SOUTHERN LEASEHOLD VALUATION TRIBUNAL

In the matter of Chapter II of Part I of the Leasehold Reform Housing & Urban Development Act 1993 and in the matter of 3 Chaucer Court Guildford Surrey

Case number: CHI/24UJ/NAM/2003/0003

BETWEEN:

St Leonards Properties Limited — Applicants

and

Ms L C Smith — Respondent

The matter was the subject of consideration by the Tribunal on the basis of written representations at Shalford Village Hall, Kings Road, Shalford, Surrey on 31st July 2003, and thereafter on 2nd September 2003

Statement of Decision and Reasons

Date of Issue: 16th September 2003

Tribunal:

Mr R P Long LL B (Chairman)
Mr M G Marshall FRICS
Mr I R Mohabir

Application

1. This was an application by St Leonards Properties Limited to the tribunal to determine the amount of costs payable by the respondent to the applicants pursuant to section 60 of the Leasehold Reform Housing & Urban Development Act 1993 ("the Act"). The application was made on 19th March 2003. References in this note are references to the Act unless otherwise stated. Our decision is summarised in paragraph 23 at the end of this note.

The facts

2. From the papers before us it appeared that the Respondent gave notice of her desire to have an extended lease of 3 Chaucer Court pursuant to section 42 of the Act through her solicitors on 1st February 2002. It appears from the breakdown of costs incurred supplied by the Applicant's solicitors with the application that the Applicant contested the validity of that notice. However, it further appears that they decided to serve a landlord's counter notice, dated 27th March 2002, admitting the respondent's right to a new lease, but contesting the terms (as to the nature of the extended lease proposed and as to the price) proposed in the Respondent's original notice.

3. For some reason the matter did not proceed. We have no copies of the relevant correspondence and do not know what the reason may have been. In their letter of 23rd October, of which we do have a copy, Messrs Wallace & Co say that they understand that the Respondent had failed to apply to this tribunal within the requisite time period so that the notice of 1st February was deemed to be withdrawn. They then set out the costs that they said their client was entitled to recover under section 60, being their own fees of £532 and valuers' fees of £750, both exclusive of VAT. We have not been provided with a copy of the valuers' account.

4. The Respondent's solicitors said that they would take instructions, but by December 2002 nothing more appears to have happened, and Wallace & Co notified the Respondent's solicitors that they would apply to this tribunal "for recovery of their costs", a step that they took in March 2003.

5. The papers initially before us were limited in their extent and the only representations were those contained in a letter from Messrs T R Bailey on behalf of the respondent dated 20th May 2003. They said that they did not contest the sum of £532 excluding VAT as the amount of the Applicant's costs as long as credit was given for a deposit of £500 that had been paid. They did not refer to the amount of the valuation fee of £750 excluding VAT that had also been mentioned in a letter from Messrs Wallace & Co on behalf of the Applicant to the Respondent's solicitors dated 23rd October 2002.

6. Further papers were sent to the tribunal office by fax at lunch-time on 31st July. The parties were aware that the tribunal would sit at Shalford Village Hall at 10-30 am on that day. By the time the papers arrived at the Panel office the tribunal had already convened but upon being made aware of the additional papers it decided that it should properly produce them for comment

to the respondent's solicitors and thereafter consider the matter in the light of them. No response was received from the respondent's solicitors when they were invited to make representations with regard to those further papers.

7. The applicant's solicitors should be aware that their failure to produce the papers in proper time, especially after they had asked for the matter to be considered on the papers only, has resulted in a waste of public money, as well as causing very considerable delay to the eventual determination of this matter. They certainly should not regard the leeway that has been granted to them in the present case as indicative that they may be treated as leniently on a future such occasion, nor as a precedent of any sort. The delay has arisen in part because of the need to put the papers before the respondent's solicitors for their additional comments and in part because, by the time that the period allowed for that response had expired, one of the members of the tribunal was on holiday. In consequence we were unable to decide the matter until 2nd September after he had returned. Thereafter we had to draft and collectively to approve this note.

The Applicable Law

8. Section 60(1) of the Act provides (subject to a stipulation that is not material here) that where notice is given under section 42 then (subject to the provisions of section 60) the tenant by whom it is given shall be liable to the extent that they have been incurred by the relevant person in pursuance of the notice for the reasonable costs of and incidental to:
   (a) investigation reasonably undertaken of the tenant's right to a new lease,
   (b) any valuation of the tenant's flat obtained for the purpose of fixing the premium and any other amount payable by virtue of the provisions of Schedule 13 and
   (c) the grant of the lease.

9. Section 60(2) then provides that such costs shall only be regarded as reasonable if and to the extent that the relevant person (in this case being the landlord) might have regarded them as reasonable if he had to pay them himself. Section 91(2)(d) gives this tribunal jurisdiction to decide whether or not the costs claimed under section 60(1) are reasonable and any questions of liability for them.

10. Finally, section 60(3) provides that where by virtue of any of the provisions of Chapter II the tenant's notice ceases to have effect, or is deemed to have been withdrawn at any time, then (subject to certain qualifications that do not appear from the papers before us to apply in this case) the tenant's liability for costs under section 60 shall be a liability for costs incurred by him down to that time.

Consideration

11. We had to consider the reasonableness first of the legal costs of £532 (net of VAT) and secondly of the valuer's fee of £750 net of VAT. We did so against the criteria set out in section 60(2) of the Act. We first considered the

breakdown of legal costs that had been supplied. This was made no easier because few of the papers referred to in it had been supplied to us. It is in our view for the applicant to provide sufficient information and documentation to make out its case. We approached the matter on the basis adopted by the County Courts in considering costs between parties, subject to the requirements of section 60(2).

12. We started by considering whether the charging rate incurred by the fee earner in question was appropriate. In the absence of any evidence or representations upon the point we concluded that a charging rate of £160 per hour would not, in our collective experience, have been unreasonable for a competent assistant dealing with this kind of work in Central London at the time that the work was carried out. It was then necessary to consider if the work done was reasonably incurred.

13. On this basis, and again in our collective experience in the absence of any representations on the point, we concluded that the time of one hour to consider a section 42 notice claiming entitlement to an extended lease, and to write three letters about it was excessive. It should not, in our opinion, have taken any longer than fifteen minutes for someone familiar with this class of work to form a view upon the notice, for which we therefore allowed a sum of £40, being one quarter of the hourly rate of £160. In the absence of any other information we allowed the commonly adopted time of six minutes for each of the three letters written on 5th February, being another eighteen minutes at £160 per hour, or £48. Thus we concluded that a sum of £88 in total was proper for the cost of the work carried out on 5th February.

14. There is no evidence before us that the notice of default prepared on 5th March was ever served or relied upon. However, it may well be that it was at least prepared in the expectation of a contested hearing, and it is right on that basis to accept that the work was reasonably done. We accept that the cost of £16 is appropriate.

15. The four items in the period between 13th March up to the short attendance on 26th March all appear on the information before us to be reasonable and proper to be allowed. They total £96.

16. It does not however appear to us, for the same reasons as are mentioned in paragraph 14 above, that the period of one hour for preparing the counter notice and writing another three letters is reasonable. The counter notice, in our collective opinion, should have taken no more than thirty minutes to prepare. The three letters presumably (again we were not shown them so must assume that they were of normal length) will have occupied another eighteen minutes, so that a period of forty-eight minutes in all appears to us to be reasonable. At £160 per hour that amounts to a further £128.

17. The hourly cost of £160 is, as we have said, in our opinion appropriate for a competent assistant. However, there should in our opinion be no real reason for partner to have to check the work of a competent assistant in an apparently straightforward matter of this kind. We have therefore disallowed the cost of

£100 incurred on 27th March for that checking. Even if we had been minded to allow it we would have felt that the time taken appeared on what is before us to be excessive to check what would normally be a relatively short piece of work.

18. It follows therefore that for the legal work we have thought it right to determine that a sum of £328 plus VAT is reasonable and that such a sum is in accordance with the definition in section 60(2) of the Act. That amount is made up of the sums of £88 referred to in paragraph 14, of £16 mentioned in paragraph 15, of £96 mentioned in paragraph 16 and of £128 mentioned in paragraph 17.

19. The valuers' account was for four hours and ten minutes work at £250 per hour, being £1041-67 net of VAT, which they reduced in their final account in this instance to £750 net of VAT. We accept that the valuers in question, Messrs Moss Kaye Pembertons, are expert in this field and that they may indeed command such an hourly rate. However, we find it difficult to accept that a person having to pay the costs from his own pocket would feel it necessary to engage the services of such an expert firm to deal with what appears to us on the papers (and without having had the benefit of hearing argument upon the point) to have been potentially a fairly small transaction in terms of value.

20. In our opinion a proposing vendor in a case like this would be disposed to engage the services of a competent local valuer. At the least such a person would have had only a very limited travelling time to the property as opposed to the three hours taken by the landlord's valuer in this case. That would have been a very material consideration for a landlord who had to pay the cost of the valuation himself, and it appears to us that this is a view that section 60(2) requires us to take.

21. The landlord's valuers put the price to be paid at £25000. It is not necessary or appropriate for us to comment upon that figure, save to say that we have assumed that any bill presented to the landlord by a local valuer may have been based on that figure, assuming also that he had agreed with the landlord's valuer in arriving at it. A local valuer, in our collective experience, would be likely to charge a fee of about 1.5% of the amount of the valuation for work like this. He may perhaps add a little for travelling or other out of pocket expenses. 1.5% of £25000 is £375, and if we allow a further £25 for those additional expenses this produces a figure of £400 exclusive of VAT. For the reasons we have given we consider that that would be a fee that was in accord with requirements of section 60(2) of the Act and that is the amount we have determined for the valuer's fee.

Summary

22. For the reasons we have given we have determined that the costs payable by the respondent to the applicant in this matter should be £328 plus VAT for legal fees and £400 plus VAT for valuer's fees, making a total of £728 plus VAT in all. There is nothing before us, for the purposes of section 60(3) of the

Act, to suggest that any of these costs were incurred after the date of deemed withdrawal of the section 48 notice given by the respondent.

Robert Long
Chairman

15th September 2003