

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

S.33 LEASEHOLD REFORM, HOUSING &
URBAN DEVELOPMENT ACT 1993



DECISION & REASONS

Case Number: CHI/00ML/OCE/2006/0044

Property: 12 Walpole Terrace
Brighton
BN2 OEB

Applicant (Tenants): 12 Walpole Terrace (Brighton) Limited

Represented by Dean Wilson Laing, Solicitors

Respondent (Landlord): Lyndale Development Company Limited

Represented by Pemberton Greenish, Solicitors

Date of Application: 15 May 2006

Hearing: Documents only

Tribunal Members: Mr B H R Simms FRICS MCI Arb (Chairman)
Mr R T A Wilson LLB (Legal Member)

Date of Decision: 19 January 2007

SUMMARY OF DECISION

The nominee purchaser shall be liable for costs in accordance with S.33 of the Act limited to a valuation fee of £705 including VAT and legal costs of £4,376.29 including VAT.

BACKGROUND

1. This application originated under S.24 of the Leasehold Reform, Housing and Urban Development Act 1993 (the Act) whereby the Applicant nominee purchaser wished to acquire the freehold interest in the property.
2. The parties having agreed all outstanding matters other than the question of the amount of the freeholder's costs payable by the nominee purchaser, the Tribunal directed that the outstanding matter be dealt with by documents only, without an oral hearing.
3. Formal directions were issued on 15 September 2006 including the notice required to be given under the procedure regulations.
4. Written submissions were made by both parties.

RELEVANT LAW

5. S.33 of the Act sets out the requirement relating to the reimbursement of costs.
6. The nominee purchaser shall be liable for reasonable costs, to the extent that they have been incurred in pursuance of the notice given by the Respondent, which are in respect of and incidental to any matters in a list specified in S.33 of the Act.
7. Guidance is given under sub-section 2 of S.33 in that the costs in respect of professional services rendered "*...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 reversioner] if the circumstances had been such that he was personally liable for all such costs.*"
8. In coming to its decision the Tribunal has had regard to the Act in its entirety but this summary is included for the assistance of the parties.

EVIDENCE

9. The evidence before the Tribunal in respect of the valuation fee consisted of various letters from the valuer Andrew Pridell FRICS and his invoice dated 25 January 2006 in the total sum of £705 including VAT.
10. A schedule of the breakdown of the legal costs of Pemberton Greenish was produced and the Applicant submitted a Schedule of Objections to these costs which included a detailed analysis of each timed item.
11. In general terms, however, the Applicant objected to charges by Katherine Simpson a partner in the firm having sole responsibility for the work some of which, in the Respondent's view, could have been delegated to an assistant who would charge at a lower rate.

12. In response the Respondent submitted the statement of Andrew Stevens a Law Cost Draughtsman who addressed the detailed timed items but also defended the use of Katherine Simpson and her charges. There has been a long standing relationship with the client in this case and even if some of the work had been delegated to an assistant there would have had to have been supervision and consultation which would not have resulted in any costs saving. The matter is not straightforward and it was pointed out that there had been a significant involvement in the matter by a partner in the firm of solicitors acting for the Applicant.
13. Additional documents were produced showing the charging rate and copies of letters and draft documents which had had to be produced by the Respondents.

CONSIDERATION

14. The Tribunal is satisfied that the costs identified fall within the various headings set out in the sub-sections of S.33 of the Act.
15. The valuer is local to the property and his fee is in line with charges made for this type of work. A valuation of the interest in the premises is an allowable charge and therefore this cost is considered to be reasonable.
16. The Tribunal considered whether or not the use of the partner for this type of legal work and charging on that basis was acceptable. It is for the reversioner to choose how they wish to transact their legal work. In this case Pemberton Greenish has a long standing relationship with the reversioner and it is not unreasonable for them to be instructed. The charging rates shown are accepted and the explanation for there being no client care letters is understood. The use of a partner is reasonable but it is to be expected that the time allowed for the appropriate work must reflect her senior experience.
17. The Tribunal considered each time recorded item and the comments made by the parties. Some concessions were made on behalf of the Respondents.
18. The Tribunal applied the test set out in S.33 of the Act and found that most of the charges were reasonable costs. Invoices were produced by Pemberton Greenish in respect of some of the costs but additional invoices will need to be submitted to satisfy the Applicants that the costs have been incurred.
19. We set out here a list of items where some adjustment to the time allocated is required and show on the right hand side the deduction in time that we believe should be made from the submitted costs schedule.

2006		Deduction (Minutes)
18/1/06	As the partner concerned regularly acts for the client and there will necessarily be some repetition of advice and familiarity with the procedure. Only 1 hour should be allocated for this work.	12

23/1/06	The issues are straightforward and we agree with the applicant that 18 minutes is sufficient.	12
31/1/06	Although the 23 January work included attendance on the valuer we agree with the Applicant that there is duplication of work.	12
2/2/06	The Respondent concedes 36 minutes for this item.	36
3/2/06	The Respondent concedes this item.	12
30/5/06	For an experienced solicitor the drafting of the lease back agreement should be relatively straightforward. There may also be some duplication of advice. 1 Hour is sufficient for this work.	30
4/7/06	The time allocated for writing these letters seems excessive and reduced time is allowed.	12
Anticipated Work	The time allowed for anticipated work excluding time directly related to these proceedings seems excessive as much of the drafting has already been completed. 1 hour is sufficient.	60
Total		186 mins

20. The charging rate increased on 1 April 2006. Of the total a deduction of 84 minutes is to be made for work before 1 April 2006 and 102 minutes for work after that date.

21. Revised Charge

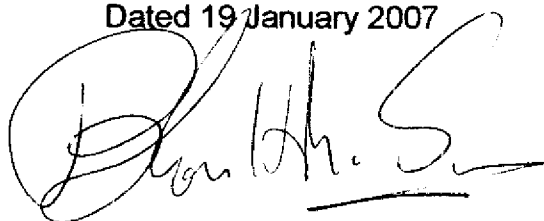
Original charge	7 hours 12 minutes, deduct 1 hour 24 minutes	
	= 5 hours 48 minutes at £300	£1,740.00
Original charge	8 hours, deduct 1 hour 42 minutes	
	= 6 hours 18 minutes at £315	£1,984.50
	Sub Total	£3,724.50
	VAT @ 17.5%	£ 651.79
	Total allowed	<u>£4,376.29</u>

22. **DECISION**

23. The costs for which the nominee purchaser shall be liable to the extent that they have been incurred in accordance with S.33 of the Act shall be limited to:

1. Valuers Fee £705 including VAT.
2. Legal costs £4,376.29 including VAT.

Dated 19 January 2007

A handwritten signature in black ink, appearing to read 'Brandon H R Simms', written over a horizontal line.

Brandon H R Simms FRICS MCI Arb
Chairman