

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
SOUTHERN RENT ASSESSMENT PANEL  
LEASEHOLD VALUATION TRIBUNAL**

**Leasehold Reform, Housing and Urban Development Act 1993**

**Case No: CHI/43UB/OCE/2006/0022**

**Re: Brackenhurst, St George's Avenue, Weybridge, Surrey KT13 0BS**

**Tribunal: Mr D.R.Hebblethwaite BA (Chairman)  
Mr J.N.Cleverton FRICS**


**Applicants: Barbara Colclough, Mark Carl Haywood and Mark Berg  
Respondent: Stoll Construction Limited**

**DECISION**

1. On 3 March 2006 the Applicants as nominee purchaser applied to the Tribunal for a determination as to the terms of their acquisition of the freehold of the subject property. Subsequently the Tribunal was advised that terms had been agreed between the parties with the exception of the costs of enfranchisement payable by the Applicants under section 33 of the Act.
2. On 14 September 2006 a hearing was held at the Civic Centre in Esher. The Applicants were represented by Mr Mark Berg. The Respondent did not appear but made written submissions from its solicitors Wallace LLP. These consisted of a Skeleton Argument with a costs schedule. As these had only been faxed on the day before the hearing the Tribunal members read them as did Mr Berg who had not seen them before. The Skeleton Argument summarises the history of the application and sets out Wallace's basis of charging. Details are not repeated in this Decision as all the parties have copies of the Skeleton Argument and costs schedule.
3. The valuation fee had been agreed and paid and the Tribunal was only concerned with Wallace's costs.
4. Mr Berg informed the Tribunal that there was no dispute with the amount of time spent, but he challenged the hourly rate. Wallace had used 3 fee earners; a Grade A Martin Olvos, said to have a charge out rate of £300 per hour (though his final job on the schedule is charged at £325), a Grade B Samantha Bone at £225 to £250, and a Grade C Leigh Shapiro at £140 (though her final job is charged at £200). Mr Berg submitted a single hourly rate of £184. He based this on a decision of the Leasehold Valuation Tribunal numbered CHI/43UB/OCE/2004/0086 in respect of which the Applicants' solicitors had advised Mr Berg that they had acted for an applicant at a hearing on 31 October 2005 when the Tribunal had adopted that rate on being told it was the guideline rate at Kingston County Court. A copy of the decision in this case was obtained from the Tribunal office. What Mr Berg had said was indeed the case, but there

was no reference to the grade of fee earner for whom £184 was the guideline rate at Kingston CC.

5. The Tribunal asked Mr Berg if he had any views on the Respondent choosing a Mayfair solicitor and not shopping around. He said that he accepted that the Respondent would want to use its regular solicitor.
6. The Tribunal thanked Mr Berg for his assistance and the hearing concluded. The Tribunal went on to consider the matter
7. Section 33 of the Act provides that the nominee purchaser shall be liable for the reasonable costs of and incidental to certain matters there set out and the Tribunal found that the costs schedule submitted by the Respondent's solicitors did indeed only refer to such matters. The only thing for the Tribunal to consider was the question of reasonableness. Sub-section (2) states that such costs shall only be regarded as reasonable if and to the extent that costs in respect of such services might reasonably be expected to have been incurred by the landlord if the circumstances had been such that he was personally liable for all such costs. This is sometimes called the "reasonable expectation test".
8. The Tribunal is not bound to only consider submissions made to it by the parties. It is an expert body free to consider the matter before it and come to its own decision.
9. The Tribunal decided that it was reasonable for the Respondent to use its regular solicitors. It further decided that for a Central London firm the charging out rates of the fee earners was reasonable. It would not apply a County Court guideline rate. There was, in any event, no evidence of current guideline rates in Central London courts for the range of fee earners concerned.
10. The Tribunal came to the conclusion that this was an uncomplicated matter. All the relevant papers were before the Tribunal, principally the original notice and counter-notice, the replacement notice and counter-notice, the transfer deed and some of the correspondence. The Tribunal concluded that it was unreasonable to use a Grade A fee earner for any of the work, and that his time should be recosted at £250 per hour, leading to a deduction of £150. The Tribunal then considered that 8.2 hours was an unreasonable time to spend on the documents and that 5 hours would have been reasonable. The Tribunal deducted 2.2 hours at the rate of £225 and 1 hour at the rate of £140, total £635. The Tribunal decided that these decisions were consistent with the reasonable expectation test.
11. The Tribunal therefore deducted a total of **£785** from the sum of £3,307 claimed, leaving **£2,522** plus VAT of £441.35, total **£2963.35**. If not yet paid the Land Registry fee of £90 is payable in addition.



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David Hebblethwaite (Chairman)  
18 September 2006