

SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

CHI/00HN/OCE/2007/0076 & CHI/00HN/OCE/20070077

Decisions of the Leasehold Valuation Tribunal on application under Sections 48 and 60 of the Leasehold Reform, Housing and Urban Development Act 1993

| | | |
|---------------------------------|---|----------------|
| First Applicant | David Frankel & Tara Victoria Frankel | 26A Derby Road |
| Second Applicant Respondent: | TAD Properties Limited Sir George Christopher Cadafael Tapps Gervis Meyrick | 26B Derby Road |
| Re: | Neville Court 26A Derby Road, Bournemouth Gainslea Court 26B Derby Road, Bournemouth | |
| Date of Applications | 14 th November 2007 | |
| Date of Inspection | none | |
| Date of Consideration | 2 nd December 2008 | |

Members of the Leasehold Valuation Tribunal

| | | |
|---------------------------------|----------------------------------|----------------------------------|
| | M J Greenleaves K Lyons FRICS | Lawyer Chairman Valuer Member |
| Date of Tribunal's Decision: | 10 th December 2008 | |

Decision

1. The costs payable to the Respondent in respect of:
 - a. 26A Derby Road, Bournemouth by the First Applicant under Section 33 of the Leasehold Reform, Housing and Urban Development Act 1993 are £1,798.99 legal fees and £960.00 Valuer's fees (all plus VAT as applicable)
 - b. 26B Derby Road, Bournemouth by the Second Applicant under Section 33 of the Leasehold Reform, Housing and Urban Development Act 1993 are **£1,565.19** legal fees and £640.00 Valuer's fees (all plus VAT as applicable)

Reasons

Introduction

2. These were applications made to the Tribunal under Section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 (the Act) for the determination of issues arising from claims for enfranchisement as follows:
 - a. by David Frankel and Tara Victoria Frankel (the First Applicant) relating to the freehold of Neville Court, 26A Derby Road, Bournemouth ("26A") and
 - b. by TAD Properties Limited (the Second Applicant) relating to Gainslea Court, 26B Derby Road, Bournemouth ("26B")
2. References below to
 - a. the parties or to the property relate to each of 26A and 26B and the parties to the application in respect of that property as the case may be unless the context otherwise requires.
3. Various terms of acquisition of the property had been in dispute but all had been settled by the parties prior to the hearing save for the costs of the Respondent payable under Section 33 of the Act.
4. The Tribunal's consideration was therefore limited to determination of the costs payable by the applicant in each case to the Respondent under Section 33 of the Act.

Inspection.

5. The Tribunal did not, in the circumstances, inspect the property.

Consideration.

6. The Tribunal considered all the case papers relating to the costs issues and the submissions made on that aspect. The case papers included the following provided on behalf of the Respondent:
 - a. Copy extract of client care letter dated 14th December 2006 from Lee Bolton Monier-Williams (LB) to the Respondent.
 - b. Interim accounts rendered to the Respondent relating to these matters in respect of 26A dated 28th December 2007 and 22nd May 2008 and in respect of 26B dated 21st December 2007 and 22nd May 2008.
 - c. Copies of time recording sheets relating to each property in respect of the matter.

7. Those documents ("the undisclosed documents") referred to in the preceding paragraph had been provided to the Tribunal with the agreement of the applicants on the basis that they would not be disclosed to the applicant. In its consideration of the issues, the Tribunal has given due consideration to those documents and, save as mentioned below, found that there was nothing in those documents which adversely affected the Respondent's entitlement to the costs claimed under Section 33 of the Act.
8. In addition to the substantive case papers, the other documents before the Tribunal were:
 - a. The Respondent's detailed costs claims for each case signed by J P Sergeant for LB
 - b. The points of dispute of the applicant dated 4th August 2008.
 - c. Respondent's solicitor's arguments as to costs for the Respondent dated 13th August 2008
 - d. Respondent's replies to points of dispute dated 13th August 2008.
9. The Tribunal did not receive any response from the applicants in reply to the submissions made by the Respondent.
10. The Tribunal considered all the evidence and submissions made by the Respondent as to cost of time and charge out rates for the fee earners of LB and the consequent charge out rates referred to in the costs claims. Specifically it found that the rates charged are within the rates chargeable to the Respondent set out in the client care letter; within those allowable in court proceedings (while accepting that these are not court proceedings); from its own knowledge and experience are reasonable rates of charge for the relevant fee earners in a firm practising in Westminster. The Tribunal also noted that the applicants did not take issue with the rates charged provided they were not otherwise restricted by the undisclosed documents.
11. In relation to the legal submissions made in the Respondent's solicitor's arguments, the Tribunal accepted paragraphs 1 to 4 and 8 to 12 of those arguments. Paragraph 14 is taken into account at 12.c.i below. The Tribunal did not consider paragraphs 5 to 7, 13 were material to its determination.
12. Neville Court 26A Derby Road
 - a. 1(d). Section 20(1) Notice. The claim is for "preparation of Notice pursuant to Section 20(1) of the 1993 Act". The applicant says in effect that the work done in preparing the Notice is straightforward and not time consuming. The Respondent sets out in the reply a lot of extra work. It did not seem to the Tribunal that much of that work, if any, fell within "preparation of the notice" and it is not assisted by narrative in the timesheets in this respect. Conversely, the Tribunal did not feel that one unit was sufficient for the work likely to be done in respect of this notice and allowed 6 units.
 - b. 2. Setting calendar. The Tribunal found that this was an item additional to that provided under 1(d); it falls well within the costs allowable under Section 33 and allowed it in full.
 - c. 7(a)(b). Drafting Counter-Notice, drafting TP1 and considering rights; internal checking practice. The applicant says that there is duplication of work for two properties; 5 units would be the most necessary for 26A bearing in mind 4 hours 42 minutes claimed for 26B. The Respondent sets out the work done; that LB could not assume the

work on the two properties was identical; it was reasonable for a partner to be involved.

- i. The Tribunal considered that whatever the similarities of properties might be, as to title or otherwise, that could not be ascertained before the work done on each had been done; that solicitors might be open to negligence claims if they did not do the work on both properties and merely relied on assumptions. Therefore it was reasonable for a full charge to be made under this item for each property. For Item 7(a) the Tribunal accordingly allowed the full 35 units being a reasonable amount of time for a fee earner of her qualification and experience.
 - ii. As to 7(b), the applicant did not expressly refer to the checking aspect but took 7(a) and (b) together suggesting a total of 5 units overall. For all work done in connection with drafting documents referred to and consideration of rights, the Tribunal considered that 35 units allowed under 7(a) was reasonable.
- d. Updating Meyrick Schedule. The applicant says this is not within Section 33. The Respondent says, in effect, it is an incidental item consequent on the transactions and is in accordance with good file management. The Tribunal considered the item did not relate to management of this case file: it really only arises in respect of general management of the Respondent's affairs beyond this matter so it was not sufficiently within the intended scope of the word "incidental" in Section 33. The item was disallowed.
- e. Reviewing file and updating Meyrick database. Again the applicant says this is not within Section 33. The Respondent says this resulted from inaction. The Tribunal considered it was reasonable to allow 1 unit, but for the file review only.
- f. Taking instructions from GB as to specific terms of transfer; agreeing terms of transfer, etc. The applicant says GB's input would not be needed as to transfer terms, but in relation to the other aspect 3 units would be the maximum to be allowed. The Respondent contends that his advice was appropriate on practical issues. The Tribunal considered that it would be reasonable to expect input from GB, with his expert and local knowledge, as to transfer terms. The applicant does not challenge other aspects and the Tribunal considered this item should be allowed in full.
- g. Reviewing Tribunal instructions/directions. The applicant says that these are not recoverable under the Act as they relate to the Tribunal application. The Respondent says, and the Tribunal agrees, this item is not claimed by the Respondent in relation to 26A.
- h. Chasing documents. The applicant says this relates to Tribunal proceedings so is irrecoverable under the Act. The Respondent says that it was reasonable to charge for good file and case management. The Tribunal notes the Respondent does not address the issue raised by the applicant, so accepted the applicant's submission. The item was disallowed.
- i. Taking instructions from GB. Again the applicant asserts this related to the Tribunal proceedings so is irrecoverable and again the

Respondent does not deal with the point. The Tribunal accepted the applicant's submission and the item was disallowed.

- j. Discussing costs with JXR. The applicant says this is not recoverable as it does not relate to any matter for which costs can be claimed. The Respondent says this is an active part of client care. However, the Tribunal noted it is not part of the Respondent's claim concerning 26A.
- k. Attending to completion matters and all post completion matters. The applicant considers that not more than 8 units should be claimed. The Respondent contends that one and a half hours is reasonable. The Tribunal noted there was no time recorded for this item on the time sheets it has seen, nor has the Respondent sought to itemise the work done. It accepts, however, that some work would be required but that not more than 8 units would be reasonable. 8 units allowed.

13. Gainslea Court 26B Derby Road

- a. 1(d). As for 26A
- b. 2. As for 26A
- c. 7(a)(b). For this property the Respondent claims 36 units and the Tribunal disregards the minor difference as against 26A, but it allows those 36 units in full for the same reasons as in the case of 26A. But the applicant, in respect of this property raises the question of checking. They say that checking would be unnecessary bearing in mind SXT's experience, so the checking aspect should be disallowed and that 1.5 hours should be sufficient to prepare the notice and transfer. The Respondent says the time spent is reasonable, it is reasonable to involve two fee earners and for a partner to oversee.
- d. The Tribunal considered, on the involvement of two fee earners and checking:
 - i. The claim only suggests involvement of a second fee earner in respect of checking documents, while the Respondent now appears to suggest possibly more active input. Maybe that is not intended.
 - ii. By reference to 26A the Tribunal has already allowed the 36 units claimed for the substantive work
 - iii. In respect of checking, the Tribunal considered:
 - 1. It would be reasonable for a client to expect the work to be done by a suitably qualified and experienced fee earner;
 - 2. If she was not sufficiently competent in all respects to do the work, it ought to have been carried out by a more qualified lawyer whose expense rate might have been higher, but who ought to have been able to do the work in a shorter time; so that the cost to LB would have been similar to that of SXT, but would probably not have thought to be in need of checking.
 - iv. LB had the work done by a fee earner whose work, they considered, needing checking and as a consequence they should expect to bear that cost.
 - v. Accordingly the Tribunal disallowed checking time.

- e. Updating Meyrick Schedule. As for 26A.
- f. Reviewing file and updating Meyrick database. The Tribunal assumes the schedule and database are one and the same. As for 26A.
- g. Taking instructions from GB as to specific terms of transfer; agreeing terms of transfer, etc. The Tribunal considered that 13 units, the same as for 26A, was appropriate, but otherwise the same comments apply.
- h. Reviewing Tribunal instructions/directions. The applicant says that these are not recoverable under the Act as they relate to the Tribunal application. The Respondent says the Respondent himself would expect to pay and that it was relevant to the transfer in terms of timetabling. The work was done on 11th March 2008. It is unclear why it would have been needed as on 7th March 2008 LB had written to the Tribunal agreeing vacation of the 12th March hearing date. In any event it seems to the Tribunal to relate rather to the proceedings than the Transfer and for both reasons it was disallowed.
- i. Chasing documents. As for 26A.
- j. Taking instructions from GB. As for 26A.
- k. Discussing costs with JXR. The applicant says this is not recoverable as it does not relate to any matter for which costs can be claimed. The Respondent says this is an active part of client care. The Tribunal did not regard this item to be incidental to the work for which costs are recoverable under Section 33: the Tribunal considers that the recoverable costs must relate to substantive work. The item was disallowed.
- l. Attending to completion matters and all post completion matters. As for 26A.

14. There are no other issues to determine relating to legal costs or valuer's fees.

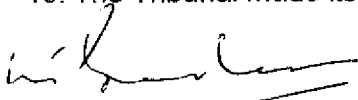
15. Taking into account the above, the costs allowed are calculated as follows:

| 26A Derby Road | | | | | | |
|--|---------------|---------------|---------------|-----|-----------------|------------------------|
| Item | Units claimed | Units allowed | Reduced units | F/E | F/E hourly rate | Value of reduced units |
| 1(d) | 12 | 6 | 6 | SXT | 175.74 | 105.44 |
| 2 | 1 | 1 | 0 | SXT | 175.74 | 0.00 |
| 7(a) | 35 | 35 | 0 | SXT | 175.74 | 0.00 |
| 7(b) | 12 | 0 | 12 | RXC | 236.34 | 283.61 |
| Update Meyrick schedule | 1 | 0 | 1 | SXT | 175.74 | 17.57 |
| Review file & update database | 1 | 1 | 0 | SXT | 175.74 | 0.00 |
| Instructions from GB re transfer terms | 13 | 13 | 0 | AXH | 175.74 | 0.00 |
| Chasing documents | 1 | 0 | 1 | AXH | 175.74 | 17.57 |
| Take instructions | 1 | 0 | 1 | RXC | 236.34 | 23.63 |

| | | | | | | |
|---|---------------|---------------|---------------|-----|-----------------|------------------------|
| from GB | | | | | | |
| Completion etc | 15 | 8 | 7 | JXR | 183.01 | 128.11 |
| Total reduction | | | | | | -575.93 |
| LEGAL COSTS CLAIMED | | | | | | 2,374.92 |
| LEGAL COSTS PAYABLE BY APPLICANT | | | | | | 1,798.99 |
| ADD VALUER'S FEES | | | | | | 960.00 |
| Total payable (ex VAT) | | | | | | 2,758.99 |
| 26B Derby Road | | | | | | |
| Item | Units claimed | Units allowed | Reduced units | F/E | F/E hourly rate | Value of reduced units |
| 1(d) | 12 | 6 | 6 | SXT | 175.74 | 105.44 |
| 2 | 1 | 1 | 0 | SXT | 175.74 | 0.00 |
| 7(a) | 36 | 36 | 0 | SXT | 175.74 | 0.00 |
| 7(b) | 11 | 0 | 11 | RXC | 236.34 | 259.97 |
| Update Meyrick schedule | 1 | 0 | 1 | SXT | 175.74 | 17.57 |
| Review file & update database | 1 | 1 | 0 | SXT | 175.74 | 0.00 |
| Instructions from GB re transfer terms | 20 | 13 | 7 | AXH | 175.74 | 123.02 |
| Review Tribunal directions etc | 1 | 0 | 1 | AXH | 175.74 | 17.57 |
| Chasing documents | 1 | 0 | 1 | AXH | 175.74 | 17.57 |
| Take instructions from GB | 1 | 0 | 1 | RXC | 236.34 | 23.63 |
| Discuss costs with JXR | 2 | 0 | 2 | RXC | 236.34 | 47.27 |
| Completion etc | 15 | 8 | 7 | JXR | 183.01 | 128.11 |
| Total reduction | | | | | | -740.15 |
| LEGAL COSTS CLAIMED | | | | | | 2,305.34 |
| LEGAL COSTS PAYABLE BY APPLICANT | | | | | | 1,565.19 |

| | | | | | | | |
|-------------------------------|--|--|--|--|--|--|-----------------|
| ADD VALUER'S FEES | | | | | | | 640.00 |
| Total payable (ex VAT) | | | | | | | 2,205.19 |

16. The Tribunal made its decisions accordingly.



M J Greenteaves (Chairman)

A member of the Southern
Leasehold Valuation Tribunal
appointed by the Lord Chancellor