

2449

London Leasehold Valuation Tribunal File Ref No.

LON/00BJ/OC9/2011/0067

Her Majesty's Courts and Tribunals Service

Leasehold Valuation Tribunal: determination

Leasehold Reform, Housing and Urban Development Act 1993 section 91(2)(d)

Address of Premises

312 & 312A Merton Road,
Southfields,
London SW18 5AB

The Committee members were

Mr Adrian Jack
Mr Neil Maloney FRICS

The Landlord: David Jensen

The Tenant: A Ashley Wilson, S Montague Wilson, G Higgins

Procedural

1. By an application received 19th October 2011 the landlord applied for determination of the costs payable by the tenants.
2. The Tribunal gave directions on 31st October 2011 for the determination of the matter on paper, but gave parties the option of asking for an oral hearing. No one availed themselves of this option and in consequence the Tribunal determines the matter on paper.

The law

3. Section 33 of the Leasehold Reform, Housing and Urban Development Act 1993 provides:

“(1) Where a notice is given under section 13, then... the nominee purchaser shall be liable, to the extent that they have been incurred by any relevant person in pursuant of the notice by the reversioner..., for the reasonable costs of and incidental to any of the following matters, namely:

- (a) any investigation reasonably undertaking
 - (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 costs 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;

but 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.

(2) For the purposes of subsection (1) any costs incurred by the reversioner... 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.

...

(5) The nominee purchaser shall not be liable for any costs under this section for any costs which a party to any proceedings under this Chapter before a leasehold valuation tribunal incurs in connection with the proceedings.”

4. The Tribunal’s jurisdiction is given by section 98 of the 1993 Act.

The facts

- 5. The tenants served a notice under section 13 of the 1993 Act on 28th September 2010 seeking to acquire the freehold. The three tenants were nominated as nominee purchasers. On 3rd December 2010 the landlord served a counternotice.
- 6. The landlord retained Clark Holt to act on his behalf. Although Clark Holt’s fee note was rendered to the landlord’s company, David A Jensen Developments Ltd, it is in our judgment clear that the retainer was by Mr

Jensen personally, not by his company, and that Mr Jensen would ultimately have been liable for the fees.

The issues

7. The landlord claims solicitors' costs as follows, with the amounts conceded by the tenants (in each case VAT stands to be added):

1.10.10	£240.50	£240.50
15.10.10	277.50	277.50
29.10.10	462.50	277.50
5.11.10	1,107.50	nil
12.11.10	92.50	92.50
19.11.10	592.00	92.50
26.11.10	296.00	296.00
3.12.10	444.00	259.00
10.12.10	536.50	nil
17.12.10	222.00	nil
24.12.10	111.00	nil
7.1.11	111.00	111.00
14.1.11	92.50	nil
21.1.11	74.00	nil
28.1.11	74.00	nil
4.2.11	92.50	nil
11.2.11	55.50	nil
18.2.11	55.50	nil
25.3.11	37.00	nil
1.4.11	185.00	nil

8. The work was carried out at an hourly rate of £185 plus VAT. No issue as to the hourly rate was raised.

Surveyor's fee

9. The surveyor's valuation fee of £600 plus VAT was conceded. The tenants submit that VAT should be at 17.5 per cent, but it is clear that the surveyor's fee note post-dates the change in the rate of VAT, so VAT of £120 is recoverable in our judgment.

Decision on solicitors' costs

10. The 29th October and 5th November 2010 entries amount to 80 units of time (8 hours) spend on correspondence and telephone calls with the landlord's previous solicitors (10 units), telephone calls and correspondence with the client (5 units) and the balance of the time devoted to investigation and research into the section 13 notice, in particular the validity of the consideration proposed.
11. In our judgment the time spent investigating the validity of the section 13 notice was excessive. If a tenant serves a section 13 notice with a grossly inadequate proposed purchase price, then the notice can be treated as a nullity. In the current case £16,500 was proposed as the purchase price, as against an amount paid by the landlord of £30,000 a short time before. The argument that the section 13 notice was a nullity because the proposed purchase price was obviously too low was doomed to failure and the solicitor should have realised that within a very short space of time.
12. The tenants' proposed figure of 1½ hours work under this head is reasonable under this head. We allow £277.50.
13. The 19th November 2011 entry charges 32 units (3 hours and 12 minutes) for preparing a draft contract, draft transfer and title pack (25 units), phoning client (2 units) and preparing notice of entry for the valuer (5 units). In our judgment there was no need for a draft contract. The total time is excessive in any event. We disallow 1½ hours so as to allow only £314.50.
14. The 3rd December 2011 entry charges 24 units (2 hours and 24 minutes) to preparing the section 21 response (14 units), letter to the tenants' solicitor (3 unit) and correspondence and telephone calls with client and valuer regarding the efforts to enter the property and the removal of the valuer from the property.
15. The valuer was not given access to the upstairs flat. The legal costs associated with attempting to obtain access for the valuer are in our

judgment incidental to the valuation and are properly recoverable against the tenants. However, the time spent preparing the counternotice is in our judgment excessive. It is a simple notice which should not have required an hour and 24 minutes to prepare. We disallow one hour, which gives the figure for which the tenants content of £259.00.

16. The 10th December 2010 entry is for 29 units largely devoted to “analysis and investigation in the content to the response to the section 21 notice” and discussing the matter with the client. The section 21 notice had already been served, so this further work was otiose. We only allow the two units spent on phone calls to the valuer, a total of £37.00.
17. The 17th December 2010 relates to correspondence with the valuer, research into the remedies available for breach of the requirement to allow the valuer reasonable access to carry out his valuation and into research into the costs available if the matter goes to the Tribunal. This last matter relates to Tribunal costs and is not recoverable. The correspondence and research into remedies is recoverable, but there is no breakdown of the time spent on research. We allow a total of four units under this date, or £74.00.
18. On 24th December 2010 there is an unexplained correspondence with Gardner Leader. We assume these are valuers, but in a small case like this it would only be reasonable to employ the one valuer. We accordingly only allow two units for telephone calls with the valuer already instructed, or £37.00.
19. On 7th January 2011 there is correspondence with valuer and client and phone calls to the client. This is in our judgment reasonable and we allow £111.00.
20. On 14th January 2011 five units, on 21st January 2011 four units, on 4th February 2011 five units, on 11th February 2011 three units and on 18th February 2011 three units are spent on the same matters. We do not consider it reasonable to revisit this matter at weekly intervals. Once a fortnight should suffice. Accordingly we allow four units on 21st January 2011, five units on 4th February 2011 and three units on 18th February 2011 and disallow the alternate weeks’ costs. The total is £74.00, £92.50 and £55.50.
21. For the same reason we allow two units on 25th March 2011 or £37.00.
22. On 1st April 2011 the solicitor charges 10 units for reviewing the LVT notice. This relates to proceedings before this Tribunal and the costs are not recoverable. We allow nothing on this date.

23. Accordingly the amount of solicitors' costs recoverable is:

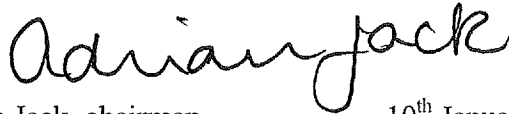
1.10.10	£240.50	£240.50	£240.50
15.10.10	277.50	277.50	277.50
29.10.10	462.50	277.50	277.50
5.11.10	1,107.50	nil	nil
12.11.10	92.50	92.50	92.50
19.11.10	592.00	92.50	314.50
26.11.10	296.00	296.00	296.00
3.12.10	444.00	259.00	259.00
10.12.10	536.50	nil	nil
17.12.10	222.00	nil	74.00
24.12.10	111.00	nil	34.00
7.1.11	111.00	nil	111.00
14.1.11	92.50	nil	nil
21.1.11	74.00	nil	74.00
28.1.11	74.00	nil	nil
4.2.11	92.50	nil	92.50
11.2.11	55.50	nil	nil
18.2.11	55.50	nil	55.50
25.3.11	37.00	nil	37.00
1.4.11	185.00	nil	nil

£2,235.50

24. In each case VAT at the rate applicable at the time is recoverable.

DECISION

25. The Tribunal accordingly determines that the landlord is entitled to recover from the tenants £720.00 in respect of valuer's fees (including VAT) and £2,235.50 plus VAT (at the rate in force from time to time) in solicitor's fees.

A handwritten signature in black ink that reads "Adrian Jack". The signature is written in a cursive, flowing style.

Adrian Jack, chairman

10th January 2012