

**SOUTHERN RENT ASSESSMENT PANEL AND TRIBUNAL
LEASEHOLD VALUATION TRIBUNAL**

Case No: CHI/00HN/0C9/2007/0011

BETWEEN:

WILVERLEY COURT FREEHOLD LIMITED

Applicant

- and -

**ALEXANDER CRAIG-MOONEY
JAMES HENRY EDWARD CHICHESTER
& JOHN RICHARD WESTMACOTT**

Respondents

PREMISES: Wilverley Court
29 Grove Road
Bournemouth
BH1 3AS ("the Premises")

TRIBUNAL: MR D AGNEW LLB, LLM (Chairman)
MR D L EDGE FRICS

HEARING: 28th January 2008

**APPLICANT'S
SOLICITORS:** Messrs Coles Miller

**RESPONDENTS'
SOLICITORS:** Messrs Lee Bolton Monier-Williams

DETERMINATION AND REASONS

DETERMINATION

The Tribunal determines the Respondents' costs payable by the Applicant under Section 33 of the Leasehold Reform Housing and Urban Development Act 1993 at £1,996.50 plus Counsel's fee of £150.00.

REASONS

1. Background

- 1.1 On 29th October 2007 Messrs Coles Miller Solicitors on behalf of the nominee purchaser, Wilverley Court Freehold Limited, applied to the Tribunal for a determination of the liability of the nominee purchaser in relation to the landlord's legal costs and the amount thereof under Section 33 of the Leasehold Reform Housing and Urban Development Act 1993 ("the Act").
- 1.2 The consideration for the transfer of the freehold under the Act, the terms to be included in the transfer and the reversioner's valuer's fee had previously been agreed.
- 1.3 A detailed bill of costs totalling £4,141.90 had been supplied to the Applicant's solicitors prior to completion of the transfer of the freehold to the nominee purchaser in which the Applicant's solicitor wished to challenge, hence the application to the Tribunal.
- 1.4 On 5th November 2007 directions were given. The parties were informed that the Tribunal intended to proceed to determine the matter on the basis of written representations without a formal hearing unless either party objected to that procedure within 28 days. There was no objection. Further, the Respondent was required to provide the Tribunal and the Applicant with documentation in support of the detailed bill by 28th November 2007. The Applicant was required to provide the Tribunal and the Respondents with points of dispute by 14th December 2007 and the Respondents were given an opportunity to file and serve their points in reply by 4th January 2008. Finally the parties were required to exchange and submit to the Tribunal final written submissions by 18th January 2008. The parties were given liberty to apply for further directions.
- 1.5 There followed some correspondence between the Tribunal office and the parties concerning the appropriateness of the direction with regard to furnishing the Tribunal and the Applicant with copies of certain documents. The essence of the Respondents' argument was that some of the documents required to be disclosed were privileged and

although the Respondents' solicitors were prepared to disclose those documents to the Tribunal they objected to serving copies on the Applicant's solicitors.

- 1.6 These matters were resolved by 15th January 2008 when the Respondents' solicitors sent to the Tribunal the documents required by the Tribunal's directions and sending to the Applicant's solicitors copies of the documents which were either not privileged or they were prepared to disclose.
- 1.7 Neither party applied for the timetable of directions to be varied. The parties were notified by letter from the Tribunal office dated 9th January 2008 that the hearing would take place as a paper hearing on 28th January 2008.
- 1.8 By the date of the hearing the Tribunal had received a further copy of the Respondents' solicitors' costs breakdown which by this time had been augmented to a total of £5,331.00 plus their documents in support and the Respondents' detailed submissions concerning costs. Although the Applicant's solicitors sent to the Tribunal their points of dispute these were not received until 29th January 2008, the day after the Tribunal had determined the application. No application for an adjournment of the hearing had been received by the Tribunal.

2. Preliminary Determination

- 2.1 The Tribunal determined on 28th January 2008 that it would proceed to deal with the application on the basis of the submissions and evidence before it. Whilst the Applicant's solicitors only had a shortened period of time in which to prepare their points of dispute following receipt of the documents enclosed with the Respondents' solicitors letter of 15th January 2008, they nevertheless had 7 working days to do so prior to the hearing and they had had the Respondents' solicitors breakdown of costs since before the Application had been made to the Tribunal in October 2007. The Applicant's solicitors had however written to the Tribunal Office on 22nd November 2007 stating that the main issues between the parties in relation to legal costs were: "whether the work done falls within the ambit of Section 33 and is therefore the liability of the nominee purchaser, whether the time spent

on the matter was reasonable and whether the landlord would have been willing to pay those fees had they been personally responsible for them." They also said that "from past experience, we doubt that hourly rates will be an issue." These were all matters the Tribunal would be taking into account in determining the costs payable.

- 2.2 The Tribunal decided that it was the Applicant's solicitors responsibility to ensure that their points of dispute were received by the Tribunal prior to the hearing or alternatively to seek an adjournment of the hearing if they did not think they had sufficient time to submit their points of dispute after receipt of the Respondents' solicitors letter of 15th January 2008. Neither had happened. The Tribunal considered that it had had enough detail and information before it to determine the issue of costs bearing in mind the main issues between the parties as stated by the Applicant's solicitors in their letter of 22nd November 2007 and in all the circumstances decided that it would proceed with the determination on 28th January 2008.

3. The Claim

- 3.1 The claim for costs appended hereto is the Respondents' solicitors detailed bill of costs and reference in these reasons to numbers is to the number ascribed to the items of expenditure claimed in that bill.

4. Evidence

- 4.1 Evidence in support of the bill which the Respondents' solicitors had filed with the Tribunal comprised a copy of a letter from themselves to their client setting out charging rates for 2006 and 2007, a copy of the invoice to their clients dated 20th December 2007 a copy of Counsel's fee note and a copy of the time recording sheets together with a copy of a letter from the Senior Costs Judge dated 14th December 2007 setting out guideline hourly rates costs of solicitors in the City of London, Central London and outer London. There was also a certificate appended to the foot of the bill signed by a partner in the receiving parties' solicitors firm confirming that the costs claimed do not exceed the cost which the receiving

party is required to pay his firm and that the receiving parties are able to recover Value Added Tax under the Value Added Tax Act 1983.

5. The Law

5.1 Section 33 of the Act provides as follows:- "(1) where a notice is given under Section 13, then, (subject to any provisions of this Section and Section 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 of 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 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 purchase 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 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."

6. **The Determination**

- 6.1 The Tribunal determined that the hourly rates claimed by the Respondents' solicitors, namely £210.00 and £223.00 for 2006 and 2007 respectively for Robert Cottingham (partner) and £157.00 and £166.00 for 2006 and 2007 respectively for Lynne Horay (solicitor) were reasonable. For reasons that will become apparent hereafter the Tribunal has disallowed the costs incurred by Mr Philip Sergeant (partner) but had it not done so it would have found that the hourly rate of £260.00 for essentially 2008 would have been reasonable.
- 6.2 The Tribunal was satisfied that there had been no breach of the indemnity principle and that the costs as determined hereafter might reasonably be expected to have been incurred by the Respondents if the circumstances had been such that they were personally liable for all such costs.
- 6.3 Whilst the Tribunal did not consider that the actual drafting of the counter notice itself and the serving of it upon the other party is within the ambit of Section 33 it did consider that some of the work required to be done in preparation for the completion of the counter notice could come within the wording of "any investigation reasonably undertaken... of any other question arising out of that notice". The Tribunal also had regard to the words "the reasonable costs of and incidental to" (emphases supplied) the matters set out in paragraphs (a) to (e) of Section 33 (1) of the Act.
- 6.4 The Tribunal made the following decisions on the various items contained in the Respondents' solicitors' bill of costs as follows:-

Section 33 (1) (a) costs:-

Item 1	Disallow. This work was carried out prior to the receipt of the initial notice and is therefore outside the scope of Section 33.
Item 2	Allow
Item 3	Allow
Item 4	Allow

Item 5	Allow
Item 6	The Tribunal considered 2 units were reasonable. Disallow 3 units.
Item 7	Allow 4 units for LH and 1 unit for RC.
Item 8	Disallow: routine letter received.
Item 9	Some of the work done under this item is, in the Tribunal's view, outside the scope of Section 33. The Tribunal considered that it was reasonable to allow 1 hour for the work done coming within the scope of that section.
Item 10	Allow 2 units
Item 11	Allow 2 units
Item 12	Allow 2 units
Item 13	Disallow. The Tribunal considered it was unnecessary to check with an experienced valuer that the separate components of the figures to be inserted in the counter notice were in accordance with the requirement of the act.
Item 14	Allow 2 units
Item 15	Allow 2 units
Item 16	Allow 2 units
Item 17	Disallow. The Tribunal did not consider that this was within the ambit of Section 33.
Item 18	Allow 2 units
Item 19	Disallow. Receipt of routine letter.
Item 19 (second entry)	Allow 1 unit.

6.5 The determination with regard to the items claimed under Section 33 (1)(e) is as follows:-

Item 1	Allow 1 unit
Item 2	Allow

Item 3	Reduced to 1 hour
Item 4	Allow 1 unit
Item 5	Allow
Item 6	Allow
Item 7	Allow
Item 8	Disallow
Item 9	Allow 2 units
Item 10	Allow 4 units
Item 11	Allow 1 unit
Item 12	Allow 2 units
Item 13	Allow 2 units
Item 14	Allow 5 units
Item 15	Allow
Item 16	Disallow
Item 17	Allow
Item 18	Disallow. Receipt of routine letter.
Item 19	Allow 6 units
Item 20	Allow
Item 21	Disallow. Receipt of routine letter.
Item 22	Allow
Item 23	Disallow. Not within scope of Section 33.
Item 24	Disallow. Not within scope of Section 33.

6.6 The "units" referred to in paragraph 6.5 above are 6 minute units of time. Where fewer units than claimed have been allowed the Tribunal considered that it was reasonable for the paying party to pay for only the reduced time allowed.

6.6 The Tribunal was prepared to allow Counsel's fees of £150.00 plus VAT.