HM Courts & Tribunals Service

LEASEHOLD VALUATION TRIBUNAL
Case no. CAM/22UN/OCE/2012/0023

Property	:	**Woodberry Court, Woodberry Way, Walton-on-the-Naze, CO14 8EN**
Applicant	:	**Gregory Philip Curtis**
Respondent	:	**Littlecroft Properties Ltd.**
Date of Application	:	**5th October 2012**
Type of Application	:	**To determine the costs payable on enfranchisement (Section 33 of the Leasehold Reform and Urban Development Act 1993 ("the 1993 Act"))**
The Tribunal	:	**Mr. Bruce Edgington (lawyer chair)** **Mr. David Brown FRICS MCI Arb**

DECISION

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1. The reasonable legal costs of the Respondent payable by the Applicant pursuant to Section 33 of the 1993 Act are £1,500.00.

2. The reasonable cost of valuation of the Respondent payable by the Applicant pursuant to Section 33 of the 1993 Act is £900.00.

3. If the Respondent company is registered for VAT purposes then it can reclaim the VAT as an input and it is not then recoverable from the Applicant. Otherwise, VAT is recoverable at the appropriate rate on both legal fees and the valuation fee in addition to these figures.

Reasons

Introduction

4. This dispute arises from the service of an Initial Notice seeking the collective enfranchisement of the property. In these circumstances there is a liability on the Applicant to pay the Respondent's reasonable legal and valuation costs as defined by the 1993 Act. All terms of the enfranchisement had been agreed save for such legal costs. The parties said that, in those circumstances, they did not want a hearing

and were content for the Tribunal to deal with this determination on a consideration of the papers only. The Tribunal decided that this was a case which could be determined on a consideration of the papers without an oral hearing. The parties were told that if they wanted an oral hearing, one would be arranged. No request has been made for such a hearing.

5. The Tribunal was provided with a bundle of documents but unfortunately, it was deficient. There was insufficient detail of the costs and fees claimed. As there is still a shortage of information it is necessary to set out what has happened.

6. On the 17th October 2012, the Tribunal made a directions order which included a direction as follows:-

> "*The Respondent must, by 4.00pm on the 9th November, serve on the Applicant a statement of the legal costs claimed setting out (a) the qualification and experience of the fee earner, (b) a breakdown of the number of hours spent or estimated to be spent, (c) details of letters sent, telephone calls and those anticipated and (d) details of any disbursements*
> *And also a statement of the valuer's costs claimed setting out details as in (a) and (b) above*"

7. The purpose of this was to ensure that both the Applicant and the Tribunal had sufficient information to enable judgments to be made about whether the costs incurred were reasonable. These are the details which any county court judge or costs judge needs in order to determine a detailed assessment of costs incurred.

8. Unfortunately, the schedule provided by the Respondent's solicitors only gave details of the fee earner's qualification as a solicitor and her charge out rate of £185 per hour. The time schedule was written in very general terms and simply provided that 100 units of time had been incurred (£1,850.00), 13 units had been spent on incoming e-mails and letters (£240.50), 16 units on outgoing e-mails and letters (£296.00) and 5 units on telephone calls (£92.50) making a total claim of £2,479.00 for the costs incurred as a result of the service of the initial notice. As to the conveyancing, a similar formula is used resulting in an additional claim of £555.00.

9. As far disbursements are concerned, the only one claimed is for counsel's fees in the sum of £350.00. The valuer's fee details simply said that the valuer's fee was £900.00 without any detail at all.

10. The Tribunal did not feel that it was fair or reasonable to just make an assessment without pointing out to the Respondent's solicitors that more information was needed. A letter was therefore written to them saying:-

> *"The members of the Tribunal have considered the bundle submitted in preparation for the decision to be made and note that because the directions order has not been complied with, the existing papers give the Tribunal no idea how the time was spent by the fee earner. Thus there is no information which enables the Tribunal to determine whether the legal costs are reasonable. We also have no idea of the experience of the solicitor fee earner. On the face of it, the time spent seems to be much more than one would expect on a case of this nature. Is there a reason for this?*
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> *As far as the valuation fee is concerned, it is not clear why it was necessary to have both a desk top valuation and a valuation following an inspection. On the face of it, it would not be reasonable to expect the Applicant to pay for both. The Tribunal requires copies of the two valuation reports.*
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> *Please let us know whether you are intending to fill in these gaps. If so you need to provide these details to the Tribunal and copy to Mr. Stapleton to enable him to comment. If we do not hear from you by 25th February we shall determine the case on the basis of the papers we have. If you do provide these details, the Tribunal will allow Mr. Stapleton (to whom we are sending a copy of this letter) seven days from their receipt to make comment upon them"*

11. A letter was received from the Respondent's solicitors dated 19th February which provides no further details of legal costs incurred and no indication of the experience of the fee earner. It simply asserts that the information has been provided and "*if the tribunal requires a further detailed breakdown we are of course happy to oblige*". As to the instruction of counsel, the letter says that it was in the Respondent's best interests "*to ensure that a Barrister reviewed the Notice received together with the titles of the property to confirm that the Notice was indeed valid...*".

12. Mr. Stapleton, on behalf of the Applicant commented on this further submission in a letter dated 25th February pointing out that as far as he was concerned, certain chasing letters etc. referred to by the Respondent's solicitors are not properly claimable.

The Law

13. The Initial Notice was served and therefore Section 33 of the 1993 is engaged. The Applicants therefore have to pay "*...to the extent that they have been incurred in pursuance of the notice...*" the Respondents' reasonable costs of and incidental to:-

    (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 the 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

14. What is sometimes known as the 'indemnity principle' applies i.e. the Respondent is not able to recover any more than it would have to pay its own solicitors or surveyors in circumstances where there was no liability on anyone else to pay (Section 33(2)). Another way of putting this is to say that any doubt is resolved in the receiving party's favour rather than the paying party.

Legal fees

15. The Respondent has used Foskett Marr, Gadsby & Head LLP of Loughton in Essex. Whilst the property is in Walton-on-the-Naze, which is rural Essex, the Tribunal agrees that it is reasonable for a Respondent whose office is in Loughton to instruct a solicitor in the same town. The courts, when assessing costs, use a national grading system depending on the experience and qualification of the fee earner to come to a starting point for hourly rates in any assessment.

16. In the outer London courts, the appropriate rate for a solicitor with 8 years' post qualification litigation experience (Grade A) at the relevant time was £229-267 per hour; for a solicitor with 4 years' post qualification experience (Grade B), £172-229 per hour and for Grade C and D fee earners, £165 and £121 per hour respectively. Enfranchisement work is very specialised and, in this Tribunal's considerable experience of a large number of assessments over the years, a landlord would normally expect to instruct a highly experienced Grade A fee earner with specialist knowledge. The reason for this is that whilst the law is not particularly complex and the time needed is not particularly great, the risks of making a wrong decision are great because time limits and a failure to comply with technicalities can be fatal.

17. It is right to say that in this case, the legal technicalities were as straightforward as they can be. The counter-notice accepted the right to enfranchise and accepted all the proposals set out in the initial notice save for the premium. The form of the transfer is standard in these cases where, for example, there is no lease back.

18. In the Tribunal's experience which, as has been said, is extensive, an experienced solicitor would expect to charge something in the region of £1,500, to consider the initial notice, prepare the counter-notice, instruct the valuer and deal with the title and completion of the transfer. In fact the last case dealt with by this Tribunal in the autumn of 2012, involved a counter-notice running to some 7 pages and profit costs allowed, in total, of £1,560.00 including the conveyancing costs for solicitors in Southend-on-Sea, Essex. The Tribunal members cannot ever remember a solicitor going to counsel for a straightforward collective enfranchisement case.

19. It is the view of this Tribunal that the Respondent's solicitors have been given more than sufficient opportunity to provide the specific details of the time they have spent and the experience of their fee earner as ordered and, subsequently, requested. Without knowing how they have managed to use 13 hours of time plus letters and telephone calls, it is impossible to say whether the time has been reasonably spent. Incoming letters are never allowed on detailed assessment anyway because the units charged for outgoing letters are deemed to include time for reviewing incoming letters. The Tribunal agrees that time spent on chasing does not form part of a statutory claim under Section 33 as set out above unless the Applicant can be said to have behaved totally unreasonably, which does not appear to have been the case here.

20. It is not reasonable to ask the same questions of the solicitors for a 3rd time and it is unfair on the Applicant to say that there has to be an oral hearing when neither party has asked for one. The Tribunal therefore considers that the only fair way of approaching this case is to use its knowledge and experience, particular that of the Tribunal chair who is also a county court judge who has spent many years dealing with costs assessments. The costs allowed are £1,500.00 profit costs. It is not considered that the use of counsel was reasonable. A client would not expect an experienced solicitor to use counsel. Counsel's fees are therefore not allowed.

Valuer's fee

21. As to the valuer's charges, the Respondent did not provide copies of the valuation reports as requested and there is no explanation for this failure. It did, however, provide some information from the Respondent's valuer which has proved useful.

22. Firstly, he says that he has not charged for the desk top valuation. Mr. Stapleton argues that because the full valuation following the site visit was not obtained until after the proceedings were issued, the fee is not claimable because it was incurred for the purpose of the proceedings and is not covered by Section 33.

23. This is a powerful argument, but, on balance, the Tribunal cannot accept it. The reason is that what appears to have happened is that the Respondent hoped that it would be able to reach a settlement on

the basis of the desktop valuation. It was unable to do so. Faced with an Applicant who was intending to continue to argue about value with the assistance of his own surveyor, the Respondent clearly decided that it needed the benefit of a full valuation. Whilst it could be said that this was in connection with the proceedings, it still comes within the statutory definition i.e. "*any valuation of any interest in the specified premises or other property*". If the Respondent is not charging for the desk top valuation, it is, in this Tribunal's view, entitled to charge for the full valuation.

24. Having said that, Mr. Stapleton has said in his letter of the 11th February that £900 excluding VAT would be reasonable provided the valuation was based upon a full inspection. The Tribunal is satisfied, on balance, that it was. It therefore seems to this Tribunal that having decided that the full valuation fee is claimable, the figure which is actually claimed i.e. £900 is agreed and the Tribunal therefore has no jurisdiction to take that matter any further.

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Bruce Edgington
Chair
4th March 2013