

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
LEASEHOLD VALUATION TRIBUNAL**

**Property** : 23 Fourth Avenue,  
Hove BN3 2PN

**Applicant** : 23 Fourth Avenue Ltd.

**Respondent** : (1) John Henry Parratt  
(2) Linda Isabel Parratt

**Case number** : CAM/00ML/OCE/2009/0024

**Date of Application** : 15<sup>th</sup> June 2009

**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. J Raymond Humphrys FRICS  
Mr. Edward A Pennington FRICS

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**DECISION**

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1. The reasonable legal costs and disbursements of the Respondents payable by the Applicant pursuant to Section 33 of the 1993 Act are £4,985.66 inclusive of VAT.
2. The reasonable costs of valuation of the Respondents payable by the Applicant pursuant to Section 33 of the 1993 Act are £1,092.50 inclusive of VAT.

**Reasons**

**Introduction**

3. This dispute arises from the service of an initial notice seeking the collective enfranchisement of the property by qualifying tenants who nominated the Applicant as the purchaser. In these circumstances there is a liability on the nominee purchaser to pay the lessor's reasonable costs.
4. The original application was for the Tribunal to determine the price and terms of transfer together with the costs. Shortly before the booked

hearing, the parties informed the Tribunal that the price and terms had been agreed. The agreed price is £49,750.00. Both parties' solicitors asked the Tribunal in writing to deal with the question of costs on the basis of written representations. The Tribunal agreed and accordingly, no-one attended the hearing. The Tribunal took into account the further letter of the 15<sup>th</sup> October from the Respondents' solicitors containing representations.

#### **The Law**

5. It is accepted by the parties that the Initial Notice was served and therefore Section 33 of the 1993 Act is engaged. The Applicant therefore has 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*
6. What is sometimes known as the 'indemnity principle' applies i.e. the Respondents are not able to recover any more than they would have to pay their own solicitors or surveyors in circumstances where there was no liability on anyone else to pay (Section 33(2)).
7. The Tribunal has been provided with a bundle of documents and the Schedule of Costs, the list of objections and replies are included as are copies of the Initial Notice, the Counter Notice and the lease back.

#### **The Issues**

8. The points of dispute can broadly be split into 5 sections i.e. the hourly rate, the work in connection with the Initial Notice and Counter Notice, the Conveyancing work, the work preparing the Schedule of Costs and the valuer's fees.
9. Solicitors' Charging Rates. The Respondents' solicitors are Stevens & Bolton LLP and their notepaper says that the office dealing with this matter is in Guildford. A look at their costs schedule reveals that they have charged for 2 fee earners i.e. £300 per hour for a 'partner' and £205 per hour for a Grade B fee earner. Even though these rates are challenged, the Respondents' solicitors, for some reason best known to themselves, have not chosen to set out the experience of either of

these fee earners in enfranchisement cases. Any client instructing a solicitor to deal with an unusual and specialised area of law would want a solicitor experienced in the subject, particularly when Grade A rates are being charged.

10. For assessing solicitors' costs on an *inter partes* basis in the county court, a Grade A fee earner is a senior solicitor with more than 8 years' post qualification experience in litigation and a Grade B fee earner is a solicitor or legal executive with more than 4 years' post qualification in litigation. Higher rates can be allowed to Grade A fee earners for substantial and complex litigation which this is not, in this Tribunal's view. In 2009, the hourly rates being awarded to solicitors in Guildford in detailed assessments were as follows:-

Grade A	£213
Grade B	£189

11. The Applicant's solicitors say that they would be prepared to agree:-

Grade A	£203
Grade B	£180

Which they say are the rates being awarded in Guildford County Court. Those were in fact the rates being awarded for work undertaken in 2008. The work in this case was undertaken in 2009.

12. These rates are not mandatory, particularly when one is assessing on an indemnity basis. However, they are helpful as a starting point for assessment.
13. In the experience of this Tribunal, enfranchisement work is a specialised area of work and Grade A rates would normally be allowed save for the conveyancing aspects of the matter where one would expect the matter to be handled by a Grade B or even a Grade C fee earner with appropriate supervision.
14. However, when paying a Grade A rate, a client would expect the work to be undertaken by a senior solicitor who is an experienced specialist. A solicitor experienced in this area of work should have been able to settle the counter notice in this case without the assistance of counsel.
15. The Respondents' solicitors say that they are a commercial firm staffed by lawyers with experience gained in the City of London. They claim that they have overheads which are "substantially higher than the average local firm". Their case seems to be that the rates claimed are those agreed by the client and therefore the rates claimed are reasonable. No financial details are given as to these additional overhead costs.
16. It is this Tribunal's statutory task to assess what is reasonable for a client to pay a Grade A and a Grade B fee earner in a Guildford firm where the client is expecting to pay the solicitors out of his or her own

pocket. The Tribunal cannot see anything in the Respondents' solicitors' submissions to suggest any divergence from the starting point for costs being allowed in the court on detailed assessment, even on an indemnity basis. This is not a commercial matter, in the accepted sense of the word, and there is no reason for the client to pay City of London rates. Thus £213 and £189 are reasonable rates.

17. Time spent dealing with the Initial Notice and Counter Notice There are individual comments made in respect of a number of items claimed but many of these comments are simply that the time spent was excessive. The point is made, as is the case, that neither the Initial Notice nor the Counter Notice are particularly unusual or complex. Extra time spent – and the necessity to instruct counsel – seem to be justified on the basis that the Respondents were particularly demanding clients. This is the only inference the Tribunal can draw from the comments made.
18. Assessing on the indemnity principle does mean resolving doubts in favour of the receiving party rather than the paying party. However, there is still a need for the Tribunal to consider what was reasonable. Rather than try to go through each item and undertake the almost impossible task of saying what would have been reasonable and which fee earner should have done the work without seeing the solicitors' file or knowing the character of the clients, a broad brush approach will be taken.
19. The solicitors for the paying party say that they accept the use of counsel to draft the Counter Notice provided the same work was not undertaken by the solicitors. These are adversarial proceedings and if they want to concede this item, then so be it. However, when instructing counsel it is incumbent on the instructing solicitor to make sure that counsel is aware of all the clients' instructions at the outset.
20. A consideration of the time spent by the solicitors following receipt of the draft Counter Notice from counsel in April 2009 reveals that some 5 hours 18 minutes was spent in addition to the signing of the engrossment. It really is difficult to see how all of this time can be justified.
21. Time spent in dealing with conveyancing This task includes approving the transfer and dealing with completion and also the drafting and completion of the lease back. The Respondents' solicitors claim 6 hours up to 11<sup>th</sup> February 2009 and estimate 4 hours thereafter. In a subsequent letter they assert that the actual costs incurred for that estimated period were £3,495.00 rather than the £1,200.00 estimated. Both these figures are apparently calculated at £300 per hour and do not include VAT.
22. The Tribunal's statutory duty is to consider the costs reasonably incurred in dealing with the specific matters set out in the list in Section 33 of the 1993 Act. This is not just a blank cheque for the Respondents to take as much time as they like with their solicitors.

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As an example the solicitors say that the reason they went to counsel to deal with the Counter Notice was "...in the light of concerns and issues expressed by the Respondent it was necessary to ask counsel to approve..." the draft they had prepared. The obvious question to ask, and which the Respondents' solicitors could and should have answered is why such a course of action was deemed to be "necessary". Why was their expertise in drafting the Counter Notice falling short of what was reasonable?

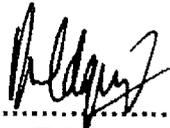
23. Work preparing schedule of costs A solicitor should not charge his client for preparing a bill of costs. Further, it is not an item in Section 33. The time spent in preparing the schedule and dealing with objections was clearly spent within these proceedings and is not allowable and the 1½ hours spent on this is disallowed.
24. Valuers fee The evidence about this is in the replies to objections. The Applicant's solicitors say that they do not know what the claim is but their valuer has charged £914.47 plus VAT. The Respondents' solicitors say that their valuer's invoice has now arrived and is in the sum of £950 plus VAT which includes some work not dealt with by the Applicant's valuer. As the fees for the valuers are approximately the same, the Tribunal approves £950 plus VAT for the valuation.
25. The Respondents' solicitors also claim a £600 fee for the valuer to prepare a plan for the leaseback. This is an unusual claim and the plan in question is at page 46 in the bundle. Having said that, Section 33 does provide for the payment of costs of and incidental to the conveyance of any interest which would include a lease back. The Land Registry is becoming very strict in what plans it will allow to be registered and the Tribunal therefore allows a fee for the preparation of the plan.
26. However, the charge of £600 however is very high. The valuers have an office quite close to the property. Even if it was necessary to re-visit the property after the visit for the valuation, it is quite a simple task for a fairly junior member of a surveyors' staff to go to the property, obtain the necessary measurements and, with the assistance of an inexpensive software package, produce the plan. The view of the 2 chartered surveyors on the Tribunal is that a reasonable charge for this task is £250 plus VAT.

### **Conclusions**

27. Doing the best it can with the limited amount of information given by the Respondents' solicitors, and using, of necessity, a broad brush approach, the Tribunal concludes that the hours claimed for both the notices and the conveyancing are unreasonable. The exact time claimed for the costs of conveyancing is not known because the solicitors simply put forward a figure of £3,495 plus VAT for work previously estimated without any detail.
28. The times claimed in the Schedule of Costs for work done on documents alone total 17½ hours in addition to letters and telephone

calls. A further 4 hours is claimed as an estimated figure for work to be undertaken after the Costs Schedule was prepared plus a further £2,295.00 in costs is claimed in the letter referred to above. Bearing in mind that the only document prepared by the solicitors was the lease back, the Tribunal cannot accept that a client would be content to pay such bill for what is, in reality, a reasonably straightforward enfranchisement transaction. It is far in excess of what the Tribunal has come to expect for cases of this nature from even central London solicitors.

29. Using its members' collective knowledge and experience in these matters, which is extensive, the Tribunal concludes that a reasonable amount of time for a Grade A fee earner to spend for a reasonable client would be 10 hours in total if the Counter Notice was being settled by counsel. If that were all allowed at the Grade A rate of £213 per hour, one comes to £2,130.00 plus VAT. Omitting the time spent with the Lease Advisory Service and with the Lands Valuation Tribunal – whatever that may be – there are 68 further units of time claimed which are allowed at £21.30 per unit making £1,448.40.
30. In summary, therefore, the total allowed is £2,130.00 plus £1,448.40 plus VAT and counsels fees of £575.00 upon which no VAT is claimed. The fee for preparing the plan is allowed as a solicitors' disbursement at £287.50 and the £8 for obtaining office copy entries is also allowed making a grand total of £4,985.66.



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**Bruce Edgington**  
Chair  
19<sup>th</sup> October 2009