LRA/184/2006

LANDS TRIBUNAL ACT 1949

COLLECTIVE ENFRANCHISEMENT – Leasehold Reform, Housing and Urban Development Act 1993 section 33 – costs of enfranchisement – procedural defect in LVT reducing costs claimed by reversioner by reference to a matter which was not in dispute between the parties.

IN THE MATTER OF AN APPEAL FROM A DECISION OF THE LEASEHOLD VALUATION TRIBUNAL FOR THE SOUTHERN RENT ASSESSMENT PANEL

BETWEEN **STOLL CONSTRUCTION LIMITED** **Appellant**

and

(1) BARBARA COLCLOUGH
(2) MARK CARL HAYWOOD
(3) MARK BERG **Respondents**

Re: Brackenhurst,
St Georges Avenue,
Weybridge,
Surrey KT13 OBS

Before: His Honour Judge Huskinson

(Decided upon written representations)

DECISION

1. The Appellant appeals to the Lands Tribunal, with permission granted by the Leasehold Valuation Tribunal ("the LVT") from a decision of the LVT dated 18 September 2006 whereby the LVT decided that there should be deducted from the sum of £3,307, which was claimed by the Appellant as being the reasonable costs of enfranchisement recoverable from the Respondents, the sum of £785. The Appellant was formerly the freehold owner of the above mentioned premises and the Respondents were the nominee purchaser for the purposes of Part I of the Leasehold Reform Housing and Urban Development Act 1993. The procedures of that Act were followed and the Respondents acquired the freehold of the premises from the Appellant. On 3 March 2006 the Respondents applied to the LVT for a determination as to the terms of their acquisition of the freehold of the subject property, but subsequently the parties were able to agree all matters except for the costs of enfranchisement payable by the Respondents to the Appellant in accordance with section 33 of the Act. The Respondents were notified of the present appeal and were asked whether they wished to serve a notice of intention to respond. However, no such notice has been served and the Respondents' solicitors, by letter dated 26 April 2007 to the Lands Tribunal, confirmed that, while the Respondents opposed the appeal, they had nothing to add to the information on the Tribunal's file and merely asked that the application be considered on its merits. By a letter dated 17 May 2007 the Appellant's solicitors informed the Tribunal that there was no further evidence on which the Appellant intended to rely and that the Appellant would rely on the application for permission to appeal and the statement of case. Subsequently the Appellant's solicitors confirmed (by telephone) that the Appellant was happy for the matter to be determined upon the written representations and without a hearing. Accordingly I conclude that this case can properly be decided upon the written representations which are at present before the Tribunal.

2. On 14 September 2006 there was a hearing before the LVT upon this question of costs and the LVT gave its written decision dated 18 September 2006.

3. Prior to this hearing before the LVT there was correspondence between the solicitors for the parties. By their letters of 11 and 12 September 2006 (the former to the Respondents' solicitors and the latter to the LVT with a copy to the Respondents' solicitors) the Appellant solicitors recorded their understanding that the only issue between the parties, which was to be determined by the LVT, was the question of whether the charge out rate, which had been applied by the Appellant's solicitors to their time spent, was a reasonable charge out rate. By their letter of 12 September 2006 the Respondents' solicitors confirmed that their objection was to the charge out rate. In particular there was no suggestion in the correspondence prior to the hearing that there was any objection taken by the Respondents to the reasonableness of the amount of time spent by the Appellant's solicitors in relation to the matter. This was expressly confirmed to the LVT by Mr Berg at the hearing on 12 September 2006 – thus the LVT records at the beginning of paragraph 4 of its decision:

> "Mr Berg informed the Tribunal that there was no dispute with the amount of time spent, but he challenged the hourly rate."

4. On the basis of this understanding that the only matter in dispute was the reasonableness of the hourly charge out rate, the Appellant was not represented at the hearing on 12 September but instead relied upon its written submissions.

5. In its decision the LVT considered the question of the reasonableness of the charge out rate which had been applied to the time spent and concluded that it was unreasonable to use a Grade A fee earner for any of the work such that his time should be re-costed at £250 per hour leading to a deduction of £150. In reaching this decision the LVT was considering the point which was indeed in issue between the parties, namely the reasonableness of the charge out rate for the time spent by the Appellant's solicitors. The LVT was entitled to reach the conclusion it did for the reasons it gave on this point. Its conclusion on this point involves no error of law or approach and there was no procedural defect in the LVT reaching this conclusion that £150 should be deducted.

6. However, contrary to the agreement that had been reached between the parties, the LVT directed its attention to the reasonableness of the amount of time spent by the Appellant's solicitors. It concluded that there should be a deduction of 2.2 hours at £225 per hour and a deduction of 1 hour at £140 per hour leading to a total further deduction of £635. In consequence the LVT deducted £785 from the £3307 claimed (ie it deducted £150 plus £635).

7. In the light of the agreement between the parties regarding what was in issue before the LVT, namely that the only matter in issue was the reasonableness of the charge out rate and that there was no dispute with the amount of time spent, the LVT erred in law in entering into consideration of the reasonableness of the amount of time spent. In acting in this manner the LVT took into account an irrelevant consideration (namely the reasonableness of the time spent) and allowed a substantial procedural defect to arise (namely by considering, in the absence of the Appellant and without any notice to the Appellant, a point which the Appellant was entitled to conclude would not form any part of the deliberation).

8. In the light of the foregoing I allow the Appellant's appeal by reversing that part of the LVT's decision which disallowed £635 (ie the disallowance by reference to the LVT's conclusions on the reasonableness of time spent). Accordingly, I determine that the reasonable costs recoverable by the Appellant are properly represented by deducting £150 from the £3307 claimed. This leaves £3157 (plus VAT) payable by the Respondents (together with the Land Registry fee of £90 if not yet paid, see paragraph 11 of the LVT's decision).

9. Neither party has made any application for costs. Also my powers in awarding costs are in any event severely limited by statute. I make no order for costs.

Dated 4 July 2007

His Honour Judge Huskinson