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RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL

Property	:	**Westbury Mill, Westbury, NN13 5LE**
Applicant	:	**Regisport Ltd.**
Respondent	:	**Westbury Mill Flats Management Company Ltd.**
Case number	:	**CAM/11UB/OC9/2009/0007**
Date of Application	:	**2nd September 2009**
Type of Application	:	**To determine the costs payable on enfranchisement (Section 33 of the Leasehold Reform and Urban Development Act 1993 ("the 1993 Act"))**
The Tribunal	:	**Mr. Bruce Edgington (lawyer chair) Mr. David Brown FRICS MCI Arb**

DECISION

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1. The reasonable legal costs and disbursements of the Applicant payable by the Respondent pursuant to Section 33 of the 1993 Act are £2,902.50 plus VAT.

2. The reasonable costs of valuation of the Applicant payable by the Respondent pursuant to Section 33 of the 1993 Act are £350.00. No VAT is being claimed for this item.

Reasons

Introduction

3. This dispute arises from the service of two Initial Notices seeking the collective enfranchisement of the property by qualifying tenants who nominated the Respondent as the purchaser. In these circumstances there is a liability on the nominee purchaser to pay the lessor's reasonable costs.

4. The Tribunal decided that this was a case which could be determined on a consideration of the papers without an oral hearing. This

information was conveyed to the parties in the Directions Order issued on the 14th October 2009. In accordance with Regulation 5 of **The Leasehold Valuation Tribunals (Procedure)(Amendment)(England) Regulations 2004,** notice was given to the parties (a) that a determination would be made on the basis of a consideration of the papers including the written representations of the parties on or after 26th November 2009 and (b) that a hearing would be held if either party requested one before that date.

5. A request was made by the Applicant's solicitors for a hearing and this was fixed for the 28th January 2010. On the 25th January, the Applicant's solicitors filed a lengthy document including a further statement, replies to the objections and other documents. A request was then made for the hearing to be vacated and the matter dealt with on the basis of the written submissions. The Respondent's solicitors were, not unnaturally, extremely irritated by the somewhat cavalier fashion displayed by the Applicant's solicitors but accepted, reluctantly, that the matter could now be dealt with on paper.

6. The Respondent's solicitors ask that the Tribunal ignores the further evidence filed. The Tribunal has every sympathy with this request but has decided that if both parties want the matter dealt with on the basis of a consideration of the papers only, it would not be dealt with fairly if the Applicant's responses to the objections were not taken into account.

The Law

7. It is accepted by the parties that the Initial Notices were served and therefore Section 33 of the 1993 is engaged. The Respondent therefore has to pay "*...to the extent that they have been incurred in pursuance of the notice...*" the Applicant's reasonable costs of and incidental to:-

   (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 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 or other property;

   (e) any conveyance of any such interest

8. What is sometimes known as the 'indemnity principle' applies i.e. the Applicant is not able to recover any more than he would have to pay his own solicitors or valuer in circumstances where there was no liability on anyone else to pay (Section 33(2)).

9. The Tribunal has been provided with a bundle of documents and the list of objections. However, despite clear and comprehensive directions being given by the tribunal that it wanted the bundle to contain (1) a document including the experience of the fee earners involved and the time spent or estimated time spent by the valuer (2) a schedule of objections and (3) the Applicant's replies to the objections (if any), only (2) was provided. Additionally, there are many documents such as the Initial Notice, the Counter-Notices, tenants information forms and some correspondence which are duplicated.

10. With solicitors representing each party, the Tribunal is disappointed that they cannot follow clear instructions which has made the Tribunal's task that much more difficult and has also wasted a great deal of paper. Much of the fault lies with the Applicant's solicitors. They were months late in the filing of their final evidence and they do not endorse their replies to the objections on the objections form despite space being left for that purpose. Even firms of solicitors with a small litigation department are perfectly used to dealing with costs assessments in the county court where objections are routinely e-mailed and replies are then endorsed in the appropriate places and returned so that the Judge has one document to deal with, much like a Scott Schedule.

Legal fees

11. The charging rate for the legal costs is not disputed although it is asserted that the draft transfer could have been dealt with by a lower grade fee earner. The Tribunal agrees that a Grade A fee earner is appropriate for enfranchisement work and the rates claimed are not challenged. As has been said on many occasions, allowing a Grade A rate, i.e. the most expensive hourly rate, means that the costs must be assessed on the basis that the fee earner is experienced in enfranchisement work and is competent.

12. There is one point of principle raised in the objections which is the Respondent's solicitors' "*...understanding from Counsel that the Landlord may recover reasonable costs up to and including the service of the counter notice...*", but that costs incurred thereafter are not recoverable. This is an interesting point but is not supported by any authority. Section 33 does not say this. It says that the Landlord is able to claim for dealing with any question arising out of the Initial Notice. Nevertheless, the Applicant must satisfy the Tribunal that costs incurred after the service of the Counter-Notice do come within Section 33.

13. It would be different if an Initial Notice were actually withdrawn because it would then be clear to the landlord that no further costs should be incurred. But in this case, there are arguments rehearsed in the statements from the solicitors about the service of the Counter-Notices and whether they were served without prejudice to any defect in the Initial Notices. As the letters and e-mails following service of the Counter-Notices re-commenced several weeks after such service, the

only inference the Tribunal can drawn is that the subsequent work was to do with the validity or otherwise of the Initial Notices. Any challenge to that is, of course, a matter for the court and any costs incurred should be claimed in any proceedings before the court and do not come within Section 33.

14. The objections deal with matters under date headings and these reasons will do the same as this would seem to be the most convenient way of dealing with matters:-

22.02.08 The claim for £60 for a trainee spending 30 minutes obtaining office copy entries is challenged because the office copies were requested of and supplied by the Respondent's solicitors. The reply is that the Applicant's solicitors always apply for their own office copies. They do not explain why they asked the Respondent's solicitors for these documents. It is perverse to ask for them and then expect the Respondents to pay for the Applicant's solicitors to get them as well. This objection is upheld - £60 deducted. Arising from this, the Land Registry fees of £87.00 would therefore need to be deducted.

14.04.08 The claim for 1½ hours for drafting the Counter-Notice is challenged because it is a standard one page notice and follows the precedent in Hague which is one of the recognised and authoritative publications on enfranchisement matters. Following the objection, the Applicant says that the time spent is reasonable. When taken together with the 1½ hours spent considering the Initial Notice which, in itself seems somewhat excessive, together with the 30 minutes considering the office copy entries and the further 48 minutes considering office copy entries and leases, this means that 4 hours 18 minutes is claimed for considering the Initial Notice and relevant documents and drafting a Counter-Notice. For an experienced Grade A fee earner this is excessive. The totality of these claims is reduced to 3 hours i.e. there is a deduction of 1 hour 18 minutes - £390.00 deducted.

17.04.08 This is a claim for 30 minutes for 'finalising' the Counter-Notice three days after it was drafted. Despite the objection, there is still no indication as to what this time was spent on save for the fee earner asking for the draft to be engrossed and the Applicant's solicitors saying that the time spent was reasonable. All this time is disallowed i.e. £150.00. The objection then raises the issue about no costs being allowable after the service of the Counter-Notice which, for the reasons stated above is accepted - £360.00 deducted. This makes a total of £510.00 deducted under this item.

09.09.08 The claim is for 1 hour to consider the second Initial Notice. It is said that this is excessive because it is in similar terms to the first notice. The reply to the objection says that each Initial Notice has to be dealt with separately and a list of matters which had to be considered is set out. As there is then further time spent considering this notice with the accompanying documents on the 21st October, it is clear to the Tribunal that this was intended to be a brief look at this

notice to ensure that it was Statute compliant. For an experienced fee earner, this should not have taken more than 30 minutes.

21.10.08 This is the further time referred to and is 2½ hours to consider the Initial Notice with office copy entries and related documents. It does seem excessive on the face of it. The response is that months had passed since the service of the previous notice and the matter had to be reviewed in its entirety. The Tribunal accepts this point. This was a new notice served some seven months after the first notice. It was necessary for the solicitors to, as it were, start from scratch. The Tribunal allows the same time as was allowed for the first notice in total i.e. 3 hours. This includes the time spent on the 22.10.08 and 07.11.08 – see below.

22.10.08 This is a challenge to the cost of drafting the transfer served at the same time as the Counter-Notice which, the Respondent's solicitors say, is not normal practice and should be disallowed. The Applicant's solicitors say it is common practice and refer to the well known case of *St. Mary's Mansions v Metropolitan Properties* which, they claim, sets out the argument for this. They do not refer to any particular paragraph in this decision. The case relates to a lease extension and it is said that the practice is the same. The Tribunal does not make any specific finding on this but points out that there is a difference in practice between leasehold transactions, where the lease is drafted by the landlord and freehold matters where the transfer is normally drafted by the purchaser. However, it notes that when the Counter-Notice was served with a letter dated 7th November 2008, the Applicant made it clear that it was challenging the validity of this second Initial Notice. It therefore does seem unreasonable to the Tribunal that the Applicant's solicitors should proceed with the conveyancing formalities. This claim for 1 hour is therefore disallowed – £350 deducted.

27.10.08 and 07.11.08 These are the further objections to the 2½ hours spent in the drafting and finalising the Counter-Notice. As has been said above the total time for considering the Initial Notice and preparing the Counter-Notice is reduced to 3 hours i.e. a reduction of 3 hours - £900.00 deducted.

25.11.08 The point made here is that nothing can be claimed after the service of the Counter-Notice. For reasons which have already been given, the Tribunal agrees that none of these costs should be allowed - £97.50 deducted.

Valuer's fee

15. The valuer's fee claimed is £2,600.00. No VAT is claimed. It is challenged in total. The invoice is from Pier Asset Management which appears to be the trading name of Pier Management Ltd. and it is addressed to the Respondent. It is dated 9th September 2009. Assuming the valuation was undertaken for the first Initial Notice, this is 19 months afterwards. It then records that instructions were received from the Applicant and then says (including misspellings):-

Surveyors cost include
Travel to/from site
site inspection, taking dara and measurements
Research and Calculation
Production of Report
Reporting to Client

Fee as per agreed structure	*2,600.00*
Assitional disbursements	
None	*0.00*

16. Paragraph 29 of the Applicant's statement says that the valuation was carried out by Ben Meagher of Ground Rent Managers Ltd., the Applicant's managing agent until November 2008. It is then said that the Applicant appointed Pier Management Ltd. as its managing agent. The statement then goes on to say that the valuation was a desk top one and the charge is per unit.

17. It is said that the normal charge per unit is £600.00 but in this case a concession has been made and the charge has been reduced to £200.00 per unit i.e. a total of £2,600.00. Paragraph 32 of the same statement says:-

"*The valuer, Ben Meagher, holds the qualification MIRPM. He has carried out valuations for the purposes of lease extension and freehold acquisition claims for the past five years. Although Ground Rent Managers Limited no longer exists, Mr. Meagher continues his duties for its parent company, Gateway Property Management Ltd.*"

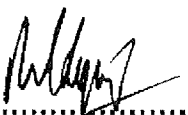
18. There is no description of what the qualification means but an MIRPM is a member of the Institute of Residential Property Managers. The qualifications for a member, according to the Institute's website, are 3 years' experience as a property manager plus the passing of an examination. According to the syllabus for the examination, taken from the link to the Chartered Institute of Housing, it does not appear to require any knowledge of property valuation, for the specialist area of enfranchisement or otherwise.

19. The evidence therefore appears to show that the valuation was carried out by someone who is not a chartered surveyor, or someone of similar qualifications, by means of what is called a 'desk top' valuation i.e. no visit is made to inspect the property. The Tribunal is not assisted by the fact that it has not been shown the valuation report which makes its task of assessing the amount of work done that much more difficult. It is the experience of the members of the Tribunal that such valuations take no more than two hours. A 'qualified' valuer would merit no more than £250.00 per hour and would probably charge nearer £150.00 per hour.

20. The Applicant's solicitors' replies to the objection do not deal with the main point of the objection. The Tribunal therefore must use its knowledge and experience to assess what a reasonable fee would be. It is its members' view that a reasonable fee for an experienced and qualified valuer would be £450.00 excluding VAT and for a person with Mr. Meagher's qualification and experience, £350.00 excluding VAT.

Summary

21. As can be seen, the legal fees claimed are reduced by £2,307.50 plus the Land Registry fees of £87.00. The valuation fee is allowed in the sum of £350.00.



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Bruce Edgington
Chair
28th January 2010