HM Courts & Tribunals Service

LEASEHOLD VALUATION TRIBUNAL
Case no. CAM/22UH/OAF/2012/0007

Property	:	**63 Eagle Close, Waltham Abbey, Essex EN9 3NA**
Applicants	:	**Kirpal Singh Sondhi and Baljit Kaur Sondhi**
Respondent	:	**Sinclair Gardens Investments (Kensington) Ltd.**
Date of Application	:	**20th July 2012**
Type of Application	:	**To determine the costs payable on enfranchisement (Section 9 of the Leasehold Reform Act 1967 ("the 1967 Act"))**
The Tribunal	:	**Mr. Bruce Edgington (lawyer chair) Mr. Gerard Smith MRICS FAAV**
Date and place of Hearing	:	**15th October 2012 at Unit C4 Quern House, Mill Court, Great Shelford, Cambs. CB22 5LD**

DECISION

---

1. The reasonable legal costs of the Respondent payable by the Applicants pursuant to Section 9(4) of the 1967 Act are £1,620.00.

Reasons

Introduction

2. The original application in this case was for the Tribunal to determine the terms of the enfranchisement and the legal and valuation fees. When this hearing approached, the terms of the enfranchisement were agreed, as was the valuation fee. The Tribunal is therefore left with the task of assessing the Respondent's reasonable legal costs. The parties' representatives asked that the determination be on a consideration of the papers only.

3. As a paper determination by this Tribunal can only happen after 28 days notice is given, even if the parties agree, the representatives took the sensible decision to agree not to attend the hearing which, of course, has the same effect.

The Law

4. It is accepted by the parties that Section 9(4) of the 1967 Act is engaged. The Applicants therefore have to pay the Respondent's reasonable costs of and incidental to:-

   (a) *any investigation by the landlord of* (the tenant's) *right to acquire the freehold;*

   (b) *any conveyance or assurance of the house and premises or any part thereof or of any outstanding estate or interest therein;*

   (c) *deducing, evidencing and verifying the title to the house and premises or any estate or interest therein;*

   (d) *making out and furnishing such abstracts and copies as the person giving the notice may require*

5. Unlike Sections 33 and 60 of the **Leasehold Reform and Urban Development Act 1993** ("the 1993 Act)" there is no reference to applying what is sometimes known as the 'indemnity principle' i.e. the principle that the landlord is not able to recover any more than it would have to pay its own solicitors in circumstances where there was no liability on anyone else to pay. Another way of putting this is to say that any doubt is resolved in the receiving party's favour rather than the paying party.

6. Having said that, the Tribunal considers that on looking at Section 9 of the 1967 as a whole and the basic principle of enfranchisement i.e. that the landlord should not be unreasonably 'out of pocket', the indemnity principle does apply.

7. The other point to mention is that the wording of the 1967 Act is out of date. It is 40 years since universal compulsory registration and such documents as conveyances and abstracts of title are rare. It is generally accepted that the provisions apply to transfers and office copy entries etc. instead.

The Positions of the Parties

8. The Tribunal should just make the point that it expects its Directions Orders to be complied with. Apart from the Respondent's solicitors apparent delay in getting details of costs to the Applicants' representatives, the directions as to the form of objections etc. has been ignored.

9. Any firm of solicitors dealing with the assessment of its costs within the legal process will be familiar with the process used in the courts. It is

quite straightforward. The receiving party prepares a detailed bill of costs with each detail or 'item' having a number. A form of objections is then prepared by the paying party with columns and the headings 'item number', 'description', 'objection' and 'response'. The item numbers, description of work and objections are then written down and the form is attached to an e-mail so that the receiving party can write down any response on the same form against the particular objection. The use of computers means that the size of that column will expand automatically, so that next item follows the end of the previous response.

10. The point of this is that the Tribunal then has what could be described as a Scott Schedule and is able to consider the bill on the one hand and then consider, in respect of each item objected to, what the objection is and what the response is alongside each other in one document. This system has been in existence since before 1999 when the **Civil Procedure Rules** 1998 were brought into effect. It is designed to assist the administration of justice and it is the duty of everyone, but mostly solicitors, to help further that objective.

11. In this case the details of the costs are buried in the middle of the Respondent's submissions and the objections are more or less in the correct form although they do not, as they should, set out what the objector considers to be reasonable and why. The responses are mainly just a reference to a separate document of submissions. It has taken the Tribunal an inordinate length of time to sort things out.

12. Furthermore, the bundle contains many previous LVT decisions which as both parties will know are of little, if any, value. It is trite law to say that the Upper Tribunal and its predecessor have said many times that evidence and opinion in one LVT decision do not amount to evidence and opinion in another. This Tribunal has therefore looked at the issues afresh. The various objections will be considered under headings as follows.

13. Charging rate. The hourly rate of £250 is claimed. This is claimed by what is known as a Grade A fee earner and for someone of Mr. Chevalier's knowledge and experience, the rate claimed is reasonable. As has been said many times, enfranchisement work is a specialist subject with many pitfalls and 'fatal' time limits to be complied with. A Grade A fee earner is reasonable for the technical work but, in this Tribunal's view, a client would not expect a Grade A fee earner to then deal with the conveyancing process, once the form of Transfer has been settled. This should be delegated to a Grade C fee earner.

14. The Tribunal is conscious of the fact that the Respondent's solicitor, Mr. Chevalier, is a sole practitioner without other fee earners. That is his commercial decision. What the Tribunal has to consider is whether an informed client who was paying the costs him/herself would find it reasonable to have a Grade A fee earner doing this relative routine

work. A Grade C fee earner would expect to recover about £160 per hour in outer London.

15. Personal attendances on client. 5, 6 minute units are claimed i.e. a total of 30 minutes. The objection is simply that it is too generalised. The Tribunal has some difficulty in understanding what the objection is. A total of 30 minutes spent with the client throughout the first stage is reasonable.

16. Instructing valuer. 3, 6 minute units are claimed and it is said that this is not the job of the solicitor under the 1967 Act. One cannot draft or consider a transfer without knowing the price to put in it. It is sensible for the landlord to ask the solicitor to instruct the valuer because the solicitor can then alert the valuer to any legal problems to be taken into account in the valuation. This work is incidental to the tasks given to the solicitor under the 1967 Act and is reasonable.

17. Investigation. 7, 6 minute units are claimed i.e. a total of 42 minutes. The objection is that this is far too long for a solicitor of Mr. Chevalier's experience. For the reasons given by Mr. Chevalier, the time claimed is reasonable. It is not just a question of looking at all the documents and considering the title etc. It includes all the processes i.e. preparation, getting the documents to be considered, putting them away, creating the records of the attendance etc. as well as those matters mentioned by Mr. Chevalier.

18. Notice in reply. 18 minutes is claimed. The objection is that this is not recoverable. It has long been held that the preparation of a counter-notice in 1993 Act cases is recoverable because it is simply part of the process of enfranchisement and is work incidental to the legal processes. The claim and the time spent are reasonable.

19. Correspondence and telephones. 7 units are claimed. The objection is simply that this is too generalised. There are some routine letters and telephone calls which are bound to crop up in almost any transaction a solicitor deals with. A total of 7 seems to this Tribunal to be eminently reasonable.

20. Conveyancing. 2 hours are estimated for this work and the objection is that this is too long for an experienced solicitor. In the response, Mr. Chevalier says that the transfer has not yet been drafted. The Tribunal agrees that it is always difficult estimating the time to be spent on this work. The estimate includes drafting all the necessary documentation. Doing the best it can, the Tribunal, using its knowledge and experience, determines that the estimate is reasonable and that a client would expect Mr. Chevalier to do the drafting which is estimated at 1 hour. Such client would expect the other time to be delegated and £160 is reasonable. Simply saying that Mr. Chevalier has no other fee earners is no justification for expecting someone to pay more.

21. Summary. The only deduction to be made from the costs claimed is therefore £90 being the difference between a Grade A and a Grade C fee earner for 1 hour of routine conveyancing work. The amount claimed is £1,710.00. The amount assessed as being reasonable is £1,620.00.

.....

Bruce Edgington
Chair
15th October 2012