

2007

Ref: LON/00AZ/0C9/2010/0037

**LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT
ASSESSMENT PANEL**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN
APPLICATION UNDER s 60 OF THE LEASEHOLD RFORM HOUSING AND
URBAN DEVELOPMENT ACT 1993**

Applicant: Sinclair Gardens Investments (Kensington) Limited

Represented by: Mr P Chevalier, Solicitor

Respondents: Ms Kate Beale

Represented by: Bennett Welch, Solicitors

**Premises: 83 Walerand Road, London SE13 7PQ
Flat and Parking Space)**

Hearing date: 14 October 2010

**Members of the Leasehold Valuation Tribunal: Mrs F R Burton LLB LLM MA
Mrs G Barrett JP**

Date of Tribunal's decision: 18 October 2010

83 WALERAND ROAD, LONDON SE13 7PQ

BACKGROUND

1. This was an application dated 16 August 2010 by Sinclair Gardens (Investments) Kensington Limited for determination of the amount of legal fees to be charged in relation to the Landlord's statutory costs pursuant to s 60 of the Leasehold Reform Housing and Urban Development Act 1993, following grant of a new Lease under the Act. The Applicant's submissions were contained in a witness statement dated 17 August 2010 by their solicitor, Paul Chevalier. The amount of costs claimed is £2137.90. The Valuer's costs were agreed at £600.

2. On 24 August 2010 the LVT issued its standard Directions, identifying the case as suitable for the Tribunal's paper track without an oral hearing, unless either of the parties requested an oral hearing: in the latter case the matter was to be determined on 13 October 2010 and if no oral hearing was requested to be dealt with on the paper track during the week beginning 11 October 2010. Paragraph 2 of the Directions required a detailed statement of costs claimed, to be sent to the Respondent Lessee by 7 September 2010 (with which it appears that the Landlord has complied) and paragraph 3 of the Directions directed that the Respondent should, by 21 September 2010, send to the Applicant Landlord a detailed statement in reply, identifying those costs which are agreed and those which are disputed and why, and also specifying alternative costs considered to be reasonable together with details of the amounts charged by the Respondent's professional advisers, if any. It appears that the Respondent provided this detailed statement in reply by way of a letter to the Landlord's Solicitor dated 4 October 2010, attaching their letter of 27 July 2010 in which they had already objected to the charges of the Landlord's Solicitor, indicating their reasons for opposing any sum for legal fees greater than £1200 + VAT, but also stating that they had obtained and were holding a retention from their client to cover the surplus over £1200 + VAT claimed by the Landlord's Solicitor, pending a determination by the LVT of the sum properly to be paid. To these the Landlord's Solicitor responded on 7 October, and Mr Chevalier complains that they were late and did not comply with Directions. Thus the evidence before the Tribunal is the submissions of the Solicitor who has claimed the costs mentioned above at paragraph 1, Mr Paul Chevalier, admitted in 1974, together with the submissions of the Solicitors to the Respondent.

THE PAPER DETERMINATION

3. On 14 October 2010 the case came before a duly appointed Tribunal of two members including an experienced Lawyer Chairman and a magistrate lay member.

THE CHARGES OF THE LANDLORD'S SOLICITOR

4. Mr Chevalier claims in his witness statements that he has been instructed in at least 2,000 enfranchisements or lease extensions and that the Landlord property company never instructs any other solicitors in relation to these matters, because Mr Chevalier does no other type of legal work, and is therefore a specialist. A further unique point in this regular relationship is that Mr Chevalier is the *only* fee earner in his firm and that he also personally supplies "all services" including, it would appear, all support services expected to be necessary in a solicitor's firm and usually costed as overheads. Mr Chevalier does not expressly state his hourly rate, and his bill is by no means clear, but is nevertheless apparently charging a full experienced lawyers' rate of nearly £240 per hour + letter and telephone charges + VAT, which is certainly at the top end of a suburban Solicitor's partner rate. He says that the work involved is complex in nature, generically causes concern to professional negligence insurers, and that he therefore always obtains the Landlord client's agreement to pay his costs on an indemnity basis, and produces a letter from them to that effect.

5. Mr Chevalier claims 3 hours 30 minutes in relation to the Lessee's Notice and right to a new Lease and 2.5 hours in relation to drafting the new Lease, both plus other charges for letters and telephone calls. The former stage of the work comes to £1,324.80 and the latter to £813.10. Not only does he not expressly state his hourly rate but it is difficult to calculate in ratio with his basic charge for Notice work and that for new Lease work. Nor is there a receipted bill showing payment by the Landlord. Mr Chevalier claims that he has charged for less than the time actually spent. The Valuer's costs were agreed at £600, which is within the ball park area of the usual surveyor's charges in these cases. However, Mr Chevalier's legal costs are not in any way average for comparable work of a suburban Solicitor, however senior, and they are in fact very high, albeit that they are incurred relying on the particular Landlord's willingness to pay and the fact that in theory an enfranchising Landlord should be entitled to his indemnity costs since enfranchisement and lease extension are a species of compulsory purchase. Mr Chevalier makes clear that he charges as much as he thinks he can persuade the Landlord client to pay and relies on the principle that in the case of indemnity costs any doubt should be resolved in his favour.

THE SUBMISSIONS OF THE RESPONDENT'S SOLICITOR

significant costs. He also objected to the Respondent Lessee's Solicitors' failure to allow a separate charge for telephone calls and letters over and above the hourly charge, and that the Respondent Lessee's suggestion that 5 hours was adequate had "come out of thin air" and was supported by no evidence, whereas he referred to his own submission of many authorities.

9. In reviewing these submissions, the Tribunal is conscious that the LVT is an expert Tribunal, sees many such costs cases and has more than a rough idea of the market rates of different types of work and seniority of solicitors in different regions. Mr Chevalier has lodged many authorities which are not of particular assistance since each case turns on its own particular facts and the LVT's decisions are in no sense binding on itself though they naturally provide a source of guidance. Nevertheless selective authorities picked for their support of a party's own case will not necessarily even provide a yardstick against which to measure the reasonableness of charges in any particular case since not all cases are on all fours. There is also nothing in Mr Chevalier's submissions to suggest that the present lease extension case was particularly difficult, justifying more time or a higher rate than usual. He is therefore charging top rate for an average case where the Valuer has charged an average fee. It is thus necessary to examine the bill of legal costs in detail, since even if the enfranchising Landlord is willing to pay whatever Mr Chevalier chooses to bill because the Landlord Company wants his services and his alone, these fees must still be "reasonable" when Mr Chevalier and the Landlord are spending someone else's money, as s 60 acknowledges in requiring costs to be of an order that the Landlord would agree to them if paying personally. The Tribunal doubts if any reasonable commercially minded Landlord company would pay more than it must and that therefore costs must bear some relation to the quantum which the Tribunal sees routinely agreed between parties before it, since the reasonable expectation test must bear some relation to market forces.

10. Mr Chevalier makes much of the lengthy time he needs to spend and the detailed work he needs to do in both stages of the legal work. The Tribunal is surprised that Mr Chevalier needs to spend half an hour out of 3.5 hours personally attending the regular and experienced property owning client and that he also needs to charge £312 for 4 (untimed) telephone attendances of which no further particulars are given. While it may be true, as Mr Chevalier contends, that separate charges for these items are generally allowed, the overall total must be looked at and if a higher hourly rate is charged these extra charges may not be reasonable as well, just as a higher hourly rate may not be reasonable if excessive time is claimed. The Tribunal considers that £1,000 + VAT should usually be enough to fund this stage since, bearing in mind the costs bills that it regularly sees, and considers that it should be possible to do the initial stage for which Mr Chevalier has charged £1324.80 for around

£1,000 + VAT. The Respondent Lessee's Solicitor is nevertheless prepared to agree £1200 + VAT (provided it seems that that includes the extra costs sought for telephone calls and letters). With regard to the new Lease stage, experience should also speed up this part of the work and the £600 that he has charged should be ample for the tasks he describes, including any letters out (of which he gives no details suggesting they were particularly complex), plus VAT. In the average case in respect of suburban property and dealt with by suburban Solicitors the Tribunal would consider that if the total statutory costs were to be capped at £1750 including VAT this would be much more in line with charges levied by other suburban Solicitors with whose bills the Tribunal is familiar, higher than some that have been allowed for London solicitors outside the City, and a very fair recompense for the weight of the tasks involved. However, the Respondent Lessee's Solicitor, having no doubt now had ample opportunity to consider in detail Mr Chevalier's unique ways of working in no less than 7 cases on the same Estate, is prepared to agree £1200 + VAT of £210, ie £1410 plus the surveyor's charges of £600, totalling £2,115 including VAT. The Tribunal notes that even Mr Chevalier is prepared to concede in his submissions that "there may be some duplications" in 7 cases of multiple lease extensions.

DECISION

11. Accordingly the Tribunal determines that the statutory legal costs payable in this case should be no more than £1,410 including VAT, and that the total costs payable, including the surveyor's fees, are £2,115 including VAT.

Chairman.....

F. R. Burt

Date.....

18. 10. 2010