

2499.



Case reference: LON/00AJ/OCE/2012/0005

**DECISION OF THE LONDON LEASEHOLD VALUATION TRIBUNAL ON
AN APPLICATION UNDER SECTION 91(2)(d) OF THE LEASEHOLD
REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993 TO
DETERMINE THE AMOUNT OF THE LANDLORD'S RECOVERABLE
COSTS (SECTION 33) AND ON AN APPLICATION UNDER PARAGRAPH
10 OF SCHEDULE 12 TO THE COMMONHOLD AND LEASEHOLD
REFORM ACT 2002**

Premises: 1 – 4 Sandall Close, Ealing, London W5 1JE

Applicant: Sandall Close (Freehold) Company Limited

Respondent: Mountview Estates plc

**Determination on the basis of written representations under regulation
13 of the Leasehold Valuation Tribunals (Procedure) England
Regulations 2003**

Tribunal: Margaret Wilson
Luis Jarero BSc FRICS

Date of decision: 15 May 2012

Introduction and background

1. This is an application by a nominee purchaser under section 91(2)(d) of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") to determine the amount of the landlord's recoverable costs in connection with a claim under section 13 of the Act to exercise a right of collective enfranchisement in respect of 1 – 4 Sandall Close, Ealing, which is a block of four flats, all held on leases with unexpired terms in excess of 80 years. The initial notice under section 13 of the Act was dated 31 July 2011 and proposed a price of £19,750 for the freehold of the specified premises and £250 for the common parts and garden. The landlord's counter-notice, which was dated 26 July 2011, proposed a price of £25,700 for the specified premises and £500 for the common parts and garden. An application to the tribunal was made on 9 January 2012 but the price was agreed before the hearing.

2. Directions for the hearing of the dispute as to costs were made on or about 29 March 2012. Neither party has asked for an oral hearing and the dispute is therefore determined on the basis of written representations in accordance with the procedure set out in regulation 13 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003. In compliance with the tribunal's directions the landlord's solicitors, Winckworth Sherwood LLP, have submitted a schedule of costs and the nominee purchaser's solicitors, Pro-Leagle, have submitted a statement in response. We have considered whether the landlord should be afforded an opportunity to respond to the nominee purchaser's solicitors' very comprehensive statement, but have concluded that it raises no new matters upon which the landlord has not been afforded a proper opportunity to comment in correspondence.

The law

3. By section 33(1) of the Act, where a notice under section 13 is given, the nominee purchaser is liable, to the extent that they have been incurred in

pursuance of the initial notice, for the reasonable costs of and incidental to the following:

- (a) *any investigation reasonably undertaken -*
 - (i) *of the question whether any interest in the specified premises or any other property is liable to acquisition in pursuance of the 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 such interest.*

4. By section 33(2), costs incurred by a landlord in respect of professional services shall be regarded as reasonable only to the extent that such costs might reasonably have been expected to have been incurred if the landlord was personally liable for the costs; and, by section 33(5), the nominee purchaser is not liable for costs which a party to proceedings before a tribunal incurs in connection with the proceedings.

5. By paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act"), a tribunal may determine that a party should pay costs incurred by another party up to a maximum of £500 if a party has, in the opinion of the tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.

Legal costs falling within section 33 of the Act

6. The landlord has claimed a total of £2700 plus VAT, together with an estimated two hours at an hourly rate of £325 for the prospective costs of completion of the transfer, by way of solicitors' fees, and £602.88 plus VAT for disbursements.

Hourly rate

7. The legal work was carried out by a partner at a rate of £275 per hour from 1 June 2011 until 22 July 2011 and of £325 from 6 September 2011 until 16 February 2012. The nominee purchaser's solicitors, relying on a decision of the Upper Tribunal in *Plunkett-Ernle-Erle-Drax v Lawn Court Freehold Ltd* [2010] UKUT 81, LRA/58/2009, submit that the work should have been carried out by a grade B fee earner at the appropriate county court hourly rate of £231. In *Drax*, the member disallowed the partner's hourly rate of £240 rising to £255 and observed, at paragraph 24, that none of the work covered by section 33 should have been carried out by a partner. In our view, however, it is not unreasonable for a partner to carry out at least some of the necessary work in this complex field of law, provided that the time spent is not excessive and the hourly rate is reasonable, and an experienced partner may well prove less expensive in the end because his work does not require supervision and his experience may lead him to work more quickly. If the member's observations in *Drax* were intended to be of general application, we respectfully disagree with them. We accept that in the present case it was reasonable in principle for the work to have been carried out by a partner and that his hourly rates were not excessive.

8. The nominee purchaser's solicitors have asked for, but have not received, a copy of the letter of instruction to the landlord's solicitors or evidence that the fees have been paid. The landlord's solicitors say that the legal fees to date have been paid and we accept that.

Disbursements

9. In respect of disbursements, the landlord's solicitors obtained official copy entries relating to surrounding parcels of land and other flats in order, they say "to see if ... they were relevant". The nominee purchaser's solicitors submit that the exercise was wholly unnecessary and was not reasonably undertaken because it was clear from the leases, from the official copy entries of the leasehold title and from the section 13 notice that there was no appurtenant property which the nominee purchaser sought to acquire.

10. The landlord's solicitors seek to justify the exercise on the basis that the landlord is "an estate landlord with multiple properties in various streets", but, as the nominee purchaser's solicitors point out, the specified premises are not part of an estate management scheme. Moreover we accept the submission that a brief conversation with the landlord would have revealed to its solicitors that it did not own any of the surrounding properties. Furthermore, we accept that the landlord should, and probably did, have copies of the leases of the four flats in the specified premises and there should have been no need to obtain copies of the leases of those flats from the Land Registry.

11. In those circumstances we accept the nominee purchaser's solicitors' submission that the only disbursements reasonably incurred for obtaining official copy entries were £20 for obtaining four leasehold and one freehold entries in respect of the specified premises.

12. Although the tribunal is not bound by the Civil Procedure Rules, we accept that it is not reasonable to expect the nominee purchaser to pay a separate charge for photocopying, which ought normally to be included in the hourly rate, and we disallow that item in full.

13. We are also accept the nominee purchaser's solicitors' submission that it is not reasonable for the nominee purchaser to pay a courier charge for the service of the counter-notice and that recorded delivery, together with a

faxed copy, at a cost of £1.16 would have been a reasonable cost for the service of the counter-notice.

Solicitors' time taken

14. The landlord's solicitors spent 1.5 hours reviewing the section 13 notice and checking eligibility to enfranchise. The nominee purchaser's solicitors have asked for a detailed checklist to enable them to ascertain whether the eligibility criteria were relevant. This has not been provided but, using our general knowledge and experience, in our view one hour, at £275 plus VAT, would, we consider, have been reasonable for this work.

15. Six minutes for a letter to the landlord's surveyor is agreed.

16. We agree with the nominee purchaser's solicitors' submission that letters in should not be charged as a separate item and therefore disallow all charges for such items.

17. The landlord's solicitors have charged for 48 minutes at £275 per hour for checking the number of leases, checking whether further instructions were required for preparation of the counter-notice and establishing whether further areas of the freehold could be retained. We accept that nominee purchaser's solicitors' submission that in this apparently straightforward case, where there was no appurtenant property over which rights might be granted and no retained land which the nominee purchaser might be required to acquire, the time taken was excessive. We allow 20 minutes at £275 per hour.

18. Similarly an item of 30 minutes for counting the leases to be sent to the valuer is duplication of other work for which no separate charge ought reasonably to be made.

19. We also disallow in full the cost of time spent in checking official copy entries of neighbouring properties which we do not consider a reasonable task

to have undertaken in the circumstances of this case for the reasons we have given. Included within the charge for that work was a charge for reviewing official copy entries relating to the specified premises, reviewing the valuer's advice, discussing the counter-notice with the client and drafting the TR1. The nominee purchaser's solicitors submit that 42 to 48 minutes would have been reasonable for this work. Doing the best we can with limited information, we allow one hour at £275.

20. A total of four and a half are claimed for 25 emails, of which no details are given, prior to 6 September 2011, together with a number of letters and emails sent and received between 10 January and 16 February 2012, after the issue of the application to the tribunal. We accept the submission of the solicitors for the nominee purchaser that we should be cautious about allowing costs of emails, or any other work, which is not explained and substantiated, and clearly costs referable to proceedings before the tribunal are not recoverable under section 33 by virtue of subsection (5). On any view emails received ought not to be the subject of a separate charge. In the circumstances, and with some misgivings because of the lack of particularity, we allow one hour at £325 for emails sent prior to the issue of proceedings and disallow the remainder claimed under this head.

21. The landlord's solicitors propose to charge for two hours for a contract and for other work required prior to completion. We accept the nominee purchaser's solicitors' submission that no contract is necessary other than form TR1 for which a charge has already been allowed and we consider that a total of one hour's work, at £325, is reasonable for this work.

Valuation costs

22. Caroline Appleby BSc MRICS of John Dean, chartered surveyors, has submitted a bill for £1750 plus VAT, which, she says, is based on her firm's standard fee of £700 plus VAT for a single lease extension halved, multiplied by three and £700 added. She says that the fee is not based on time spent.

23. The nominee purchaser's solicitors submit that the fee is excessive for a case with no marriage value and that the fee should have been based on time spent at a reasonable hourly rate. They submit that an hourly rate of £175 plus VAT would be reasonable and that no more than three hours should have been taken, producing a total valuation fee of £525 plus VAT.

24. We agree that an analysis of the time taken and a general explanation of the work done should have been provided. We are prepared to assume, however, that Ms Appleby inspected the premises and carried out some limited research of comparable transactions to arrive at the reversionary value. However, given that no marriage value calculation was required we regard the fee sought as wholly excessive and consider that no more than £750 plus VAT would be reasonable.

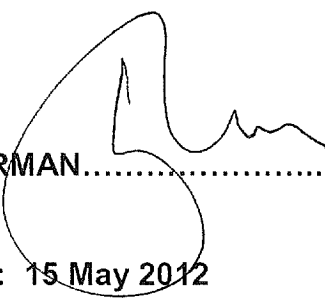
Schedule 12 to the 2002 Act

25. The nominee purchaser's solicitors submit that the landlord acted unreasonably in failing or refusing to negotiate the amount of its recoverable costs. They rely on *Drax* (see above) where a refusal to negotiate was taken into account in connection with a decision by the Upper Tribunal to award costs under Schedule 12 to the 2002 Act. In our view the present case is distinguishable from *Drax*, in which there were several instances of unreasonable conduct on the part of the nominee purchaser, including a deliberate instruction to serve an initial notice at the wrong address, the deliberate inflation of the claim for costs, and what the first instance tribunal found to be the nominee purchaser's "total lack of co-operation". While we have decided that the claim for costs in the present case is excessive, we do not consider that the landlord's conduct amounts to behaviour which justifies an order under paragraph 10 of Schedule 12.

Conclusion

26. We therefore determine that the landlord is not liable to pay any costs to the nominee purchaser under paragraph 10 of Schedule 12 to the 2002 Act but that the nominee purchaser is liable to pay the following, plus VAT where applicable, by virtue of section 33 of the Act:

solicitors' time:	£1319.17
disbursements	£21.16
valuation:	£750


CHAIRMAN.....

DATE: 15 May 2012