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**HM COURTS AND TRIBUNAL SERVICE**

**LEASEHOLD VALUATION TRIBUNAL**

**SOUTHERN RENT ASSESSMENT PANEL**

**Case No. CHI/00HA/OC9/2011/0012**

**Re: 102 Sydney Place, Bath, BA2 6NE (the "Property").**

**BETWEEN :**

**WATERGLEN LIMITED**

**Applicant**

**and**

**102 SYDNEY PLACE (BATH) LIMITED**

**Respondent**

**Date of Consideration: 16th April 2012**

**Date of Decision: 26th April 2012**

**Tribunal: Mr S Lal, LIM Barrister, and Mr RA Athow FRICS**

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**THE TRIBUNAL'S DECISION**

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**Background**

1. This is an application made by the Applicant pursuant to Section 91(2)(d) of the Leasehold Reform, Housing and Urban Development Act 1993 (the "Act") to determine the amount of Landlord costs payable by the Respondent pursuant to Section 33 (1) of the Act.
2. The factual background of the matter can be set out fairly shortly. The Applicant was the freeholder of the Property and the Respondent is the management company set up by the seven qualifying tenants of the Property to acquire the freehold pursuant to Section 1(1) of the Act. Each of the leases held by the qualifying tenants have an unexpired term of 964 years.
3. On 23<sup>rd</sup> September 2010, the Respondent's Solicitors sent an Initial Notice to the Applicant pursuant to Section 13 of the Act. The proposed purchase price for the freehold interest in the Property was £5,000 plus £1 for the freehold interest in the garden and access areas. On 17<sup>th</sup> November 2010, the Applicant's Solicitors sent a Counter Notice to the Respondent pursuant to Section 21 of the Act proposing a purchase price for the freehold of the Property of £10,748 plus £100 for the garden and access areas.

4. By 16<sup>th</sup> March 2012 the parties had agreed a purchase price for the freehold of £8,751. However, since the terms of the contract and the service charge figures could not be agreed in accordance with the timings set out in the Act, the Respondent's Solicitors applied to the Court on 12th July 2011 for an Order under Section 25(6) of the Act for the freehold interest to be vested in the Respondent. On 4<sup>th</sup> November 2011, the Court granted a Vesting Order in favour of the Respondent.

5. On 20<sup>th</sup> December 2011, the Applicant applied to the Tribunal pursuant to Section 91(2)(d) of the Act for a determination as to the reasonable costs payable by the Respondent under Section 33 (1) of the Act. The amount of legal costs claimed by the Applicant amount to £1,965.95 and the surveyor's fees claimed by the Applicant amount to £3,290.00.

6. On 29<sup>th</sup> December, provisional directions were issued by the Tribunal giving notice to the parties that the Tribunal proposed to deal with the Application on the basis of written representations and documents without a formal hearing. The parties have agreed to this approach although the Respondent has requested that a surveyor sits with the Chairman of the Tribunal to advise on the issue of surveyor's fees. It should be noted that this request has been complied with. The Applicant has provided the Respondent and the Tribunal with a detailed breakdown of solicitor's costs and surveyor's fees together with its statement of case. The Respondent has provided submissions to the Tribunal and the Applicant detailing the points of dispute regarding costs.

## **Case for the Applicant**

### **(i) Solicitor's Costs**

7. The Applicant states that the Solicitor responsible for this matter, Robert Plant, is a Partner of Tolhurst Fisher LLP Solicitors whose charge out rate was £180 per hour up to 25<sup>th</sup> March 2011 and £200 per hour thereafter. The Applicant states that this is a reasonable fee for a Grade B fee earner of this qualification. The Applicant claims that there is no requirement to restrict costs to the cheapest rate acceptable to the Respondent (see the Tribunal case of 1-30 Hampden Court). The Applicant further states that it has satisfied the test of reasonableness set out in Section 33(2) of the Act. The Applicant again quotes the case of 1-30 Hampden Court where it was noted that leasehold enfranchisement is a form of compulsory purchase from an unwilling seller at a bargain price.

8. In these circumstances, the Tribunal in this case said it would be "surprising if reversioners were expected to be further out of pocket in respect of their inevitable incidental expenditure incurred in obtaining the professional services of valuers and lawyer." The Applicant claims that all legal costs are recoverable on an indemnity basis except in so far as they are of an

unreasonable amount or have been unreasonably incurred (Gomba v Minorities Finance).

9. The Applicant considers that it is for the Respondent to prove with evidence that the Applicant would not have paid the legal costs if liable to do so. The Applicant has set out in some detail the reasons why it believes the legal costs were reasonable at each stage of the transaction together with a detailed breakdown of these costs.

### **(ii) Surveyor's Costs**

10. The Applicant states that the surveyor, Paul Holford of Morgan Sloane has 12 years of MRICS qualified experience and seven years of property valuation experience. His charge out rate is £200 per hour, which the Applicant claims is a reasonable rate for his experience. Again the Applicant claims there is no obligation to restrict costs otherwise reasonably incurred to the cheapest rate or rates acceptable to the Respondent (case of 1-30 Hampden Court).

11. The Applicant confirms that the surveyor's costs do not exceed the amount, which the Applicant is liable to pay. Again the Applicant stresses that the surveyor's costs are recoverable unless they are considered to be of an unreasonable amount or unreasonably incurred, the burden of proof being on the Respondent. The Applicant has provided a detailed justification of the elements of the surveyor's costs relating to travel time, inspection of the Property and preparation of the valuation report together with a breakdown of costs.

### **Case for the Respondent**

12. The Respondent accepts that it is liable to pay the reasonable costs of and incidental to the matters listed in Section 33(1) of the Act. However, the Respondent claims that Section 33(2) of the Act was intended to "import a requirement of proportionality" so that if the premium is small (as in this case), costs should be kept to a minimum. The Respondent argues that there is no reversionary value in the leases of the Property and the only premium the Applicant could obtain would be the capitalised value of the ground rent. The Respondent notes that the reasonableness test is an objective one.

### **(i) Solicitor's Costs**

13. The Respondent identifies two areas of dispute. Firstly, it disputes the costs incurred between 24<sup>th</sup> March and 20<sup>th</sup> July 2011 on the basis that it was not necessary to have a contract in these circumstances. Once the premium has been agreed, the Respondent claims that it would be usual to proceed to completion without a contract. The costs incurred between 24<sup>th</sup> March and 20<sup>th</sup> July 2011 related to negotiating the terms of the contract. The Respondent considers that it was unreasonable for the Applicant to insist on a contract given the low premium. Further, the contract was never agreed as the Respondent claims the Applicant's Solicitor insisted on clauses that could not be justified.

14. The second set of costs in dispute are those incurred from 13<sup>th</sup> August 2011 to 2<sup>nd</sup> November 2011. The Respondent claims that costs incurred during this period related to attempts to settle the claim for a Vesting Order and therefore should be considered part of the costs of those proceedings and not Section 33 costs.

### **(ii) Surveyor's Costs**

15. The Respondent disputes whether the Applicant has incurred any costs at all within Section 33(1) of the Act on the basis that Morgan Sloane is the in-house valuation department of Regis Group plc. and the Applicant is a subsidiary of Regis Group plc. The Respondent claims that any payment by Regis Group plc. to Morgan Sloane would be simply an internal transfer and no VAT should be payable as there was no genuine supply.

16. If the Tribunal does not accept the former argument, the Respondent considers that it was not reasonable for the surveyor to inspect each of the flats given the lack of reversionary value in the flats for the Applicant. The Respondent also considers that it was not necessary to look at historic and current house price data or consult local agents for the same reason. The Respondent claims that an appropriate fee for the Surveyor would be £383.32 if based on the £200 charging rate. The Respondent further alleges that the inspection of the Property was carried out in connection with an unrelated matter, although no evidence has been submitted regarding this.

### **The Decision**

#### **Solicitor's Costs**

17. The Tribunal considers that the fee rate of the partner at Tolhurst Fisher LLP is a reasonable rate for a fee earner of this qualification. The Tribunal has considered whether the costs themselves were reasonably incurred, concentrating on the two areas of dispute. Firstly, the costs incurred between 24<sup>th</sup> March and 20<sup>th</sup> July 2011. The Tribunal considers that, on balance, these costs were reasonably incurred as the Act does anticipate that the parties will enter into a contract, even though it is sometimes practice to proceed direct to completion. Unfortunately in these circumstances, costs increased as the terms of the contract could not be agreed.

18. Secondly, the Tribunal has considered the costs incurred between 13<sup>th</sup> August and 2<sup>nd</sup> November 2011. The Tribunal agrees with the Respondent that the costs incurred between these dates should be considered as part of the costs of the proceedings relating to the Vesting Order. The costs between these dates are, therefore, not recoverable by the Applicant.

19. The Tribunal finds that the total solicitor's costs payable by the Respondent under section 33(1) of the Act should, therefore, amount to £1,725.95 (£1965.95 - £240).

### Surveyor's Costs

20. The Act allows the costs of employing a valuer if they are reasonably incurred. In cases of enfranchisement of long leasehold property (as is the case in this instance) where low settlement figures are concerned, it is appropriate that the freeholder should be conscious of the costs involved in reaching the valuation. The Tribunal finds that the valuer's costs are excessive.

21. The Tribunal acting as an expert Tribunal finds that an appropriate hourly rate for a local valuer with suitable knowledge and skill is £180 per hour (plus VAT if registered).

22. The Tribunal finds that it was not appropriate for the freeholder to employ a valuer who had to make a 10 hour round trip to carry out the valuation. In any event the valuer was by his own admission, by email, visiting another client that day and the cost of travel should have been shared. It could have been carried out by a local valuer at a much more cost-effective charge. The result is that the time charged is inappropriately high in this case. The provision of the breakdown of the valuer's fee has been of assistance to us.

23. The Tribunal finds that the time taken for a competent valuer to read the lease and Land Registry entries should be no more than 15 minutes. Whilst it is agreed that it is appropriate for the valuer to inspect the property, it is not necessary to spend any longer than 30 minutes on site in this instance. Travel to and from the property should take no more than 1 hour maximum. The in-house process of checking values, LVT decisions, etc. should take no more than 15 minutes in this case. The full preparation of the report should take no more than 2 hours.

24. The Tribunal finds that the maximum time that should be allowed in this case is 4 hours. The fee should be based on hours at £180.00 per hour, which equates to £720.00. If the valuer is registered for VAT this would give a final fee of £846.00, and this is the sum that the Tribunal finds appropriate in this case.

25. The Tribunal finds that the total amount payable by the Respondent to the Applicant under section 33(1) of the Act is £2,571.95.

Dated the 26<sup>th</sup> April 2012

CHAIRMAN .....  
Mr Sanjay Lal

