

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL



**Residential
Property**
TRIBUNAL SERVICE

Sections 24 and 33 Leasehold Reform, Housing & Urban Development
Act 1993

DECISION AND REASONS

Case Number: CHI/00HN/OCE/2006/0045

Property: Erinbank Mansions Manor Road
Bournemouth
BH1 3HX

Applicant
(nominee purchaser): Erinbank Freehold Limited

First Respondent
(reversioner): William Alexander Palmer Alexander Craig Mooney James
Henry Edward Chichester

Second Respondent
(Head leaseholder): Citywalk Limited

Date of Application: 15th May 2006

Date of Hearing:
(paper track) 25th February 2007

Tribunal Members: Cindy Rai LLB Chairman
Robert Batho Valuer Member

Date of Decision: 9th March 2007

Background

- 1 An application to the Tribunal was made by the Applicant on the 15th May 2006 under sections 24 and 33 of the Leasehold Reform Housing & Development Act 1993 in which the Applicant sought that the Tribunal determine:-
 - 1 The Purchase Price
 - 2 The form of Transfer
 - 3 The extent of the Freehold to be transferred; and
 - 4 The amount of the Statutory Costs

Subsequently the parties were able to reach agreement in relation to matters 1 – 3 above, prior to the scheduled hearing date. They gave written notice to the Tribunal of this agreement and withdrew their application in respect of those matters.

The parties requested that the Tribunal determine the one outstanding matter, namely the amount of the Statutory costs which the Respondent was entitled to charge the Applicant, and to do so without a hearing, on the “paper track”

- 2 The Applicants Solicitors requested that the Tribunal issue further directions regarding the information which would be required to enable the Tribunal to determine the amount of the Respondent's costs that the Applicant should pay. Having reviewed all the relevant correspondence, and following further correspondence from the Respondent's solicitors requesting a different content to any directions, the Tribunal notified the parties that:-
 - 1 It has jurisdiction to deal with an application to determine the Respondents costs if they were not and could not be agreed by the parties
 - 2 It had discretion to decide how it wished to proceed once the evidence from the parties requested was available to it, although it would take account of the representations made by the parties.
- 3 The parties agreed that the determination should be solely as to whether the work carried out by the Respondents was within the ambit of the statutory costs as set out in Section 33.
- 4 The Tribunal advised both parties that further directions would not be issued, and thereafter the Respondents solicitors supplied a narrative of the legal work which they had carried out. This gave details of who had undertaken each element of work, their charging rates for the relevant years, and the details of why the Respondents considered that the costs were recoverable. In a later letter dated the 19th February 2007 the Respondents provided a copy of their valuer's justification of the amount of his valuation fee
- 5 Although the Applicants solicitors acknowledged receipt of this information from the Respondents to the Tribunal office above, and indicated that they would respond to it during the week commencing the 12th February 2007, no such response has been received by the office.

- 6 The Tribunal met on Friday 23rd February 2007 to consider the remaining part of the original application on the basis of the written evidence that had been supplied by the Respondents.

The Law

- 7 Section 33 of the Leasehold Reform and Urban Development Act is titled "Costs of enfranchisement" and sets out: the ambit of the statutory costs

- (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;

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 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) Where by virtue of any provision of this Chapter the initial notice ceases to have effect at any time, then (subject to subsection (4)) the nominee purchaser's liability under this section for costs incurred by any person shall be a liability for costs incurred by him down to that time
- (4) The nominee purchaser shall not be liable for any costs under this section if the initial notice ceases to have effect by virtue of section 23(4) or 30(4)
- (5) The nominee purchaser shall not be liable 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
- (6) In this section references to the nominee purchaser include references to any person whose appointment has terminated in accordance with section 15(3) or 16(1); but this section shall have effect in relation to such a person subject to section 15(7)

- (7) Where by virtue of this section, or of this section and section 29(6) taken together, two or more persons are liable for any costs, they shall be jointly and severally liable for them.

Consideration

- 8 The draft narrative explains that the legal costs incurred by or on behalf of the Respondents have been incurred over a period of three years during which different charging rates have been applied. It also explains that the work has been carried out by two people with different qualifications who charge for their work at different hourly rates based upon their qualifications and seniority.
- 9 The person responsible for the conduct of the file was Sally Trevaskis ("ST") a legal executive but she was supervised by a Partner Robert Cottingham ("RC") who would appear from the narrative to have reviewed the file quite regularly.
- 10 When considering whether any item of charge should be allowed the Tribunal has considered:-
- 1 whether the costs are allowable under the headings set out in section 33
 - 2 whether any costs incurred by the Respondent should be regarded as reasonable
- and in so doing has applied the criteria clearly set out sub paragraph (2) of section 33 of the LR&UDA, namely would the Respondents have incurred the costs if they had been personally liable for them

Conclusion

- 12 The draft narrative has been prepared in two parts. The first part purports to deal with costs falling within sub-section 1 (a) of section 33, namely
- 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;

The Tribunal concluded that the following claimed costs could not properly be allowed:-

2005

- Item 2: it is not accepted that "incepting the file" falls within the section 33.1(a) costs. Only 12 minutes of ST's time has been allowed
- Item 5 is not allowed since no explanation has been offered as to the identity of the Person carrying out the work or their qualification to do so.
- Item 10: it is considered that the amount of time allocated is excessive given the seniority of the person carrying out the work and 1.18 of the time claimed is disallowed
- Item 15 is disallowed in total since it appears to duplicate the work already carried out by RC in Item 10

2006/2007

- Items 17 and 18 are not allowed since they do not fall within the ambit of section 33

14 The second part of the draft narrative deals with costs falling within sub-sections 1 (d) and (e) of section 33. The Tribunal concludes as follows:-

- Item 5 should not have occupied a senior fee earner such as RC for as long and therefore 1 hour and 18 minutes has been disallowed.
- Item 6 should not have required as much work in that the draft transfer was agreed. The only purpose of the agreement must have been to enable the parties to bind themselves to transferring the land as agreed, and therefore the contract could simply have referred to an agreement to transfer the interests set out in the attached transfer. The drafting of the transfer falls within sub paragraph (e) but had already been charged for in item 5 so all time claimed is disallowed.
- Item 7 again relates in part to the settlement of the agreement. It is accepted that the explanation given to the Estate Trustees (the Freeholders) would fall within the ambit of section 33, but none of the other work specified, and so only half the time has been allowed

2007

- Item 10 insofar as it refers to a vesting order is not within the ambit of the section 33 costs. Whilst section 24 of the LR&UDA provides that either party may make an application to the court where terms are agreed but no binding contract has been entered into, such costs are not properly recoverable
- Item 11: The Tribunal considered that this item could and should have been dealt with by ST since it appeared to relate primarily procedural issues which did not require the expertise of a senior fee earner. The amount has been disallowed at the charge out rate specified but half the time claimed has been allowed at the rate specified for ST for the same charging period

Valuation costs

- 15 The costs charged by the Valuer are accepted to fall within the ambit of section 33 (1) and to be reasonable in the circumstances set out in section 33(2)

Conclusion

- 16 As a part of its consideration of the costs sought the Tribunal made a simple arithmetical check of the amounts claimed and concluded that they were overstated in any event. The Tribunal has calculated the totals which it considers to be justified by applying the relevant charge out rates to the allowable hours in each charging period and then adding a small upward rounding to allow for possible slight discrepancies. In order to assist, the relevant calculations are set down in the spreadsheet which is attached to, but which is not intended to form part of, this determination.
- 17 The Tribunal determines that the total of Legal Costs allowable thus amounts to £3,500. It determines that the Valuation Fees are allowable in the full amount claimed namely £2880. The Respondents may recover VAT at the standard rate in addition in both cases.



Cindy Rai LLB
Chairman

A member of the Southern Leasehold Valuation Tribunal appointed by the Lord Chancellor

Dated 12 March 2007

ERINBANK COSTS CLAIM

	2005				2006				2007									
	TIME		CHARGE		TIME		CHARGE		TIME		CHARGE							
	RC	SXT	RC	SXT	RC	SXT	RC	SXT	RC	SXT	RC	SXT						
			£192/hr	£153/hr			£210/hr	£157/hr			£223/hr	£166/hr						
LIST A																		
1	0.2		£	38.40														
2	0.1	0.4	£	19.20	£	61.20												
3	0.2	1.4	£	38.40	£	214.20												
4		0.1		£	15.30													
5		0.1		£	15.30													
6		0.2		£	30.60													
7		2.0		£	306.00													
8		0.1		£	15.30													
9		3.0		£	459.00													
10	2.3		£	441.60														
11		0.6		£	91.80													
12		0.2		£	30.60													
13		0.4		£	61.20													
14	2.6		£	499.20														
15		3.0		£	459.00													
16		0.1		£	15.30													
17					1.3		£	273.00										
18									5.0	1.0	£	1,115.00	£	166.00				
LIST B																		
1					0.2		£	42.00										
2						0.3		£	47.10									
3						0.2		£	31.40									
4						0.2		£	31.40									
5					3.3		£	693.00										
6					1.1		£	231.00			£	-						
7					2.4		£	504.00										
8					0.3		£	63.00										
9					0.1		£	21.00										
10									1.3		£	289.90						
11									2.0		£	446.00						
	5.4	11.6	£	1,036.80	£	1,774.80	8.7	0.7	£	1,827.00	£	109.90	8.3	1	£	1,850.90	£	166.00

Our Figures			
Hours Totals	2005	2006	2007
RC	5.4	8.7	8.3
SXT	11.6	0.7	1.0
Charges			
RC	£ 1,036.80	£ 1,827.00	£ 1,850.90
SXT	£ 1,774.80	£ 109.90	£ 166.00
Total Charge			£ 6,765.40

Their Figures			
Hours Totals	2005	2006	2007
RC	5.2	10.7	8.3
SXT	12.6	0.6	1.0
Charges			
RC	£ 1,928.00	£ 2,247.00	£ 1,851.00
SXT	£ 999.00	£ 110.00	£ 166.00
Total Charge			£ 7,301.00

	Net result		
Hours Totals	2005	2006	2007
RC	4	3.8	0
SXT	8.92	0.7	2.3
Charges			
RC	£ 768.00	£ 798.00	£ -
SXT	£ 1,364.76	£ 109.90	£ 381.80
Total Charge			£ 3,422.46