

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

**Southern Rent Assessment Panel
Leasehold Valuation Tribunal**

**SECTIONS 91 AND 33, LEASEHOLD REFORM, HOUSING AND URBAN
DEVELOPMENT ACT 1993**

Case Number: CHI/45UF/OCE/2007/0056
Property: Douglas Houghton House, 4 Oxford Road, Redhill, Surrey
Applicant: 4 Oxford Road (Freehold) Limited
Respondent: Harston Limited

Representatives

For the Applicant: Samuels & Co, solicitors
For the Respondent: Lester Aldridge LLP, solicitors
Date of Decision: 3rd July 2009

Members of the Tribunal

C.H.Harrison Chairman
M. Loveday BA (Hons) MCI Arb

BACKGROUND

1. This is an application for costs to be determined pursuant to section 33 of the Leasehold Reform, Housing and Urban Development Act 1993 (the 1993 Act).
2. The reversioner Respondent's solicitors had produced a costs proposal of:

Costs	£1,856.00
VAT	£324.80
Disbursements	<u>£48.58</u>
<u>Total</u>	<u>£2,229.38</u>

3. The proposal was supported by a schedule of time spent and narrative. Time is recorded in units of 6 minutes each, at an hourly rate of £160. The Applicant does not take issue with that hourly rate or with the disbursements.
4. The Applicant file a schedule of points in dispute in which the Applicant offered the sum of £688 on the basis that the Respondent could establish that it had incurred and had been billed for certain of the time claimed.
5. The Respondent filed a schedule of points in reply in which the Respondent agreed some of the Applicant's points in dispute and proposed certain deductions in order to meet other points. As a result, the Respondent reduced its proposal for costs by £656 to £1,200.
6. The Respondent also claimed a valuation fee of £1,000 plus VAT of £175, incurred to its valuers, Anderson, Wilde & Harris.

ISSUES

7. The following items remain in dispute. The numbering at the beginning of each paragraph below refers to the numbering of the schedule of points in dispute:
 - a) (3.2) In respect of letters in, the Applicant disputes the principle of the Respondent's ability to charge for perusing and considering them at all. The Respondent disagrees but has made a deduction proposal £176 in respect of 1 unit per each of the 11 letters in.
 - b) (3.3 and 3.5) The Applicant disputes that it was reasonable to incur time in reviewing Land Registry official copies after a decision had been made by the Respondent's solicitors to obtain updated copies and that, in any event, 1 hour was an unreasonable time to spend. The Applicant also contends that a record of an additional 30 minutes of time spent in reviewing official copies appears to be an error. The Respondent asserts that there was no such error and that, on the contrary, it was reasonable to investigate title based on the official copies tendered on the Applicant's behalf, even though updated official copies would be required and would themselves require perusal.
 - c) (3.4) The Applicant contends that it is not part of a solicitor's function to review the valuation provided to the Respondent. It therefore disputes a charge of £80 made for that purpose and for checking the leases which the Applicant contends had been checked previously. The Respondent argues that it is reasonable to review a valuation and to check the leases on more than one occasion.

- d) (3.7) The Applicant disputes a proposed charge of £240, covering 15 units, in respect of preparing a draft transfer, because it was prepared for annexation to the counter notice, and a letter out. The Respondent's reply proposes a deduction of 8 units equating to £128 in respect of the draft transfer but argues the letter out was long and was primarily concerned with advice on validity. Accordingly, the proposal has been reduced to £112 plus VAT.
 - e) (3.8) The Respondent denies the Applicant's assertion that 30 minutes is an excessive time to incur in respect of serving 3 notices and related letters out.
 - f) (3.9) The Respondent also contends that 18 minutes was properly recorded in respect of a letter in (to which its deduction proposal at paragraph (a) above applies) and an e-mail out were properly recorded, despite the Applicant's contention referred to above in respect of letters in and that an e-mail out should be allowed at 1 unit.
 - g) (3.10) The Applicant contends that 2 units should be charged for an e-mail out and for deducing title. The Respondent argues that the time record of 4 units at £64 (albeit including a letter in to which its deduction proposal at paragraph (a) applies) is both correct and reasonable.
 - h) (3.13) The Applicant contends that a charge of £112 in respect of a telephone call with the Land Registry, 1 e-mail out and 2 letters out is excessive and should be limited to a charge of £64.
 - i) (3.14) In respect of a charge of £80, the Applicant contends no charge should be allowed in respect of checking the position in a legal textbook and repeats its assertion relating to letters in and that 1 unit should be charged for each of a letter and an e-mail out. The respondent disagrees.
 - j) (3.15 and 3.16) The Applicant makes the same assertion, equally denied by the Respondent, relating to two charges of £48 each in respect of letters in and 2 letters out (6th June 2007) and 1 letter out 9th June 2007). Each of those charges include two letters in, in respect of which the Respondent's deduction proposal at paragraph (a) applies.
8. The Applicant also stated in its schedule of points in dispute that it had not seen evidence that the Respondent had been billed for recorded time since 17th April 2007. Accordingly, the Applicant reserved its position on liability since that date, pending evidence that the relevant costs had been incurred. The Applicant also asserted that it is not liable for VAT if the Respondent is registered for VAT and can reclaim the VAT on its solicitors' costs.
9. In reply, the Respondent has provided a copy bill from its solicitors dated 31st October 2007 and has confirmed that the Respondent is not registered for VAT.

THE LAW

10. The costs which the Respondent is entitled to recover from the Applicant are set out in section 33 of the 1993 Act. That section requires that the costs should be reasonable and lists a number of matters which the tribunal must bear in mind in determining costs. In particular, section 33(2) provides that costs will only be "*regarded as reasonable if and to the extent that costs in respect of such services might reasonably be expected to have been*

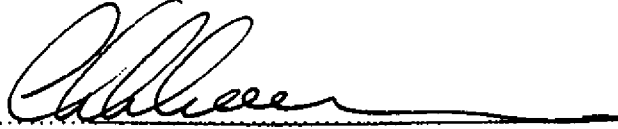
incurred by [the reversioner] if the circumstances had been such that he was personally liable for all such costs”.

DETERMINATION

11. The tribunal considers that the hourly charging rate of £160 is reasonable.
12. The tribunal determines, by reference to the same paragraph lettering at 7(a) to (j) above:
 - a) that none of the time recorded in respect of all narrated letters in and letters and e-mails out appears to be unreasonable but the tribunal notes the Respondent's proposed deduction referred to at paragraph 7(a);
 - b) the tribunal cannot accept the Applicant's contentions at paragraph 7(b). It considers that it was reasonable for the Respondent's solicitors to study the first set of official copies, notwithstanding the need to obtain further copies at a later date. That is quite common practice in the field of investigating title. Moreover, the time recorded does not appear on the face of the time record to be unreasonable;
 - c) again, that it is part of a solicitor's function to review his client's valuation. This is not because a solicitor has valuation skills but because the solicitor has overall responsibility for the conduct of the case and it is reasonable to expect such an adviser to be aware of what the valuation says. Equally, it may be necessary, within reason, for an adviser to need to check the contents of the same document on more than one occasion;
 - d) having noted the Respondent's proposed deduction of £128, the residual charge of £112 is reasonable;
 - e) to (g) and (j), that, subject to the Respondent's deduction proposal in respect of letters in, the costs proposals by the Respondent referred to in these paragraphs are reasonable;
 - h) there is no evidence that the time was excessively recorded and the charge appears reasonable on its face; and
 - i) that it is entirely reasonable to charge for reasonable time taken up in referring to a legal textbook.
13. The tribunal also considered the costs claimed by the Respondent as a whole, as a cross-check on its findings in relation to individual items. The tribunal considers that overall legal fees and disbursements of under £1,250 are reasonable for a property of this kind.
14. In respect of paragraphs 8 and 9 above, the tribunal notes that the Respondent has incurred the relevant costs and that the Respondent's solicitors state their client is not registered for VAT, as to which there is no evidence to the contrary.
15. The tribunal also determines that the valuation fee of £1,000 plus VAT is reasonable.
16. Accordingly, the tribunal determines that the costs for which the Applicant is liable under section 33 of the 1993 Act are:
 - a) the Respondent's legal costs of £1,200.00

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| b) the legal disbursements of | £48.58 |
| c) the Respondent's valuer's fee of | £1,000.00 |
| d) All properly assessed VAT on those sums. | |

Dated 3rd July 2009



C.H.Harrison Chairman