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DECISION OF A LEASEHOLD VALUATION TRIBUNAL

Leasehold Reform, Housing and Urban Development Act section 91

LON/00AH/OC9/2012/0006

Property:	111 and 113 Cheston Avenue, Croydon, Surrey CR0 8DF
Applicants/Nominee Purchasers:	Monica McCarthy and Damian Bevis
Represented by:	In person
Respondent:	Robin Dundas, Earl Ronaldshay
Represented by:	Forsters LLP
Date of Hearing:	Paper Decision
Date of Decision:	21 June 2012
Members of the Tribunal:	Mr Colum Leonard

Introduction

1. This is an application under section 91 of the Leasehold Reform, Housing and Urban Development Act 1993 (the Act"). The application is for the determination of the costs payable by the nominee purchasers under section 33 (1) of the Act following service by them, on about 28th March 2011, of a notice under section 13. The notice related to 111 and 113 Cheston Avenue (two maisonettes, upstairs and downstairs respectively), in the Parkfield Estate, Croydon.

The Statutory Provisions

2. Section 33 provides, insofar as relevant for the purposes of this decision:

(1) Where a notice is given under section 13, then (subject to the provisions of this section and sections 28(6), 29(7) and 31(5)) the nominee purchaser shall be liable, to the extent that they have been incurred in pursuance of the notice by the reversioner or by any other relevant landlord, for the reasonable costs of and incidental to any of the following matters, namely—

(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 that 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....

(2) For the purposes of subsection (1) 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.

3. The Respondent's solicitors have pointed out that in this particular case the Applicants, on serving notice under section 13 of the Act, simultaneously served notices under section 42 (acquisition of a new lease). That gives rise to a potential entitlement by the respondent to costs under section 60, the provisions of which are similar to section 33.

4. This application is for only a determination of costs payable under section 33, so that any costs payable under section 60 fall outside the scope of this determination. For that reason, in this decision those costs have where possible been identified but not deducted from the amount found to be reasonably due from the Applicants to the Respondent. The leasehold extension process initiated by those section 42 notices having been "frozen" pending the completion of the enfranchisement process, the work performed in respect of them was (as

is evident from the information supplied by the Respondent's solicitors) minimal in any event.

The Amount of Costs Claimed

5. On completion of their acquisition of the freehold of 111 and 113 Cheston Avenue the Respondent appears to have claimed, and the Applicants to have paid, £2,400 towards valuation fees and £2,424 towards legal fees. These figures appear in a completion statement and so must be assumed to include VAT. The net figures - £2,000 and £2,020 respectively – appear to represent a modest discount on fees of which the Respondent's valuers (Beckett and Kay) have supplied a breakdown totalling £2056.25 and the Respondent's solicitors (Forsters LLP) a breakdown totalling £2,365.83.

The Applicant's case

6. The Applicants argue that the costs paid by them to the Respondent are excessive. They complain that the Respondent's valuations were consistently too high, so that unnecessary costs were incurred: it might, for example, otherwise have been possible to deal with matters by agreement rather than through the full statutory process. They suggest that they should be paying the Respondent fees similar to those they paid to their own advisers for equivalent work: £530 plus VAT for property valuation and £1200 plus VAT for legal fees.

7. It would not be right to penalise the Respondent for adopting the figures he did, or to assume that some of the legal costs incurred by him might have been avoided if he had taken a different view. The Respondent is entitled to take professional advice and follow it. The question is whether, in the circumstances, the costs incurred by the Respondent and charged to the Applicants are reasonable by reference to the criteria set out in section 33, sub-sections (1) and (2).

Solicitors' Fees

8. The Applicant's suggestion that they should pay legal fees at a similar level to those paid to their own advisers raises the question of whether it is reasonable for the Respondent to recover from the Applicants the full cost entailed in his choice of central London solicitors charging hourly rates of £430 per hour for a partner and £300 per hour for an assistant.

9. As to their fees, the Respondent's solicitors Forsters LLP say :

> 'We do...act for Lord Ronaldshay in connection with all enfranchisement claims he receives on the estate. He also instructs Beckett and Kay in relation to any such claims. Both ourselves and Beckett and Kay are always conscious that our client's estate is not an estate in central London, although both our practices are based there, and therefore we are always mindful of this and the premium involved when we issue our invoices both give a discount to usual charges. Our client is entitled to instruct any such professionals he chooses to deal with these claims and should not be prejudiced because he has instructed firms in central London. That said the Section 33 costs that have been charged in this case are well under the "market rate" for central London practices.'

10. The suggestion that the Respondent should not be "prejudiced" by his choice of central London, and so relatively expensive, solicitors is not, with all due respect, to the point. The Respondent can instruct anyone he likes: the question is whether the full cost consequent

on that choice is reasonable, by reference to section 33 of the Act, and so recoverable from the Applicants under that section. If it is not, he may have to bear some of the cost himself. There is no prejudice in that.

11. It will be evident from the figures set out above that any discount to the fees passed on to the applicants is small. Nor can this Tribunal accept the proposition that the hourly rates charged by the Respondent's solicitors are well under the market rates for central London firms.

12. Before considering what the market rates in central London might be, however, it is necessary to consider whether it is reasonable for the Respondent to recover such rates from the Applicants.

13. As to whether the choice of central London solicitors was reasonable, some guidance may be derived from the decision of the Court of Appeal in *Truscott v Truscott; Wraith v Sheffield Forgemasters Ltd* [1998] 1 WLR 132. That case (referred to in this decision as *Wraith*) concerned the choice of litigation solicitors, and the Civil Procedure Rules rather than property transactions and the 1993 act, but it did focus upon the same question of reasonableness: in particular whether it is reasonable, for the purposes of recovery from another party, for a person to choose to instruct solicitors in an expensive location where suitable representation might have been available elsewhere at a lower rate.

14. The Court of Appeal decided that Mr Wraith, who worked, lived and was injured in Sheffield but whose claim for serious personal injury had gone to London solicitors because his trade union's practice was to send all such cases to London, could recover only the much lower hourly rates that a suitable solicitor practising in Sheffield or Leeds might have been expected to charge. Mr Truscott, who lived in East Cheam and had tried local solicitors without success, was entitled to recover the cost of the London solicitors to whom he turned when local representation failed.

15. In the course of preparing this decision the Tribunal invited further submissions from both parties upon the proper application of the *Wraith* principles to this case. The Respondent has offered no further submissions. The Applicants have, and have added further detailed submissions on the time spent by the Respondent's solicitors and valuers. These further submissions on time spent (as opposed to the *Wraith* principles) have not influenced the Tribunal's conclusions, for these reasons.

16. No direction was given for such further submissions. The Applicants had made it clear in their letter to the Tribunal of 8 February 2012 that they had nothing further to add. If further ad hoc submissions were to be accepted from the Applicants now, it would be necessary to invite the Respondent to respond. That could cause further delay and disproportionate cost. Such further delay and cost would only be merited if there were some likelihood that the Tribunal's conclusions would be materially affected. That is not the case, as most of the Applicants' further submissions raise points already considered by the Tribunal or appear to be based upon an over-restrictive interpretation of section 33, a test of strict necessity rather than the applicable standard of reasonableness and a lack of understanding of the work necessarily undertaken by solicitors in the preparation of what may appear to be fairly standard documents.

Conclusion: Solicitors' Hourly Rates

17. In this case the Respondent is based in Leeds. The Parkfield estate, which is the subject of many applications under the Act, in Croydon. The Respondent chooses to instruct solicitors and valuers in central London to deal with those applications. The work to be undertaken is

not so unusual or complex that only central London solicitors can do it; the Applicants managed perfectly well with local advisers.

18. The position of the Respondent is similar to that of Mr Wraith (albeit that the practice of sending regular work to central London solicitors is his own, rather than a representative organisation's choice). The Respondent is of course fully entitled to instruct his preferred choice of solicitors for all enfranchisement work or lease renewal work on the Parkfield estate, but his choice is an expensive one and the hourly rates charged by them well in excess of what is, bearing in mind in particular section 33 (2), reasonably recoverable from the Applicants.

19. The Respondent should recover his solicitors' fees for work reasonably undertaken at rates commensurate with instructing suitable solicitors in outer London or Central Leeds. Hourly rates of £250 for a partner's work and £200 for an assistant's work would reflect that.

20. The detail of the work undertaken is considered below.

Conclusion: the Work Undertaken by the Respondent's Solicitors

21. Forsters LLP have helpfully supplied an itemised breakdown of costs (no disbursements are mentioned or claimed). Hourly rates aside there is little in it which falls outside the parameters of reasonableness for the purposes of this decision.

22. 35 minutes of partner's ("PJN") time on 26 May 2011 "reviewing the claim and checking the Counter-notice" is supervisory in nature and as such irrecoverable from the Respondents, as is 15 minutes on 4th October "receiving an email".

23. All the remaining time claimed is the assistant ("LJB")'s time. Of that, strictly speaking, to exclude matters pertaining to the section 42 notices the time claimed on 31 March and 5 April recoverable under section 33 (as opposed to section 60) could be reduced to 24 minutes for each date and the time spent on the 27 May on "suspension notices" excluded altogether. However as noted above those small items may be recoverable under section 60 and no determination has been sought in that respect. None of the time spent appears unreasonable: such doubt as there may be as to a few of the smaller items is de minimis.

24. LJB performed 6 hours and 8 minutes of work which at £200 per hour amounts to £1360. Given that the time spent is not excessive and this tribunal has not been asked to determine costs recoverable under section 60, the Applicants' adjusted liability for legal fees is £1360 plus VAT, totalling £1632.00.

Beckett and Kay's Hourly Rates

25. Beckett and Kay, surveyors and valuers, charged £325 per hour for the services of Richard Kay BSc (Hons) MRICS, partner, and £200 per hour for the services of Karolina Tolgyesi MRICS, associate.

26. As to hourly rates much the same principles must apply as to solicitors, although the need for some local expertise points to outer London rather than Leeds charging rates. The Applicants' valuer appears to have charged only £40 per hour, a very good rate but well below that reasonably recoverable by the Respondent.

27. The rates charged by the Respondent's central London valuers are too high to be recoverable in full from the Applicants. A uniform hourly rate of £150, assuming a suitable

valuer with the appropriate enfranchisement expertise charging an appropriate rate for the outer London area, is fair.

Beckett and Kay's Time

28. It is suggested that, given their familiarity with the Parkfield estate, Beckett and Kay did not need to undertake an inspection and valuation of 111 and 113 Cheston Avenue. Such a conclusion would be unfair to the Respondent, who is not obliged to assume that properties are identical. However Beckett and Kay's familiarity with the Parkfield estate is relevant given that it should have resulted in a saving of time.

29. The Respondent's solicitors say that Beckett and Kay spent substantial time on informal discussions with the Applicants for which they have not charged. It is difficult to understand the relevance of this: Beckett and Kay were not acting for the Applicants and would have had no proper basis upon which to charge them. Nor are the costs of discussions or negotiations recoverable from the Applicants under section 33.

30. As for the work the cost of which is recoverable, the Applicants say that Beckett and Kay are levying a standard charge of £1000 per property on the Parkfield Estate, doubling it up for the two maisonettes.

31. That is not how Beckett and Kay analyse their own charges. Their "job costing" shows a total of 8 hours and 15 minutes spent by Karolina Tolgyesi at £200 per hour and one hour and 15 minutes spent by Richard Kay at £325 per hour.

32. The time spent by Mr Kay totals one hour and 15 minutes on discussions with, and advise to, the client on the enfranchisement and lease extension claims and on preparing recommendations on the figures to be inserted in the Respondent's counter-notice. He did supply the relevant figures to his client by email. His time on advice was minimal and is unlikely to have duplicated work undertaken by the Respondent's solicitors.

33. Ms Tolgyesi's time totals eight hours and 15 minutes including dealing with the initial notices (the small amount of time spent on the section 42 notices will be treated in this decision in the same way as solicitors' fees), opening files, advice, perusing the leases, arranging inspection, preparing, inspecting and measuring, reviewing comparables and preparing figures for the counter-notice.

34. Even given that the exercise involved two adjoining maisonettes Ms Tolgyesi's time seems very full. Time spent opening files is not chargeable. Three hours considering the notices served and advising, and 30 minutes arranging inspection, appears beyond what it is reasonable for the Applicants to pay. So does a full hour preparing for inspection and preparing a draft valuation template (which would surely be available already). Given reasonable familiarity with the Parkfield Estate four hours and 45 minutes on inspection and review of comparables is very high – much of that time must have been spent on travel which would have been unnecessary but for the Respondent's choice of valuers in central London. Time claimed for preparing the valuation and figures for the counter-notice duplicates the work undertaken by Mr Kay.

35. Overall it is the Tribunal's conclusion that reasonably recoverable valuation fees can be measured by reference to a suitable valuer with appropriate local knowledge (but without assuming any special knowledge of the Parkfield Estate). Such a valuer could reasonably have undertaken the work required for both properties within a total of eight hours at £150 per hour. Accordingly this Tribunal determines that the sum due to the Respondent from the Applicants for valuation fees is £1200 plus VAT, totalling £1440.

Summary and Conclusions

36. The Tribunal has determined that the sum payable by the Applicants for legal fees is £1632 (including VAT) and for valuation fees £1440 (including VAT). The Applicants have paid a total of £4824. The Respondent must repay to the Applicants the sum of **£1752.00.**

Signed Colum Leonard Chairman

Date: 21 June 2012