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First-tier Tribunal
Property Chamber
(Residential Property)

Case Reference	:	**CAM/00KF/OCE/2014/0003**
Property	:	**41 & 41A Pall Mall, Leigh-on-Sea, Essex SS9 1RH**
Applicant	:	**Matthew James Izard and Sean Frederick Smillie Represented by Mr. J Nathan (solicitor)**
Respondent	:	**Regisport Ltd. Represented by Ms. Laura Cleasby (solicitor)**
Date of Application	:	**14th February 2014**
Type of Application	:	**To determine the terms of acquisition and costs of the collective enfranchisement of the property**
The Tribunal	:	**Bruce Edgington (Lawyer Chair) Evelyn Flint DMS FRICS IRRV Neil Martindale FRICS**
Date and place of Hearing	:	**1st May 2014 at Southend Magistrates' Court, Victoria Avenue, Southend-on-Sea SS0 7NG**

DECISION

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1. The reasonable valuation fee of the Respondent in dealing with the matters set out in section 60 of the **Leasehold Reform, Housing and Urban Development Act 1993** ("the Act") is £600.00 plus VAT but subject to the consideration of whether VAT is either chargeable by the valuer or recoverable by the Respondent. If it is not, or is, respectively, no VAT is recoverable from the Applicants.

2. The Respondent shall pay costs to the Applicants' solicitors pursuant to Rule 13(1)(b) of **The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013** ("the rules") in the sum of £500.00 plus VAT by 4.00 pm on the 30th May 2014 or as a set off

against monies payable on completion of the transfer of the property in favour of the Applicants, whichever is the earlier.

Reasons

Introduction

3. This was an application for the Tribunal to determine the terms of a collective enfranchisement of the property plus the costs and valuation fee in accordance with section 33 of the Act. As usual in cases of this nature, the Tribunal gave clear directions timetabling the case to a final hearing. The hearing date was fixed to suit the parties.

4. The hearing bundle arrived and it was noted that, once again, the Respondent failed to serve its valuation report as ordered. It transpired that the original valuation report dated 21st August 2013 and an addendum report dated 27th January 2014 were sent to the Applicant's solicitors after the bundles had been prepared. However, the words 'once again' are used because Regisport Ltd. owns many properties within the jurisdiction of the Tribunal and appears regularly as both Applicant and Respondent. Where it is Respondent, it appears to have a standard policy that it will not serve any valuation report until the very last minute despite charging the Applicant for such report and being ordered to serve it.

5. The problem with this is that neither the Applicant's valuer nor the Tribunal has any real idea as to how Regisport's valuer – almost always the same chartered surveyor – argues his case. Negotiations almost invariably involve someone else from Regisport i.e. not the valuer. On many occasions, as with this case, negotiations appear to be very much a last minute affair and a settlement is reached just before the hearing when hundreds of pounds of taxpayers' money have been spent setting up the Tribunal.

6. Warnings have been given to Regisport before about this practice and, in particular, they have been warned that a continuation of this practice may involve an application for wasted costs which is exactly what has happened in this case. At the hearing the Tribunal was told that the terms of the transfer and the legal fees had been agreed shortly before the hearing which just left the valuation fee and the Applicants' application for what is sometimes called a 'wasted costs order'. In fact Ms. Cleasby, representing the Respondent indicated that she was going to make an oral application for a similar order in favour of her 'client'. In fact she decided not to proceed with such an application.

The Law

7. It is accepted by the parties that an Initial Notice was served and therefore Section 33 of the 1993 Act is engaged. For the reasons set out below, the Applicant therefore has to pay the Respondent's reasonable costs of and incidental to:-

(d) any valuation of any interest in the specified premises or other property;

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

9. Rule 13(1) of the rules says that "*The Tribunal may make an order in respect of costs only---.....(b) if a person has acted unreasonably in ....defending or conducting proceedings in...a leasehold case*"

The Respondent's claim

10. The Respondent's valuer is Paul Holford of Morgan Sloane who are valuers working almost exclusively for the Respondent and its associated companies. He is a surveyor with 14 years' experience after becoming an MRICS including 9 years of property valuation experience. He practices in Laindon which is about 30 minutes by car from the subject property. As has been said, he deals with many of these cases and claims at the rate of £200.00 per hour plus VAT.

11. Mr. Holford did not attend the hearing even though it was known that his fees were being challenged which was unfortunate because neither Ms. Cleasby nor her colleague were able to answer many of the questions put to them by the Tribunal. He claimed the following times:-

Date	Item	Time	Claim(£)
15.08.13	obtain and review leases	40 mins	133.33
15.08.13	obtain office copy entry plan and title	10 mins	33.33
19.08.13	travel to site (50% rate)	30 mins	50.00
19.08.13	inspection	15 mins	50.00
21.08.13	travel from site (50%)	30 mins	50.00
21.08.13	historic & current house price data	50 mins	166.67
21.08.13	consulting local agents	40 mins	133.33
21.08.13	review LVT cases	60 mins	200.00
21.08.13	research data	15 mins	50.00
21.08.13	valuation report	100 mins	333.33
	Totals	6½ hours	1,200.00

There then appears to be a deduction of £10 with the words "As per agreed fee structure". VAT is then added bringing the total to £1,428.00.

12. The 2 chartered surveyor members of the Tribunal have, between them, many years of experience in not only enfranchisement but also in assessing the fees of valuers. As has been said, a number of questions were asked of Ms. Cleasby as to how various items of time were spent and why the valuer was spending so much time looking at the leases

when instructions from the lawyer should have provided all the information he needed. No satisfactory answers could be given and the members of the Tribunal therefore had to do the best they could from the comments of Mr. Nathan and its own knowledge and experience. The following conclusions were reached:-

(a) It was clearly unreasonable for a surveyor to spend 50 minutes obtaining copy title documents and looking at the leases. The lawyers would have had to do this in their work and it is double charging. 10 minutes is allowed in total.
(b) Finding out house price data for the area is quite a speedy task with the number of internet sites which are able to provide the necessary data. Someone of Mr. Holford's experience would also have his own database. 10 minutes is allowed.
(c) Looking at recent LVT decisions would take no more than 10 minutes, again with someone of Mr. Holford's experience. It was accepted by Ms. Cleasby that all he would be looking for is capitalisation, deferment and £ per square metre.
(d) Consulting the research data i.e. the graph of graphs would take 5 minutes
(e) Preparing the report seen by the Tribunal with so much standard 'template' wording would take no more than 1 hour.

13. With nearly 3 hours being deducted and one of the allowed hours being at half rate as claimed, the Tribunal's conclusion is that this desk top survey should attract a fee of no more than £600.00.

14. VAT is only payable by the Applicants if Morgan Sloane is registered for VAT purposes or the Respondent is not able to reclaim the VAT. No doubt this will be considered by the parties. The reason, of course, is that the valuation service has been supplied to the Respondent even though the costs are being paid by the Applicants.

The Application for Wasted Costs

15. Mr. Nathan presented a claim for all his firm's costs incurred in the enfranchisement in the sum of £6,364.40 including VAT and disbursements. When it was put to him that his clients were bound to have incurred most of these costs anyway, whatever the behaviour of the Respondent, he did seem to accept this in part. He also agreed that the claim included items which had not actually been incurred such as the valuer's attendance at the hearing and the cost of a 6 hour hearing.

16. In presenting his case, Mr. Nathan said that the price in the Counter-Notice was grossly inflated; that there was a failure to engage in negotiation; that the report failed to comply with rule 19 of the rules; that the valuation was 'false' because a wrong ground rent figure had been used and all of these things contributed to a settlement not being agreed until 2 days before the hearing.

17. Ms. Cleasby responded by saying that the valuer had not been able to inspect the inside of the flats before the Counter-Notice was served

because a tenant was not available; that a subsequent arrangement for September 2013 had been cancelled by Mr. Nathan and an inspection could not actually take place until 2014 which slowed down the Respondent's ability to negotiate based on facts rather than supposition.

18. After submissions and a number of questions from the Tribunal, the following conclusions were reached:-

    (a) The failure to inspect the flats was largely because of slow action on the part of the Respondent. The Initial Notice was dated 27th June 2013 but it was not until 12th August 2013 that the Respondent instructed its valuer i.e. less than 3 weeks before the Counter-Notice had to be served. Even the surveyor did not move very quickly because he did not ask for the inspection until 19th August. This left very little time for a date to be agreed within the necessary time scale.
    (b) This failure was then compounded because Mr. Nathan then obstructed any inspection for over 4 months. He must have realised or ought to have realised that negotiation would be greatly assisted by allowing the inspection.
    (c) The price in the Counter-Notice was high but it was based on a valuation and was certainly within the range of figures which a commercial landlord would reasonably put forward, in this Tribunal's view.
    (d) The Respondent's failure to serve its valuation report, once again, until the very last minute, presumably to prevent the Applicant's valuer from seeing the full reasoning for the Respondent's position, is a very serious matter when it again directly and knowingly disobeys a direction from the Tribunal. This action alone was bound to delay negotiations from 27th January 2014 when access to the flats was eventually allowed.

19. The Tribunal concludes that most of the costs incurred by Mr. Nathan would have been reasonably incurred in any event. A commercial landlord is going to try to get the very best price it can and will negotiate hard. Having said that, the actions of those representing the Respondent to delay their valuation in the first place and then to withhold important information from the Applicants' representatives must have had a delaying effect on negotiations which were, as is known, successfully concluded at a price considerably less than their valuation just before the hearing.

20. Had action been taken reasonably speedily by those representing the Respondent and had there been reasonable and prompt disclosure, the Tribunal concludes that a settlement could have been reached in good time to prevent a hearing. Thus the Applicant's costs of the hearing will be allowed. Mr. Nathan's hourly rate was not challenged. It is the Tribunal's view that the Applicants should be compensated for the 1½ hour hearing and some preparation, including drawing the index for the bundle, in the total sum of £500 plus VAT.

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Bruce Edgington
Regional Judge
7th May 2014