

**LEASEHOLD VALUATION TRIBUNAL  
For THE LONDON RENT ASSESSMENT PANEL**

**LON/00AM/OLR/ 2010/0105**

**LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT  
1993 (as amended)  
SECTION 48 – Legal Costs payable under Section 91**

**Premises:** Lower Ground Floor Flat, 13 St Philips Road, London E8 3BP

**Applicant:** Sinclair Gardens Investments (Kensington) Ltd (Reversioner)

Represented by: P. Chevalier & Co, Solicitors

**Respondent:** Miss B. Gill (Leaseholder)

Represented by: Layzells, Solicitors

**Tribunal:**  
Mr L.W.G. Robson LLB(Hons) (Chairman)

**DECISION AND REASONS**

**Background**

1. This application relates to a claim by the Respondent to be entitled to the grant of a new long lease under the terms of the Leasehold Reform, Housing and Urban Development Act 1993 (the Act). The Applicant initially objected to the proposal made in the Respondent's Notice of Claim, and the Respondent made an application to this Tribunal under Section 48 of the Act, received on 3rd February 2010. Standard Directions for hearing of the substantive application on 22<sup>nd</sup> February 2010, with a hearing date set for 15<sup>th</sup>/16<sup>th</sup> June 2010. Terms of settlement were agreed by the parties on the lease and premium. These were not revealed to the Tribunal. The Reversioner's legal costs payable by the Leaseholder were not agreed. The Application then proceeded as an application to determine the costs pursuant to Section 91 of the Act, based on written representations.
2. The Applicant made detailed written submissions on 27<sup>th</sup> May 2010. The Respondent made a brief written submission on 15<sup>th</sup> June 2010. The Applicant then made a further written submission on 16<sup>th</sup> June 2010.

**Submissions**

3. The Applicant submitted that the Respondent's liability arose under Section 60 of the Act. The matter had been handled throughout by Mr P. Chevalier, the sole principal and fee earner, who was well experienced in this type of

application. His basic charge rate was £240 per hour plus VAT. He had spent 3.5 hours on investigation of the claim, and expected to spend 2.5 hours on the conveyancing aspects of the case, explaining the detail of each element. He submitted he was entitled to charge letters and phone calls in addition, at the same rate. The Applicant had instructed him on approximately 2,000 previous occasions, and was an established client. He provided evidence of the fee agreement, and confirmed that the fees charged were those which his client would have expected to pay if it was obliged to pay them itself. The Applicant was not obliged to seek the cheapest solicitor, but only to act reasonably under Section 33(1) of the Act. We were referred to numerous LVT cases supporting this proposition. He further submitted that the burden of proof lay upon the paying party to provide evidence showing, on the balance of probability, that the proposed charge was unreasonable. The consideration of the costs should be a summary consideration, rather than a detailed examination of each item. He proposed a fee of £1,152 plus VAT for investigation of the notice, and £692 plus VAT for the conveyancing work.

4. The Respondent made a submission of less than 3 pages, comprising mainly of an extract of Section 60 of the Act, and a "Scott - like" schedule criticising some aspects of the details of Mr Chevalier's charge. It concluded with a submission that the total costs in accordance with Section 60 ought to be £794.49 plus VAT.
5. The Applicant made a further submission on 16<sup>th</sup> June 2010. The Tribunal had some doubt as to the validity of the submission, but in the event it seemed unnecessary. This submission also included a request for the Tribunal to exercise its discretion to make a costs order against the Respondent under Para.10 of Schedule 12 of the Commonhold and Leasehold Reform Act 2002, on the basis that the Respondent had acted unreasonably in the conduct of the proceedings.

#### **Decision**

6. The Tribunal noted the very extensive and detailed submissions made by the Applicant. While there were a few aspects of those submissions with which the Tribunal disagreed, no evidence at all provided by Respondent, and the submissions made on her behalf were mostly assertions of unreasonableness relating to specific aspects of the time costs suggested by the Applicant, with a suggested figure for such items, and a final submission that the costs ought to be £794.49 plus VAT (i.e. £933.55 in total). The submission did not challenge an hourly rate of £240 (£4 per minute), or an hourly rate of £329 (£5.49) per minute
7. The Applicant's submission was helpful, although perhaps it did not sufficiently highlight that consideration should commence with a consideration of a solicitor's obligations to his own client relating to costs, with which the solicitors for both parties in this case must be familiar. Whether or not those costs are payable by a third party, the obligation remains the same. The obligation is an old one, has changed little in recent times, and is currently set out in the *Solicitors' (Non-Contentious Business) Remuneration Order 2009 SI*

10. The Applicant also submitted that the burden of proof was on the paying party, and the subjective opinion of the paying party without evidence did not discharge the burden of proof particularly if there was evidence that the Reversioner would have reasonably paid the same if required to do so. Further the Tribunal should carry out a summary assessment and not a detailed assessment of each item. The Respondent again made no submission on the point.
11. The Applicant went on to make a number of other detailed and interesting submissions on various matters, including one relating to a reasoned decision by the Tribunal. While the Applicant may be disappointed that all its submissions were not referred to in detail, it is sufficient in this case, due to the rudimentary nature of the Respondent's submissions, to decide the matter on the following basis:
  - a) A solicitor's costs must be reasonable in all the circumstances as set out in SI 2009/1931.
  - b) The criteria in SI 2009/1931 incorporate a certain degree of latitude and subjectivity, thus the Tribunal should have in mind at least a band of reasonable costs for this type of transaction and the work done, and stand back at the end of its consideration of the evidence and submissions to decide whether its proposed figures fall into that band.
  - c) Section 33(2) of the Act gives the Respondent some protection from arbitrary or inflated costs by imposing a test that the costs should be no more than the sum the Reversioner would reasonably expect to pay.
  - d) The burden of proof is generally on the paying party. If that burden is not discharged, and the costs are within the band which the Tribunal considers reasonable, then the Tribunal should find in favour of the Reversioner.
  - e) It is not the function of the Tribunal to carry out a detailed assessment of the costs. It should carry out a summary assessment, which involves a broad brush approach in resolving the dispute, but if the costs are apparently outside the band of reasonableness, then the Tribunal should impose its own figure, ensuring that the parties have had the opportunity to argue this specific point.
12. The Tribunal noted the lack of evidence from the Respondent. There was clear evidence from the Applicant that it would pay the specific fees proposed by its solicitor. The Tribunal was not informed as to the agreed value of the transaction, only being able to note that it was likely to be between £10,000 and £14,000, these being the figures in the parties' respective Notices. The Tribunal accepted the Applicant's submissions that the work to be done and the time spent were reasonable. While the Respondent disagreed, she provided no evidence of comparable transactions or gave sufficient detail of reasons for disagreement.
13. The Tribunal noted from its own knowledge that when giving a remuneration certificate, the Law Society is generally not in favour of additions for letters or telephone calls, considering that these items should be subsumed into the

hourly rate. On that basis, for dealing with the investigation of the notice of claim the rate works out at £329 per hour. For the conveyancing, if the same rate is applied, the time spent is estimated at just over 2 hours. The Tribunal decided that the time spent on each matter was comfortably within the bands of reasonableness for this type of case. Using its own knowledge and experience, The Tribunal considered that for a solicitor practising within the Greater London area, the hourly rate of £240 per hour was unremarkable, although a rate of £329 per hour is higher than expected. Against this high figure, the Tribunal accepted that Mr Chevalier is a principal solicitor and also very experienced in this type of work. Also, standing back and looking at transactions of a similar nature, the total proposed fee costs seemed high, but not excessive.

14. The Tribunal therefore determined that the Applicant's proposed legal fees of £1,152 plus VAT for investigating the Notice of Claim, and the proposed legal fees of £692 plus VAT for the conveyancing were reasonable.

#### **Costs before the Tribunal**

14. In its second submission dated 16<sup>th</sup> June 2010, the Applicant made an application for a (discretionary) costs order under Paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002, which has to be made on the basis that a party's behaviour was frivolous, vexatious, disruptive, or otherwise unreasonable. This application was made on the day of the determination, by fax. It was not expressed in clear terms. For ease of reference an extract of Paragraph 10 is also set out in the Appendix to this decision.
15. The Tribunal would not normally make such an order without the Respondent being given the opportunity to make submissions. However the Tribunal decided that the submission and application dated 16<sup>th</sup> June 2010 was invalid. The submission was not required by any Directions and was submitted without leave or prior consultation with the Tribunal. In any event the Tribunal noted that however unsatisfactory the submissions made on behalf of the Respondent, and however late they were, she was entitled to a determination of the costs by the Tribunal. The Tribunal's power under Paragraph 12 is discretionary. The Tribunal decided that Respondent's conduct did not cross the high threshold of unreasonableness required to engage Paragraph 10.

Signed:

  
L.W.G Robson

Dated:

16<sup>th</sup> June 2010

#### **Appendix**

##### **Section 60 Commonhold & Leasehold Reform Act 1993**

- “(1) Where a notice is given under section 42, then subject to the provisions of this section the tenant by whom the notice is given shall be liable, to the extent that they have been incurred by any relevant person in pursuance of the notice, for the reasonable costs of and incidental to any of the following matters namely-

- a) any investigation reasonably undertaken of the tenant's right to a new lease;
- b) any valuation of the tenant's flat obtained for the purpose of fixing the premium or other amount payable by virtue of schedule 13 in connection with the grant of a new lease under section 56
- c) the grant of a new lease under that section

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."

## **Commonhold and Leasehold Reform Act 2002**

### **Schedule 12**

#### **Paragraph 10**

*"(1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).*

*(2) The circumstances are where-*

*(a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or*

*(b) He has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.*

*(3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed-*

*(a) £500, or*

*(b) .....*"