

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

**Case No: CHI/00HN/OC9/2008/0001**

**BETWEEN:**

**MS F MELLERY-PRATT**

**Applicant**

**- and -**

**WYCHWOOD FREEHOLD LIMITED**

**Respondent**

**PREMISES:** Wychwood  
2a Grosvenor Road  
Bournemouth  
Dorset  
BH4 8BJ ("the Premises")

**TRIBUNAL:** Mr D Agnew LLB, LLM (Chairman)  
Mr D Lintott FRICS

**DATE OF  
DETERMINATION:** 27<sup>th</sup> March 2008 at Christchurch Town Hall, Christchurch

**DETERMINATION AND REASONS**

1. The Application
- 1.1 On 7<sup>th</sup> January 2008 the Applicant applied to the Tribunal to determine the costs payable by the Respondent under Section 33 of the Leasehold Reform Housing and Urban Development Act 1993 ("the Act") following the acquisition by the Respondent of the intermediate leasehold interest of the Applicant under a collective enfranchisement.
- 1.2 The Tribunal issued directions on 15<sup>th</sup> January 2008 providing for disclosure points of dispute and reply. Although the Applicant's reply had been served on the Respondent's solicitors only on the day before the hearing and on the Tribunal on the morning of the

hearing the Respondent's solicitors were content for the hearing to proceed and for the Tribunal to consider the Applicant's points in reply and documents. Neither party wished to attend the hearing and were content for the Tribunal to proceed on the basis of written representations.

2. The Applicant's case

- 2.1 The Applicant sought to recover the sum of £1,358.50 for solicitors costs, which was the full amount of their costs as shown on a time recording report. The Respondent did not challenge the charging rates applied in that report. In addition the Applicant sought to recover their valuer's fees of £600 plus VAT.
- 2.2 A copy of the aforesaid time recording report is appended to these reasons. Each entry on the report has been given a number from 1 – 50. References to numbered items in these Reasons are references to the numbers on that report as appended hereto.

3. The Respondent's points of dispute

- 3.1 In a nutshell the Respondent argued that many of the items claimed by the Applicant are not properly claimable under Section 33 of the Act. The Applicant, it said, was trying to recover all her legal costs on an indemnity basis but Section 33 requires first that the charges are reasonable, that Section 33 only provides for certain costs to be recoverable and that Section 33(2) requires that only such costs as the Applicant might reasonably be expected to incur had she been liable for the costs herself are recoverable.
- 3.2 With regard to the Section 33(2) point the Respondent's solicitors argued that as the consideration being paid to the Applicant was only £1,250 it is unlikely that she would be prepared to pay £2,301.24 as claimed in costs if she were paying for the legal and valuation fees herself.
- 3.3 As for the Transfer itself, it was said that this was a simple document, the inference being that it should not have taken long to prepare it.

- 3.4 As to the valuer's fees it was said that £600 plus VAT cannot be reasonable for such a straightforward low value transaction. Further In the absence of the Applicant having provided any basis as to how the valuation fee was calculated it should be disallowed in its entirety, it was claimed.
- 3.5 To paraphrase the Respondent's points of dispute regarding the detail of the Applicant's solicitors time recording they were as follows:-

a) Items 1 and 8	These relate to costs of drafting and serving the Counter notice and so are outside the ambit of Section 33.
b) Items 2, 3, 4 and 7	Too much time has been spent on this work relating to the transfer of the freehold in respect of which the head lessee only had a minor interest.
c) Item 5	An unreasonable amount of time was spent.
d) Item 6	No information has been supplied, so disallow.
e) Items 9, 10, 11 and 12	Too much time claimed.
f) Items 13 and 14	Not within the ambit of Section 33.
g) Items 15 – 36	These are costs of the Tribunal proceedings and so outside the ambit of Section 33
h) Item 37	Routine incoming letter and should be disallowed.
i) Items 38 - 44	No evidence has been supplied that the work done was within the ambit of Section 33 and should therefore be disallowed.
j) Items 45 – 50	Agreed.

4. The Applicant's case in reply

4.1 With regard to the valuer's fees, the Applicant produced the valuer's invoice plus a letter from the valuer. £600 plus VAT was the valuer's standard fee whatever the value of the transaction and whatever the complexity or simplicity of the task he was required to carry out. His fee included an external inspection of the block, perusal of plans and perusal of the headlease and intermediate lease. It also covered "meetings and telephone calls with the surveyor acting for the freehold owner" and "agreeing the amount of compensation payable to the intermediate lessee."

4.2 With regard to the costs recoverable generally, the Applicant contended that the Act imposes its own rules as to costs and that "ordinary costs rules do not apply." Section 33(2) is intended to prevent the landlord from "inflating his costs merely because the tenants are paying them." It was said that all the costs on the file would have been incurred even if the Applicant had been paying them herself. It was pointed out that the Applicant was not involved in this case out of choice. If she is unable to recover her costs "she will be deprived of the right and entitlement that parliament has given her."

4.3 Generally, with a few concessions, the Applicant's solicitors argued that the costs claimed did come within the ambit of Section 33 and were reasonably incurred and of a reasonable amount for the work done. With regard to Section 33(5) it was said that "proceedings before a Leasehold Valuation Tribunal" referred only to the "process of appearing in front of a valuation panel and work in connection with preparation for such a valuation panel", and not all costs from the time of application onwards should be disallowed.

5. The applicable law

5.1 The relevant parts of Section 33 of the Act state as follows:-

"33 Costs of enfranchisement

(1) Where a notice is given under section 13, then (subject to the provisions of this section and sections 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 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 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 purchaser 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 rendered by any person 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.

(5) The nominee purchaser shall not be liable under this section for any costs which a party to any proceedings under this Chapter before a leasehold valuation tribunal incurs in connection with the proceedings."

## 6. The determination

6.1 Appended to these Reasons as Appendix 2 is a list of items claimed together with the Tribunal's decision as to whether each item has been allowed or not and a short explanation as to why.

6.2 The Tribunal has, however, some general comments to make as to the approach it has taken in determining the costs payable under Section 33 in this case.

- 6.3 The first point to make is that this Tribunal considers that its jurisdiction in such matters is laid out in Section 33 and this Section alone provides the basis upon which the Tribunal is to determine the costs payable by the lessee.
- 6.4 First, the costs payable have to be reasonable and secondly they must not exceed what the receiving party might have reasonably expected to have to pay if he or she were liable to pay them. Although this would suggest that this second requirement is an additional safeguard to the payer over and above the requirement that the costs be reasonable to prevent the landlord from incurring more costs than necessary in the knowledge that someone else will have to pay them, it is difficult to see how, in practice, this means any more than that the payer shall pay what is a reasonable amount for the payer to pay in the circumstances. If the landlord had required more work to be done than necessary or work to be done at an unreasonable charging rate, the resultant costs would not be reasonable costs for the payer to pay.
- 6.5 The Tribunal did consider that there was some force in the Applicant's argument that the Applicant was involved in the enfranchisement process through no choice of her own and that she is necessarily placed in a position of incurring certain costs in order to protect her own interests. It would not be right to say, however, that this means that Parliament has intended to ensure that landlords are not out of pocket in responding to this procedure. It is clear that the costs incurred in appearing before the Tribunal are not claimable by the landlord and if Parliament had intended that landlords should be able to recover all their costs associated with "protecting their interests in the property" then Section 33 would surely extend to cover such costs reasonably incurred, but it does not.
- 6.6 The Tribunal did not consider, however, that simply because the Applicant ultimately accepted a figure of £1200 only for her head leasehold interest that she should necessarily be precluded from recovering any more than that in costs. The fact of the matter is that a certain amount of costs has to be incurred before the landlord necessarily knows what the likely consideration will be. Further, the landlord may have taken a view that she would rather compromise on the consideration than have to bear the costs of contesting the

matter through to a Tribunal hearing. It would not be appropriate to penalise the landlord in costs as well as accepting a reduction in the amount of the consideration. Having said this the likely consideration payable will be a factor that the Tribunal will take into account when considering the reasonableness of the landlord's costs. Where the consideration is large and/or where there is a significant difference between the parties' view of the amount of the consideration, it will be more reasonable to incur higher costs.

6.7 In interpreting Section 33(1) this Tribunal considered that the words "the reasonable costs of and incidental to any of the following matters, namely –

(a) any investigation reasonably undertaken - ..... " (emphasis supplied) means that although the cost of actually preparing and serving the counter notice are outwith the ambit of the section there are some costs which are properly claimable by a landlord in receipt of an initial notice preparatory to the drafting of the counter notice provided that they relate to an investigation into the matters set out in sub-paragraphs (a) to (e) of subsection 1 of section 33, or are incidental thereto.

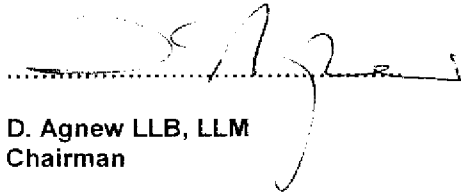
6.8 With regard to the interpretation of Section 33(5) the Tribunal considered that the costs referred to here were not restricted to the actual appearance before the Tribunal at a hearing or work done in preparation for such a hearing. This subsection refers to costs incurred in connection with "the proceedings" and the Tribunal considers that most of the work done after the issue of the proceedings, if not all of it, are likely to be "in connection with" those proceedings.

6.9 As for the valuer's fees, these have to be justified and it is not sufficient for the valuer to say that he has charged his standard fee. On the other hand, the valuer in this case has carried out work for which he is entitled to charge and for the landlord to reclaim from the lessee under Section 33. The Tribunal has disallowed £100 of the fee as being attributable to the work done in negotiating the consideration which are not costs in respect of which the landlord is entitled to recover under Section 33.

## 7. Conclusion

7.1 The resultant costs for which the Respondent is liable to the Applicant in this case are £674.50 for the solicitors' fees (as detailed in Appendix 2.) and £500 for the surveyor's fees, plus VAT in each case if applicable.

Dated this *12<sup>th</sup>* day of *April* 2008

  
.....  
D. Agnew LLB, LLM  
Chairman



## Appendix 2

<b>Item</b>	<b>Allowed ?</b>	<b>Reason</b>
1	Yes	Within Section 33
2, 3, 4, 7	8 units allowed	9 units conceded by Applicant
5	Yes	Within Section 33
6	Yes	
8	No	Not within Section 33
9 – 12	Partially – 3 units	3 units agreed
13, 14	No	Not within Section 33
15 – 36	Only item 16, 30, 32, 33, 34 (totalling 9 units)	Otherwise not within Section 33
37	No	Conceded
38 – 44	Yes for items 38, – 41, 43, 44	Item 42 not within Section 33
45 – 50	Yes	Within Section 33

There are a total of 43 units allowed @ £145 per hour and 3 units @ £170 per hour amounting in total to £674.50