sufficient to do all of this and the Tribunal allows £345 plus VAT. It does not allow counsel's fees.

40. In respect of the work under the 1993 Act, the lack of time recording is regretted. It is also clear from the Respondents' solicitors own representations that all the paperwork had been not only concluded but was also executed *in escrow* as part of the costs already paid by the Applicants.

41. However, having said that, it appears that the costs claimed include some time spent but the breakdown provided only refers to correspondence and telephone calls. It is difficult to see how a total of 35 letters could have been written but taking the claim 'in the round' and as a considerable discount appears to have been already been made, the Tribunal agrees that £800 plus VAT is a reasonable figure for the solicitors' costs.

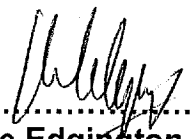
42. As far as the valuer's costs are concerned, the Tribunal accepts that the charging rate of £200 is on the high side. However, 1 hour for valuing 2 properties plus 2 separate garages and preparing a report for the solicitors is less time than many surveyors would spend and the Tribunal therefore allows £200 plus VAT for the valuation.

43. It is clear from the wording of Section 60 of the 1993 Act that the only valuer's fee which can be claimed is that for preparing the valuation. Thus the remainder of Mr. Parish's fees are irrecoverable.

44. As to the claims for wasted costs, they amount to an argument about whether 6 letters and some legal authority were or should have been included in the bundle. Neither claim is properly quantified and therefore even if the Tribunal found that there had been unreasonable behaviour, it would not have been able to make an order because the

2002 Act makes it clear that the Tribunal has to quantify the costs actually incurred as a result of the alleged behaviour.

45. In the event, the argument is trivial, to say the least, and is hardly the sort of behaviour anticipated by the 2002 Act. No award is made to either party.



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Bruce Edgington
Chair
4th November 2009