

Ref LON/ENF/947/03

LEASEHOLD VALUATION TRIBUNAL

THE LEASEHOLD REFORM HOUSING AND URBAN DEVELOPMENT ACT 1993
SECTION 91(2)(d)

Premises: 72 Penge Road, London SE20

Hearing on: Tuesday 30 March 2004

Tribunal Members: Mr G F Bowden TD MA FRICS
Mr L Jarero BSc FRICS
Mr J J Tomalin

Tenants: Mr Keith Victor Makin and Mr Keith James Keith-Jopp

Represented by: Messrs Denniss Matthews, Solicitors

Landlord: Sinclair Gardens Investments (Kensington) Limited
Represented by: Messrs P Chevalier & Co, Solicitors

Clerk: Miss S Brown

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72 PENGE ROAD, LONDON SE20

1. This was an application by Keith Victor Makin and Keith James Keith-Jopp to the Tribunal for a decision as to the appropriate figure payable in respect of the costs of the freeholders solicitors, following to the acquisition of the freehold of the subject property pursuant to Section 25 of the Leasehold Reform Housing and Urban Development Act 1993 (the Act).
2. The Respondent Freeholder was Sinclair Gardens Investments (Kensington) Limited, who were represented by their solicitors, Messrs P Chevalier & Co, whose fees were the matter at issue in this application.
3. The terms for the acquisition of the freehold had been agreed and were not in dispute. The only point at issue were the fees payable to the Respondent-Freeholder's solicitor. The parties agreed that the Tribunal should decide this issue on written representations and documentary evidence, and in such circumstances no hearing would be necessary.
4. The Applicants were represented by Mr Richard Sims of Messrs Denniss Matthews, solicitors. In his statement dated 5 November 2003, Mr Sims stated that he felt the fees claimed by Messrs P Chevalier & Co, were "excessive" and that having seen the schedule prepared by Mr Paul Chevalier he felt that this was a straight forward matter and that the time expended on this work had been "considerably exaggerated." He submitted that a reasonable hourly rate for dealing with this matter would be £175 per hour, and that the work time involved would be no more than four hours, resulting in a fee of £700 plus VAT. This figure, plus disbursements of £528.75 would in Mr Sims opinion be the appropriate charge.
5. The Respondents' case was set out in the statement of Mr Paul Chevalier, dated 27 January 2004. It stated that the fee charged was at the rate of £200 per hour plus VAT. The work involved included study of the lease; consideration of Initial Notice; preparation of Counter Notice; consideration of valuation report and evidence of comparable transactions. These tasks resulted in a time expenditure of some 4 hours 55 minutes. This at the quoted hourly rate, amounted to £983.33 to which 2 further sums of £220 for "11 letters out" and £210.58 (presumably for VAT were added), making a total of £1413.91. Further expenditure which will be incurred in relation to conveyancing was estimated at £587.50. The total costs involved are £2211.99.
6. Mr Chevalier, drew the Tribunal's attention to the decision 1-30 Hampden Court (Ref LON/ENF/785/02) dated 14 November 2003, which indicated that the matter does not turn on what Nominee Purchaser's may reasonably expect to be their liability, but rather upon what the Reversioner would ordinarily, incur, if he himself were bearing the cost.
7. It was stated that the Revisioner had over the years, instructed Messrs Chevalier & Co in some 100 enfranchisement and lease extension cases, and that they do not instruct any other solicitors on such matters.

8. The Tribunal gave careful consideration to the submission of the parties, and the documentary evidence before them. In considering the Applicants' contention that the fee rate should be £175 per hour, they were not given any evidence of the basis for such a figure; as to who, where, or in what circumstances such a rate was prevalent. The statement that the time expended was "exaggerated" must be regarded as a generalisation without any detailed analysis of the itemised schedule of Messrs Chevalier, as to individual tasks.
9. The Tribunal could accept that at first glance the measure of the professional fees incurred could appear disproportionately high when seen in relation to the actual enfranchisement cost. However this was not the basis on which the reasonableness of fees should be measured.
10. In considering the Respondent-Reversioner's case the Tribunal recognised that the firm of P Chevalier & Co was one which specialised in lease extension and enfranchisement matters. They accepted that it was customary for the Reversioner to instruct this firm exclusively on such matters, and that the firm had acted for them for some 100 transactions. In such circumstances it was not unreasonable for the Reversioner to instruct them on this occasion.
11. The Tribunal considered that the hourly fee-rate for such work of £200 per hour and this was not unreasonable, nor was it out of line with the Tribunal's experience of fee rates.
12. The Tribunal considered Mr Chevalier itemised break-down of the tasks involved and took the view that the time expenditure, 4 hours, 55 minutes was not unreasonable for the work involved.
13. The Tribunal noted the provision of Section 33(2) of the Act, "Any costs incurred by the reversioner ... in respect of professional services rendered by any person shall only be regarded as reasonable if and to the extent that costs in respect of such services might reasonably be expected to be incurred by him if the circumstances had been such that he was personally liable for all such costs".
14. The Tribunal decided, that in the light of the evidence before them, the submission of the parties, and their own knowledge and experience of professional fee-rates, that the legal costs of £2211.99 (inclusive of VAT) were reasonable in the circumstances.

CHAIRMAN *Clement Bowden*
DATE *26 April 2004*