

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

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON
APPLICATION UNDER SECTION 33 OF THE LEASEHOLD REFORM, HOUSING
AND URBAN DEVELOPMENT ACT 1993**

Properties: Cambridge House, 18 Weimar Street, London SW15 1SX
Roseland House, 20 Weimar Street, London SW15 1SY

Applicant Tenant: Cambridge House Ltd.

Represented by: Buy your Freehold Ltd.

Respondent Landlord: Sinclair Gardens Investments (Kensington) Ltd.

Represented by: P Chevalier & Co. Solicitors

Application date: 03rd October 2006

Members of the Leasehold Valuation Tribunal:

Mrs T I Rabin JP – Chairman

Mr J C Avery BSc FRICS

Date of Tribunal's decision: 30th January 2007

**CAMBRIDGE HOUSE 18 WELMAR STREET LONDON SW15 15X and
ROSELAND HOUSE 20 WELMAR STREET LONDON SW15 15X**

INTRODUCTION

1. This is an application for the Tribunal to determine the amount of legal costs payable to the Respondent by the Applicants following service of an Initial Notice by the Applicants under Section 33 of the Leasehold Reform Housing and Urban Development Act 1993 ("the 1993 Act). The application form submitted also requested the Tribunal to determine the enfranchisement terms pursuant to Section 24 of the 1993 Act.
 2. The application under Section 24 was set down for a hearing on 16th January 2007. The Applicant was represented by Mr T O'Keeffe of Buy Your Freehold Ltd and the Respondent was represented by Mr P Chevalier of P Chevalier & Co. On the morning of the hearing the Tribunal was advised that the terms of the enfranchisement and the valuer's fees had been agreed and the Tribunal was invited by Mr O'Keeffe to consider the matter of costs under Section 33 of the 1993 Act on the basis of written submissions. The Tribunal was also asked to settle the terms of the Transfer. Mr O'Keeffe submitted his submissions at 9.30 on the morning of the hearing, having served a copy on Mr Chevalier who sent the Tribunal general submissions but said that he had not had been given an opportunity to consider the objections raised by Mr O'Keeffe to his costs and requested that the matter be adjourned for 14 days to a paper hearing by which time he would have submitted a written response. The Tribunal considered that there was sufficient information to respond to Mr O'Keeffe's specific comments on the statement of costs submitted by Mr Chevalier in the latter's very full submissions. The Tribunal was satisfied that there was sufficient information available and did not agree to the adjournment.
 3. The costs payable by the Applicant are in accordance with the provisions of Section 33(1) of the 1993 Act. This provides that the costs payable are:
 - (1)the reasonable costs of and incidental to any of the following matters, namely:
 - (a) any investigation reasonably undertaken
 - (i) of the question whether any interest in the specified premises or other property is liable to acquisition in pursuance of the initial notice; or
 - (ii) of any other question arising out of the initial notice;
 - (b) deducing evidencing and verifying the title to any such interest;
 - (c) making out and furnishing such abstracts and copies as the [Applicants] may require;
 - (d) any valuation of any interest in the specified premises or any other property;
 - (e) any conveyance of any such interest
- "Reasonable" is defined in Section 33(2) and provided that costs incurred by the Respondent are to be regarded as reasonable:
- (2)if and to the extent that costs in respect of such[professional] services might be reasonably be expected to have been incurred by him if the circumstances had been such that he was personally liable for all such costs

REPRESENTATIONS

4. The Tribunal considered the written submissions from Mr O'Keeffe on behalf of the Applicant and Mr P Chevalier on behalf of the Respondent. The application referred to two adjoining blocks of flats, Cambridge House and Roseland House Welmar Road aforesaid. There were twelve flats in Cambridge House and fifteen in Roseland House. Although the Tribunal were not provided with office copies of the freehold title, Mr O'Keeffe stated that the two properties were registered under one title number and the Tribunal has no reason to doubt this.

Mr O'Keeffe's representations

5. Mr O'Keeffe asked the Tribunal to take the following matters into account when considering Mr Chevalier's costs set out on pages 6-9 of the Appellant's bundle:
 - (a) Since there were two separate buildings, two Section 13 Notices were served but these Notices were served simultaneously, as were the Sections 17 and 20 Notices served by the Respondent and the Respondent's valuer inspected both properties at the same time. The Nominee Purchaser is the same in the case of both properties and there will be one transfer for both properties. Although Mr Chevalier's claim for costs indicates that there were two separate claims, there was duplication in some of the aspects of the work undertaken.
 - (b) The £220 plus VAT per hour charging rate for Mr Chevalier was reasonable but Mr Chevalier was a sole practitioner and an economically rational client would choose a practice where there were gradations of seniority so that less specialised work could be undertaken by a more junior member of staff.
 - (c) Time spent drafting the Counter Notice is not allowed under Section 33 of the 1993 Act.
 - (d) Drafting standard notices under Section 17 and 20 of the 1993 Act does not require the attention of a senior solicitor at £220 per hour
 - (e) The Respondent has a substantial, if not exclusive, relationship with Lawrence Nesbitt and instructing a valuer should not take more than 30 minutes
 - (f) Mr Chevalier has a substantial relationship with the Respondent and personal attendances of 90 minutes are excessive
 - (g) There should be no separate charge for phone calls and letters which should be absorbed in the £220 per hour charge
 - (h) Mr Chevalier works substantially for the Respondent and the Tribunal should consider whether the charge of £220 per hour plus VAT reflects the appropriate cost of the work
 - (i) The form of Transfer is being determined by the Tribunal and what remains of the conveyancing is limited to obtaining the Respondent's signature, proceeding to completion. This is a straightforward matter comprising one freehold title and an appropriate level of charge would be £150 plus VAT per hour
 - (j) The time allocated for considering the initial notice should be reduced to 15 minutes.

Mr Chevalier's representations

6. Mr Chevalier made the following points regarding the costs payable by the Applicant pursuant to Section 33 of the 1993 Act:

- (a) The Appellant accepts that Mr Chevalier is a sole practitioner charging at £220 plus VAT per hour and that all services will be provided by him.
- (b) It is necessary to read all the leases where participating tenants are seeking to enfranchise to check that these are consistent and there are no matters which will affect the valuation. It is his practice to read one lease carefully, which enables him to read the remaining leases more quickly. Considering the first lease takes 15 minutes and the remaining leases 5 minutes each. Similar checks have to be made to the office copies of each leasehold title for which 5 minutes per title is claimed.
- (c) The valuer is then instructed and all relevant documentation is sent to him
- (d) The Initial Notice must be carefully considered and, in his submissions at pages 2 and 3, Mr Chevalier sets out the matters upon which he has to satisfy himself to ensure that the participating tenants have the right to collective enfranchisement. Care must be taken as the Counter Notice cannot be amended and at this stage the initial valuation must be checked for factual errors of which the valuer may not have been aware.
- (e) The Valuation Report must then be discussed with the Respondent and instructions taken.
- (f) Mr Chevalier set out the time spent on tables which can be found at pages 6-9 of Mr O'Keefe's submissions. The costs claimed are £1,688.86 for Cambridge House and £1,775.02 for Roseland House, VAT included in both cases. The conveyancing costs could not be accurately assessed at this stage as the parties had not even reached contract stage. He estimated that there would be an additional two and a half hours required completing the conveyancing for each property. The difference in costs up to the final conveyancing was attributable to the fact that there were fifteen leases to consider in Roseland House but only twelve in Cambridge House.

7. Both Mr O'Keefe and Mr Chevalier referred to a number of earlier tribunal decisions on costs, all of which were considered by the Tribunal and the written arguments arising from the decisions submitted by both parties were also considered.

DECISION

8. The Tribunal did not find that Mr Chevalier's hourly rate of £220 plus VAT was excessive. He is a solicitor of over thirty years experience and has, to the Tribunal's knowledge, considerable experience in enfranchisements and lease extensions. Mr O'Keefe argued that a prudent client would seek the advice of a larger firm where there would be range of members of staff at all levels, the more junior of whom could undertake the more straightforward tasks. Mr Chevalier has chosen to practice as a sole practitioner, as he is entitled to do, just as the

Respondent is entitled to choose the solicitor of his choice and there is nothing to say that he should have regard to the possible cost to the Appellant and select a solicitor accordingly. Mr Chevalier referred the Tribunal to the case of **Hampden Court (LON/ENF/785/02)** where Professor Farrand expressed the same view.

9. Mr O’Keeffe has suggested that, in view of the close professional relationship between the Respondent and Mr Chevalier, the basis of the calculation of his hourly rate should be considered by the Tribunal. In the Tribunal’s view the wording of Section 33(2) of the 1993 Act provides that costs are reasonable if the services rendered to the Respondent might reasonably be expected to have been incurred by the Respondent if it would have been expected to pay for the services itself. The Tribunal is aware that Mr Chevalier has been involved in a number of matters before the Tribunal and it is clear that there is a relationship between Mr Chevalier and the Respondent. The Respondent has confirmed by letter dated 15th January 2007, on the last page of Mr Chevalier’s submissions, that they agreed at that time the basis of charge by Mr Chevalier would be at the rate of £220 plus VAT per hour. This rate would apply whether or not the transaction was voluntary or under the 1993 Act and, since Mr Chevalier was a sole practitioner, all legal work would be charged at that rate. This clearly falls within the definition of “reasonable” for the purposes of Section 33 of the 1993 Act and the Tribunal can see no basis for any adjustment due to the close relationship. Indeed, it would not be reasonable to expect the Respondent to appoint a firm where there would be a variety of fee earners if it has confidence in the advice given by Mr Chevalier. The Tribunal can see no reason why the Respondent should not instruct the solicitor of its choice, provided the charges made are reasonable. The Tribunal also considers that it is reasonable for letters, separate from personal attendances, are properly chargeable and that the level of charge is reasonable.
10. Since the Section 13 Notices were served simultaneously, as were the responses, there would have been some duplication. Although there are two buildings, they are incorporated in one title and are immediately adjacent to one another, according to the photograph attached to Mr Nesbitt’s valuation. The Tribunal finds that, bearing in mind the nature of the properties, the time allowed for personal attendances of 45 minutes for each property is not reasonable and that a total of one hour for both properties would be reasonable. The Sections 17 and 20 Notices are simple documents which could be prepared by an experienced practitioner in the time allotted for one and the Tribunal allows 20 minutes for the preparation of these Notices on both properties. There is no more junior fee earner in the practice but a person of Mr Chevalier’s experience would need less time than someone more junior.
11. The Tribunal agree that the time allotted for investigating the leases relative to each property is reasonable. It is important to check leases fully for the reasons expressed by Mr Chevalier and the method he adopted is appropriate. This also applies to the consideration of each of the copy entries relating to the individual lessees in each property. These costs are allowed in full. The Tribunal also considers that the instruction of the appointed valuer by the Respondent’s solicitor is important and the fact that there is a substantial relationship between the valuer and the Respondent does not detract from the need for Mr Chevalier to ensure that all relevant information relating to the properties is passed on to the valuer. Mr

Chevalier has charged forty minutes in relation to each of the properties for considering the valuation and discussing it with both the Respondent and the valuer. However, there was only one valuation report dealing with both properties and the Tribunal considers that forty minutes for both properties would be reasonable and disallows forty minutes.

12. Mr Chevalier has charged for one hour and fifteen minutes for considering each of the initial notices. The Tribunal accepts that the checking of the initial notice is important but a charge has been made and allowed for a very full investigation of the leases and the titles of the individual tenants. The Notice is in standard form and the Tribunal is of the opinion that one hour for each initial notice would be reasonable and disallows fifteen minutes for each property.
13. Mr Chevalier has charged for fifteen minutes for drafting each counter notice and a further twenty five minutes for discussions with the Respondent and the valuer. The cost of the counter notice is not chargeable under the provisions of Section 33(1) of the 1993 Act. The allowable costs are clearly laid out and do not include the drafting of the counter notice. The Tribunal considered the decision in **Selby Court (LON/ENF/1254/04** where the Tribunal found that the cost of preparing the counter notice was not included and stated that the statute was very specific, a view shared by the Tribunal. Mr Chevalier argued that the preparation of the counter notice were to be regarded as costs "of and incidental to" in Section 33(1). In support of this, the Tribunal was referred to the case of **Cressingham Properties Ltd [1999]2 EGLR 117 PH** but this related to proceedings to enfranchise a house under the Leasehold Reform Act 1967 and the reference to Hague related to a claim under Section 42 of the 1993 Act where the costs are recoverable under Section 60. . There is no reference in Hague to the question of whether the costs of the counter notice are recoverable by the Respondent in relation to either Section 33 or Section 60 of the 1993 and the fact that this is reference to the costs being specifically excluded in relation to claims under the Leasehold Reform Act 1967 is not, in the Tribunal's view significant. The costs chargeable are determined by statute. The purpose of the counter notice is to start a process of negotiation, the costs of which process are not otherwise claimable. Section 33(2) clearly sets out the chargeable items and the Tribunal does not accept that the costs of the counter notice are allowable.
14. Mr Chevalier has allowed a further two and a half hours for completing the conveyancing, to include drafting contract, deducing title, exchanging contracts, approving transfer, preparing completion statement and completing. Mr O'Keeffe considers that the matter is straightforward and he suggests an hourly rate of £150 plus VAT. He has made no comment on five hours allotted by Mr Chevalier for this. Mr O'Keeffe pointed out that the Tribunal has been asked to settle the Transfer and Mr Chevalier would not need to approve its terms. . The 1993 Act provides for a contract but it is quite common for a contract to be dispensed with now all the terms are agreed. However, a contract under the Leasehold Reform (Collective Enfranchisement and Lease Renewal) Regulations 1993 is in the best interest of the parties as the Regulations set out time limits (Regulation (6)). The Tribunal notes that there is one transfer relating to both properties and it is therefore not necessary to prepare two contracts. If a contract is entered into, the terms can be simple as the price is agreed and the transaction relates to the transfer

of the freehold of the properties where the participating tenants are all leaseholders. There is one registered title and the completion statement relates only to the purchase price and the Section 33 costs. Negotiations regarding arrears of service charge do not fall within the ambit of costs recoverable by the Respondent under Section 33. . The Tribunal does not agree that Mr Chevalier's rate should be reduced, but the time allocated is excessive and three hours would be reasonable. The Tribunal therefore disallows two hours.

15. The only matter to be determined by the Tribunal in relation to the Transfer is whether the indemnity clause proposed by Mr Chevalier should be included. A freeholder has the protection afforded by the implied covenant to observe the obligations in a registered lease on the transfer of a leasehold interest under the Law of Property (Miscellaneous Provision) Act 1994 except where the landlord has failed to disclose antecedent breaches of any registered lease. Any failure to disclose breaches of any lease would nullify that protection. The indemnity suggested by Mr Chevalier is very broad and there is no evidence that no prudent purchaser would give that covenant unless a warranty has been offered by the landlord that there are no breaches of any of the leases. There is no evidence of such a warranty being offered. Bearing in mind the protection afforded by the 1994 Act, the Tribunal can see no reason to include the indemnity suggested. . A copy of the Transfer as amended is attached and initialled on behalf of the Tribunal.
16. The Tribunal determines that the costs payable by the Appellants under Section 33 of the 1993 Act are at a rate of £220 plus VAT per hour and with a deduction of two and a half hours excluding the costs for conveyancing in respect of which one hour is disallowed for the reasons set out in this decision.

Decision

17. A total of two and a half hours is disallowed for the costs requested up to the delivery of draft contract and one hour is disallowed for the costs of conveyancing. The hourly rate is £220 plus VAT per hour.

CHAIRMAN.....



Mrs T I Rabin JP

Date: 30th January 2007