SOUTHERN RENT ASSESSMENT PANEL AND LEASEHOLD VALUATION TRIBUNAL

In the matter of section 33 of the Leasehold Reform Housing and Urban Development Act 1993 (as amended)

and in the matter of Eton Mansions and Windsor Mansions, Bolton Close, Southbourne Bournemouth.

Case Numbers: CHI/OOHN/OC9/2007/0003
CHI/OOHN/OC9/2007/0004

Between

The Halliard Property Co Limited ("the Applicant")

and

Bolton Close Management Limited (the Respondent)

Decision of the Tribunal

Hearing: 7th September 2007

Mr S Serota of Messrs Wallace LLP for the Applicant

Mr C Beamish of Messrs DMA Chartered Surveyors for the Respondent.

Decision issued: 19th September 2007

Tribunal

Mr R P Long LLB (Chairman)
Mr J B Tarling MCMI

Decision

1. For the reasons that are given below the Tribunal has determined that the legal costs amounting to £3915-69 (inclusive of VAT) together with disbursements of £358 incurred by the Applicant in respect of Eton Mansions and the legal costs amounting to £3899-24 (inclusive of VAT) together with disbursements of £426 incurred by the Applicant in respect of Windsor Mansions that are the subject of this application are properly allowable and recoverable by it pursuant to section 33 of the Leasehold Reform Housing and Urban Development Act 1993 (as amended) ("the Act").

Reasons

2. This matter arises from two applications made to the Tribunal by Wallace LLP on behalf of the Applicant that the Tribunal determine the legal costs payable by the Respondent to the Applicant pursuant to section 33 of the Leasehold Reform Housing and Urban Development Act 1993 ("the Act"). The costs were incurred in connection with the acquisition by the Respondent as nominee purchaser of the freehold reversion to each of Eton Mansions and Windsor Mansions at Southbourne, Bournemouth. Both transactions were completed without the need for involvement of the Tribunal, and valuers' fees have been agreed in each case.

3. Section 33(1) of the Act provides, subject to certain qualifications that are not relevant here, that the nominee purchaser shall be responsible for the reasonable costs of the landlord or and incidental to the transaction, to the extent that they have been incurred in pursuance of the initial notice given, in respect 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 property or other property;
    e. any conveyance of any such interest.

4. Section 33(2) of the Act provides that 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 may reasonably be expected to have been incurred by him in the circumstances that he was personally liable for all such costs.

5. The remaining provisions of section 33 of the Act are not relevant for the purposes of this application.

6. The amount of the Applicant's legal costs in respect of Eton Mansions was £3915-69 inclusive of VAT together with HMLR fees of £358-00, and the amount of its legal costs in respect of Windsor Mansions was £3899-24 inclusive of VAT together with HMLR fees of £426-00.

7. For the Respondents, Mr Beamish said that he wished the Tribunal to be aware that the agreed premium for the head lease and for the freehold for both blocks totalled £11632. His clients own legal costs had amounted to £29706-26. This arose because of obstacles that were put forward by the freeholder. The legal and valuation costs for the head lessor had totalled £2702-50. He did not contest the issue of liability, but at the hearing he said that his clients' principle concern in the matter was that of reasonableness. It must be the case, he argued, that there is a correlation between the price payable in a transaction such as this and the fees incurred. In the light of the terms of section 33(2) of the Act his clients did not believe that the Applicant would have agreed to incur legal costs of the level charged here if it had been personally liable for those costs.

8. Mr Beamish continued by saying that he acts for many freeholders as well as leaseholders, and in his opinion none of his clients would spend £10,067-69 to obtain a return of £1882. He did not explain the derivation of these figures, but the Tribunal took them at face value. Such costs, he submitted, were disproportionate to the return expected, and that in such a case the paying party would wish to "cap" the fees, at, perhaps, a figure around 10% of the expected return. In this case, had the Applicant been personally liable it would have been likely to have asked its solicitors to put a trainee on the case and perhaps to agree a "cap" of £500.

9. The Applicants had referred in their written submissions to the decision of the LVT in Daejan Investments Limited v Parkside 78 Limited dated 4 May 2004 ("Daejan"), where the Tribunal had said:

"As a matter of principle ..... leasehold enfranchisement under the 1993 Act may understandably be regarded as a form of compulsory purchase by tenants from an unwilling seller and at a price below market value. Accordingly it would be surprising if freeholders were expected to be further out of pocket in respect of their inevitable incidental expenditure incurred in obtaining the professional services of valuers and lawyers for a transaction and proceedings forced upon them. Parliament has indeed provided that the expenditure is recoverable, in effect, from tenant-purchasers subject only to the requirement of reasonableness (see s. 33(1) of the 1993 Act)".

Mr Beamish said he agreed totally with those sentiments, but he referred to a reference earlier in the decision where the Tribunal had said that it was not persuaded that in the complex circumstances of the premises and leases, *especially given the values involved* (his emphasis), that any of the time taken by principals and assistants was unnecessary. The values involved here, he said, were small.

10. Mr Beamish did not pursue at the hearing some questions of detail relating to some of the items of charge shown in the time print of Messrs Wallace LLP raised in his written statement sent to the Tribunal and dated 20 June 2007. These had been replied to in the witness statement of Samantha Bone filed on behalf of the applicant. He concluded by saying that if the Tribunal was against him on the primary point of reasonableness there were four additional points to which he would wish to draw its attention. They were:

    a. whether the Applicant could properly claim that the cost of drawing paragraphs 5, 6 and 7 of the counter notices fell within the intention of section 33,
    b. whether there had been an unnecessary duplication of costs given that the two blocks are identical and there was only one nominee purchaser,
    c. whether a firm as experienced in such matters as Wallace LLP should have spent as much time on the matter as it did, and
    d. whether, if the applicant had been personally liable, it would have accepted an increase in hourly rate half way through the matter.

11. In reply Mr Serota submitted that there is a distinction between "reasonableness" and "disproportionality" that is succinctly illustrated by Daejan. Matters such as this were not consensual, and so often became drawn-out. His firm charged on a time basis only in matters of this nature because many lawyers were not familiar with the relevant legislation, which added to the time taken. They charged on that basis whether their client or the purchaser was paying so that these clients, who are part of a larger group for whom his firm act) paid the same rate and on the same basis. A concept of proportionality paid no attention, for example, to the value of retained property. In this case the respondents had themselves incurred legal costs of some £29,000.

12. The Tribunal were not in Mr Serota's submission entitled to impose some sort of limit on the costs. It was for the respondents to identify the elements that were not reasonable. In a case like the present one, statute made life more difficult by requiring two notices to be prepared and served for one block may proceed whilst the other might not.

13. It was crucially important, said Mr Serota, to get the counter notice right. The omission of any required provision could invalidate it. Each part of the counter notice was there because section 21 of the Act required it, and that argument was applicable to each of paragraphs 5, 6 and 7. There were clearly matters in the notices that related to both blocks, whilst others did not. The Landlord was entitled to seek to protect its rights in any counter notice. It might, as one example, choose to seek to grant rights over other land rather than to transfer it.

14. The Applicant had provided schedules and it was appropriate in a hearing like this for the Respondent to say what was challenged, and to advance reasons why particular elements in them should not have been charged. It was his firm's practice to review its charging rate in each August. Its client in this case

was aware of that, and accepted that charging rates would change at that time. His firm had established no reference point with any of the companies in the group in question at which it would refer the question of costs accrued to date to them.

15. Mr Beamish confirmed that there was no challenge to the disbursements incurred by the Applicants.

16. The Tribunal accepted, as did the parties, that the statement set out above from Daejan represents an accurate statement of the law. The issue between them, in the absence of specific challenges to items of charge, was whether in the context of the present matter the totality of the charges made by Messrs Wallace LLP was or was not "reasonable" for the purposes of section 33(1). In that context it bore in mind not least Mr Beamish's argument that in Daejan the Tribunal had specifically taken into account not only the complexity of the matter but also the values involved, and that the sums involved in this case for the premiums paid were not by any means large in the context of transactions of this nature.

17. In the present case, the counter notices are undoubtedly complex. They run in one case to seven pages and in the other to seven and a half pages and contain many detailed requirements. Their differing length tends to support Mr Serota's argument that they are not identical, although the Tribunal's attention was not drawn to the specific differences that may exist.

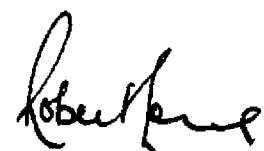
18. The Tribunal accepts that the Respondent's costs incurred are hardly proportionate to the amounts of premium involved. It equally accepts that the premium is far from being the only gauge of the value to the Applicant of the work done. For example, it was told by Mr Serota in response to a question by Mr Beamish that the land transferred differed from that which had been sought to be acquired in the initial notice. It understood from what the parties said that the extent of the land in question may not have been very great, but was told nothing about its value, potential or otherwise.

19. Finally, the Tribunal was also influenced by the fact that the Applicants had been willing to pay some £29000 for their own costs in the matter. That of itself appeared to bear testament to very considerable complexity. Mr Beamish had said in his initial written representations of 20 June 2007 that those costs had been incurred because the Applicants had put obstacles in the way of his clients. He did not enlarge upon that argument at the hearing save to the extent that the Tribunal understood that he was referring to some of the requirements that the Applicants had included in their counter notice. If so, that may amount to no more than a legitimate attempt by the Applicant to protect its interests in the matter, and nothing was put before the Tribunal to suggest otherwise.

20. This was plainly a matter of very considerable complexity. The fact that it did not also in this instance involve substantial sums of money does not in the Tribunal's view of itself dictate a lesser sum for costs. Here the complexity alone, evidenced not least by the Respondent's own costs, appears to be sufficient to justify the Applicant's costs as reasonable in the light of their

proper objectives. The evidence before the Tribunal is that the costs are the time costs for the work involved, and that the Applicant would have paid such costs for the work to be done. In the circumstances therefore the Tribunal determined that the costs the subject of the application (the amount of which is stated in paragraph 1 above) should be allowed in full as being costs reasonably incurred, that the evidence shows the Applicant would have been prepared to pay itself, and that are recoverable under section 33 of the Act.

21. Although the Tribunal was not required to consider the point for the purpose of making the decision described above, it observes that Mr Serota's argument that a Tribunal dealing with an application such as this is "not entitled" to impose a limit on the Applicant's costs may overstate the position. The Tribunal is required to determine what are reasonable costs, and as Mr Beamish pointed out, it is required to take into account the limitations imposed by section 33(2). The concept of what is or is not "reasonable" in any given case is very wide indeed, and in consequence it may perhaps be that other and different facts and circumstances could require it to impose such a limit in another case.



Robert Long
Chairman

18th September 2007