

LON/OOAN/OC9/2007/0070

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON AN APPLICATION UNDER THE LEASEHOLD REFORM HOUSING
AND URBAN DEVELOPMENT ACT 1993 SECTIONS 60 and 91**

PROPERTY: 18A, B, C AND D SYCAMORE GARDENS LONDON W6
0AP

APPLICANT: PENTDOWN LIMITED

RESPONDENT: SYCAMORE GARDENS LIMITED

TRIBUNAL

Mrs T I Rabin Chairman
Mr R Humphrys

Date of Tribunal's decision: 6th February 2008

18 A, B, C and D SYCAMORE GARDENS LONDON W6 0AP

FACTS

1. The Tribunal was dealing with an application under Sections 33 of the Leasehold Reform Housing and Urban Development Act 1993 ("the Act") for a determination of the level of costs to be paid by the Respondent, Sycamore Gardens Ltd in relation to an application under Section 13 of the Act. The Application related to 18 A, B, C and D Sycamore Gardens London W6 0AP ("the Property"). The landlord Applicant Pentdown Limited made the application following an application under Section 13 of the Act to acquire the freehold of the Property.
2. The Landlord's claimed costs are a total of £5,162 and this figure is disputed by the Applicants. The Tribunal will determine the costs in accordance with Section 91(d) of the Act.

The Law

3. The Respondent's costs for which the Applicants are responsible following the service of a notice under Section 13 of the Act are set out in Section 33 (1) of the Act. This states:

33(1) Where a notice is given under Section 13 then.....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:

- (a) any investigation reasonably undertaken:-
 - (i) of the question whether any interest in the specified premisesis liable to acquisition in pursuance of the initial notice;
 - (ii) of any other question arising out of the 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.....;
- (e) Any conveyance of 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

33(2) For the purposes of sub-section (1) any costs incurred by the reversioner 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.

EVIDENCE AND DECISION

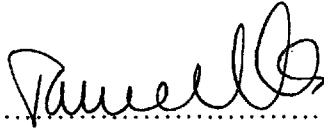
4. The evidence before the Tribunal is contained in the parties' statements of case. The Applicant has set out the costs claimed in his application and has made a charge of £220 per hour. They did not instruct a solicitor but stated that the

charge of £220 per hour was on the basis of in house work by a former solicitor. The Respondent set out their objections in their statement in reply. A copy of the schedule of costs annexed to the application with the charged items numbered by the Tribunal and the Respondent's reply are attached for ease of reference.

5. The Tribunal noted that the application was made a considerable length of time after the hearing in October 2004 and the Tribunal will base their assessment of the costs accordingly. The Respondent does not accept the level of hourly rate as the Applicant dealt with the matter in house and should only be allowed to claim the sum of £9.25 per hour as a litigant in person under the CPR Rules at Practice Direction 48 paragraph 52 ("the Practice Direction"). The Tribunal agrees that the figure of £220 per hour is unreasonable because the Applicant did not instruct professional advisers and has provided no evidence that there was an appointment of an in-house solicitor. Even if this were the case, the sum is far in excess of an appropriate figure for an in-house solicitor in limited company several years ago and there is no evidence that such costs were in fact incurred. The Tribunal will assess a reasonable cost for the work undertaken in house and which falls to the paid by the Respondent under Section 33(1) of the Act.
6. The Tribunal agrees with the points raised by the Respondent in the reply with the exception of the following, retaining the same numbering:
 7. The Tribunal has no indication as to when the initial notice was served and cannot conclude that such an investigation was necessary. If the notice was served prior to the implementation of the Leasehold Reform Housing and Urban Development Act 1993 then the Applicant would have been entitled to charge for inspecting office copies. However, the time taken would have been minimal as only the names and the date of acquisition needed to be ascertained. The Tribunal considers that 10 minutes would have been sufficient.
 - 9 & 13. It is reasonable for the Applicant to make a charge for enquiries from valuers as they were not instructing independent valuers. This information is readily available and an hour would be more than generous
 15. This is an area where the law is not clear as Section 33(1) only allows for incidental costs relating to the specified items. Nevertheless the Applicant's suggestion that it took 3 hours to complete what is in effect a standard form is in the Tribunal's view, excessive. The Tribunal will allow 15 minutes
 - 18.(a) The Respondent agrees that 3 letters would be chargeable and the Tribunal accepts that view. The figure of £20 per letter is excessive as this would be the level charged by a senior solicitor in a law firm. Items (b) and (c) are disallowed for the reasons stated. Item (d) is allowed.
7. The Respondent considers that a charge of £60.86 would be appropriate for the work involved. They point out that their own costs for work undertaken prior to the Tribunal proceedings were £500 plus VAT in accordance with the invoice attached to the reply.
8. The Tribunal has taken account of the fact that the proceedings were dealt with in house and no external costs were incurred. The Tribunal is not bound by the Practice Direction as the Applicant is a limited company and not a litigant in

person. The Tribunal is required to assess the reasonable costs and the Practice Direction would be no more than a guide. The Tribunal considers that a reasonable fee for the costs incurred in house and liable to be paid by the Respondent under Section 33(1) are **£120**. There has been no claim for VAT and no evidence that the Applicant is liable for VAT. Accordingly no VAT is payable.

CHAIRMAN.....



Mrs T I Rabin

Date

6th February 2008

LEASEHOLD REFORM HOUSING AND URBAN DEVELOPMENT ACT 1993
("the Act")

APPLICATION TO THE LEASEHOLD VALUATION TRIBUNAL PURSUANT
TO SECTION 91(d) FOR DETERMINATION OF COSTS UNDER SECTION
33(1)

BETWEEN:

PENTDOWN LIMITED

Applicant

- AND -

TENANTS AT 18 SYCAMORE GARDENS

Respondents

STATEMENT OF REPLY TO
APPLICATION OF ASSESSMENT OF BILL OF COSTS
DATED 10 APRIL 2005

Pursuant to the Directions of the Leasehold Valuation Tribunal dated 21 November 2007, the Respondents hereby set out their Reply to the Application for costs sought by Pentdown Limited in its letter of 10 April 2005.

General Comments

The claim for costs pursuant to Section 33 (1) relate to:

1. Investigations recently undertaken of any question arising out of the Initial Notice including the premises to be acquired;
2. Deducing evidence in and verifying the landlord's title;
3. Preparing and providing abstracts and copies required by the Nominee Purchaser;
4. Any valuation of any interest in the specified premises or other property; and

5. The conveyance of any such interest;

The Nominee Purchaser is liable only for the reasonable costs incurred by the freeholder of and incidental to such matters, and the costs which are not recoverable thus include costs incurred in any tribunal proceedings.

It should be noted that the hearing in this matter took place on 26/27 October 2004 and some 3 years have passed prior to the freeholder lodging its application for costs pursuant to Section 33 of the Act. Further the Applicant's claim for costs at the rate of £220.00 per hour is not accepted; the Applicant acted on its own behalf in the matter and did not incur any professional charges albeit that the indication seems to be that he may have been a former in-house solicitor; the CPR Rules at Practice Direction 48, paragraph 52 provide that such an individual would be considered a 'litigant in person' and also that such a person's charges ought to be at the rate of £9.25 per hour. Accordingly, the Respondent only accepts that the Applicant would be entitled to a rate of £9.25 per hour for work undertaken.

Item No:	Respondent's Comments
1.	Perusing and considering Section 13 Notice. The Respondents accept that this time will have been expended in dealing with this aspect.
2.	Perusing and considering leases of the four flats and office copies to check the owners of the leases. The Respondents accept that the Applicant would have undertaken such work at the time taken.
3.	Obtaining office copies of the titles to check the plans with respect to claim under paragraph 2 and 3 of the Section 13 Notice. Respondents dispute that it will have taken 20 minutes to obtain such office copy entries and would consider 10 minutes for such endeavour.
4.	Examining the plans and title claimed. The Respondents dispute it would have taken 40 minutes to examine the plans. The title has already been checked in item 2 above. The Respondents accept that to examine the plans, the Applicant would have taken 15 minutes to consider the plans which are all similar.
5.	Considering and examining the landlord's files and examining the devolution of the title to establish whether lessees were qualifying tenants. The Respondents do not consider it a necessary endeavour for the landlord to check his files. The landlord has previously already checked the office copies regarding the claim and the entitlement is clear from such documentation. However, we would allow the landlord Applicant say 10 minutes to consider the qualifying tenant's position.
6.	Considering litigation files of Wilka in the High Court, whether the tenant was a qualifying tenant by considering the breaches of the lease and

	<p>defective title including breach of covenants such as planning applications.</p> <p>The Respondents do not consider this a recoverable item pursuant to Section 33. As the Applicant was involved in the litigation with Wilka, it will have been fully aware of the position on the litigation matter without the requirement to consider such files. Additionally, the Respondents note that the litigation that the Applicant had with Wilka was resolved and settlement achieved and as such those issues resolved negating the need for the Applicant to consider such an issue. Accordingly, the Respondents dispute this aspect of the claim.</p>
7.	<p>Checking status of Jamie and Katherine O'Neil and obtaining office copies of their Chiswick property to establish if these tenants occupied the property as their sole home for the preceding two years.</p> <p>The Respondents dispute the claim for such time expended on the basis that there is no qualifying period requirement. As such, it was unnecessary to undertake such work with regard to occupation requirement.</p>
8.	<p>Checking bundle of documents served by the Applicant.</p> <p>The Respondent disputes that this time expended can be claimed pursuant to Section 33 of the Act on the basis that this relates to the Application to the Leasehold Valuation Tribunal and costs are not recoverable for work undertaken in such proceedings.</p>
9.	<p>Making preliminary enquiries of FH Valuation.</p> <p>The Respondents do not consider this aspect to be recoverable on the basis that no valuation appears to have been obtained by the Applicant. No evidence of has been provided.</p>
10.	<p>Checking files to ascertain payment ground rent receipts.</p> <p>The Respondent disputes that the Applicant undertook such work on the basis that the Respondents have only recently, in late 2007, received any claim for outstanding ground rent from the Applicant. Accordingly, the Respondents do not accept this work was undertaken and also dispute that this is a recoverable cost pursuant to Section 33 as it is not in relation to deducing evidence in and verifying the landlord's title; preparing and providing abstracts and copies to the Nominee Purchaser or in relation to the valuation. The matter did not proceed to the conveyance aspect and as such no costs in that regard can have been incurred.</p>
11.	<p>Considering office copies in conjunction with the leases to check the extent of premises demised.</p> <p>The Respondents dispute that these costs are recoverable on the basis that the Applicant has already claimed for them at items 2, 3, and 4.</p>
12.	<p>Considering letter received from Rent Tribunal dated 10 June and responding thereto.</p> <p>The Respondents dispute that such costs are recoverable pursuant to Section 33 on the basis that such matters relate to the Leasehold Valuation Tribunal proceedings and costs incurred in this connection are not</p>

	recoverable.
13.	<p>Contacting a number of valuers to discuss the rental value to consider any element of marriage value.</p> <p>The Respondents do not consider this aspect to be recoverable on the basis that no valuation appears to have been obtained by the Applicant. No evidence of this has been provided.</p>
14.	<p>Dealing with Land Registry regarding objection and removal of caution which was eventually withdrawn all inclusive.</p> <p>The Respondents consider that no more than 2 hours would be required to deal with this aspect.</p>
15.	<p>Preparing counter-notice by reference to information obtained, considering such information and drafting the counter-notice.</p> <p>The Respondents dispute such costs are recoverable on the basis that Section 33 (1) provides that such costs are not recoverable.</p>
16.	<p>Preparing List of Issues prepared on behalf of the landlords.</p> <p>The Respondents do not consider such costs are recoverable as it is work that has clearly been undertaken in relation to the tribunal proceedings and these are not recoverable.</p>
17.	<p>Perusing Schedule of documents and examining documents enclosed therewith. Going through the documents with a view to preparing for the hearing and re-examining Section 13 Notice and Counter-notice.</p> <p>The Respondents reassert the position that such costs are not recoverable as they are clearly incurred in relation to tribunal proceedings and thus not recoverable.</p>
18.	<p>(a) Letters to Jennifer Israel, 7 at £20 per letter.</p> <p>(b) Letters to tribunal, 3 at £20 per letter.</p> <p>(c) Letters received, 5 at £20 per letter.</p> <p>(d) Office copy entries, petties, postage.</p> <p>(a) The Respondents would dispute that all letters to Jennifer Israel were in relation to the investigations and would accept that possibly three letters were forwarded to Jennifer Israel in relation to investigation, deduction of title, and the like. The Respondents also disputes that the Applicant is entitled to a fee of £20 per hour for each letter on the basis that the applicant is clearly a litigant in person albeit that the indication seems to be that he may have been a former in-house solicitor; the CPR Rules at Practice Direction 48, paragraph 52 provide that such an individual would be considered a litigant in person and also that such a person's charges ought to be at the rate of £9.25 per hour. Accordingly, the applicant only accepts that three letters at the rate of £9.25 per hour would be recoverable.</p> <p>(b) The Respondents dispute that letters to the tribunal are recoverable</p>

	on the basis as set out at paragraphs 12, 16 and 17.
(c)	The Respondents dispute the charges for letters received. Professionals do not charge for receipt of letters but merely for dispatch of letters and the Respondents solicitors follows that procedure on behalf of the Respondents and accordingly, such costs are deemed not to be recoverable.
(d)	Office copy fees and petty postage. The Respondents accept that such costs are likely to have been incurred albeit that no evidence has been provided of these costs being incurred.

The Respondents were charged £500.00 for the work undertaken by its solicitors for the preliminary issues prior to the tribunal proceedings and would anticipate a much smaller figure from a Freeholder who acts on its own behalf without professional assistance. A copy of the invoice dated 4 August 2003 (appropriately redacted) is attached for reference. Accordingly, the Respondent would consider that the Applicant acting on its own behalf would incur minimal costs which have been calculated based on the forgoing at £60.86 pursuant to Section 33 of the Act.

HC

21 January 2006.

Israel

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Whetstone
London N20 9HJ

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8446 6607

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SYCAMORE GARDENS LIMITED
IN ACCOUNT WITH
JENNIFER ISRAEL & CO.
Solicitors
VAT Registration No. 505 880640

Date: 4 August 2003
Ref: JI(DM)/jh/Sycamore.Gdns(SYC02 01)(20) & (27)

	COSTS	DISBS	VAT rate	VAT
RE: 18 SYCAMORE GARDENS				
TO OUR CHARGES in connection with your Collective Enfranchisement Notice including obtaining and considering Deeds, replies to questionnaires and surveyors report. Making Land Registry Searches and other enquiries where appropriate. Preparing Notice and Participation Agreement. Obtaining and checking signatures, etc. Service of Notice and reporting to you, preparing Land Registry Caution and attending to make Statutory Declaration in support	500.00		17.5	87.50

A Singh
Pentdown Ltd
17 Cornwood Close
London N2 OHP.

To Sycamore Gardens Ltd
C/O Jennifer Israel & Co
1346 High road
London N20 9HJ

10.04.05

Dear Sir

RE 18 Sycamore Gardens London W6 – Note of Charges

Our charges with respect to responding to Sec 13 Notice and completing a Counter Notice with respect to 18 Sycamore Gardens W6

1	Perusing and considering Sec 13 Notice	20 mins
2	Perusing and considering leases of the four flats and office copies to check the owners of the leases	60 mins
3	Obtaining office copies of the titles to check the plans with respect to claim under Para 2 and 3 of the Sec 13 Notice	20 mins
4	Examining the plans and title claimed	40 mins
5	Considering and examining the LL files and examining the devolution of the title to establish whether the lessees were qualifying tenants	1 hour
6	Considering litigation files of Wilka in the High Court to , and whether the tenant was a qualifying tenant by considering the breaches of the lease and defective title including breach of covenants such as the planning application	2 hours
7	Checking status of Jamie and Catherine O Neil	

and obtained office copied of their Chiswick property to establish if these tenants occupied the property as their sole home for the preceding 2 years.

1 hour

8 Checking Bundle of Documents served by the applicant 15 mins

9 Making preliminary enquiries of FH Valuation 1 hour

10 Checking files to ascertain payments of ground rent receipts 75 mins.

11 Considering office copies in conjunction with the leases to check the extent of premises demised. 90 mins

12 Considering letter received from Rent Tribunal dated 10th June and responding thereto 45 mins

13 Contacting a number of Valuers to discuss the rental FH value to consider any element of marriage value. 45 mins

14 Dealing with Land Registry regarding objection and removal of Caution and which eventually was withdrawn -all inclusive 4 hours

15 Preparing Counter Notice by reference to information obtained, reconsidering such information and drafting the Counter Notice 3 hours

16 Preparing List of Issues prepared on behalf of the landlords 40 mins

17 Perusing Schedule of Documents and Examined documents enclosed therewith } 30 mins
Going through the documents with a view to preparing for the hearing and reexamining Sec 13 Notice and the Counter Notice } 2 hours.

18 Total time 22 hours
At 220 pounds per hour (In-house by former solicitor) 4840 pounds
Letter to Jennifer Israel 7 at 20 pound per letter 140 pounds
Letters to Tribunal 3 at 20 pounds per letter 60 pounds
Letters received 5 at 20 pounds per letter 100 pounds
Office copies fee 12 pounds
Petties postage 10 pounds
Total 5162 pound

With Compliments
Pentdown Ltd