

**SOUTHERN RENT ASSESSMENT PANEL**  
**LEASEHOLD VALUATION TRIBUNAL**

**Case No. CHI/00HP/OC9/2005/0001**

**REASONS**

**Application** : Section 33 Leasehold Reform, Housing and Urban Development Act 1993 (“the 1993 Act”)

**Applicant** : Gary Peter Ireland (Flat 1), and Andrew Gordon Ferguson and Emma Louise Skyrme (Flat 2)

**Respondent**: Sinclair Gardens Investments (Kensington) Limited

**Building** : 120 Surrey Road Branksome Poole BH12 1 HJ

**Date of Application** : 30 September 2005

**Representatives for Applicant**: DTW Solicitors (“DTW”)

**Representatives for Respondent** : P Chevalier & Co (“Mr Chevalier”)

**Date of Hearing** : considered by the Tribunal on the 4 January 2005 without a hearing pursuant to Regulation 13 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 as amended, and in accordance with directions given by the Tribunal on the 7 October 2005

**Members of the Leasehold Valuation Tribunal** : Mr P R Boardman MA LLB (Chairman), and Mr K M Lyons FRICS

**Date of Tribunal’s Reasons** : 4 January 2006

## **Introduction**

1. This is an application by the Applicant under section 33 of the 1993 Act to determine the liability of the Applicant to pay the legal costs of the Respondent on enfranchisement

## **The enfranchisement**

2. The Applicant served the initial notice under section 13 of the 1993 Act on the 4 January 2005
3. The Respondent served a valuation inspection notice under section 17 on the 10 January 2005
4. The Respondent served a deduction of tenants' title notice under section 20 on the 10 January 2005
5. The Respondent served a counter-notice under section 21 on the 7 March 2005
6. The transfer to the Applicant was completed on the 24 October 2005 at a price of £4050

## **Documents**

7. The other documents before the Tribunal are :
  - a. the application
  - b. Mr Chevalier's statement dated the 4 November 2005
  - c. DTW's points of dispute dated the 16 December 2005
  - d. Mr Chevalier's response dated the 23 December 2005
  - e. office copy entries for Respondent's freehold title
  - f. office copy entries for Applicant's leasehold titles
  - g. various Tribunal decisions submitted by the parties
  - h. correspondence between the parties

## **Inspection**

8. The Tribunal did not carry out an inspection in the circumstances

### **Preliminary and procedural matters**

9. By letter dated the 14 December 2005 Mr Chevalier submitted that the Applicant was debarred from making submissions for failing to comply with the Tribunal's directions dated the 7 October 2005
10. The Tribunal has also noted that neither party has complied with direction 7, so far as a paginated bundle or bundles are concerned, apart from the bundle paginated 9 to 64 from Mr Chevalier
11. However, the Tribunal does now have the Applicant's submissions dated the 16 December 2005, together with Mr Chevalier's response dated the 23 December 2005, and has decided in the interests of fairness to include both documents in its consideration

### **The Legal background**

12. Section 33 of the 1993 Act provides as follows :

- (1) Where a notice is given under section 13, then (subject to the provisions of this section and sections 28(6), 29(7) and 31(5)) the nominee purchaser shall be liable, to the extent that they have been incurred in pursuance of the notice by the reversioner or by any other relevant landlord, for 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 that notice;*
  - (b) deducing, evidencing and verifying the title to any such interest;*
  - (c) making out and furnishing such abstracts and copies as the nominee purchaser may require;*
  - (d) any valuation of any interest in the specified premises or other property;*
  - (e) any conveyance of any such interest;**but this subsection shall not apply to any costs if on a sale made voluntarily a stipulation that they were to be borne by the purchaser would be void.*
- (2) For the purposes of subsection (1) any costs incurred by the reversioner or any other relevant landlord 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 have been incurred by him if the circumstances had been such that he was personally liable for all such costs.*
- (3) Where by virtue of any provision of this Chapter the initial notice ceases to have effect at any time, then (subject to subsection (4)) the nominee purchaser's liability under this section for costs incurred by any person shall be a liability for costs incurred by him down to that time.*

- (4) *The nominee purchaser shall not be liable for any costs under this section if the initial notice ceases to have effect by virtue of section 23(4) or 30(4).*
- (5) *The nominee purchaser shall not be liable under this section for any costs which a party to any proceedings under this Chapter before a leasehold valuation tribunal incurs in connection with the proceedings.*
- (6) *In this section references to the nominee purchaser include references to any person whose appointment has terminated in accordance with section 15(3) or 16(1); but this section shall have effect in relation to such a person subject to section 15(7).*
- (7) *Where by virtue of this section, or of this section and section 29(6) taken together, two or more persons are liable for any costs, they shall be jointly and severally liable for them.*

**Mr Chevalier's statement dated the 4 November 2005**

13. Mr Chevalier employed no other fee earner. He had agreed with the Respondent that all services would be provided by him. His charging rate was £200 an hour plus VAT

14. Mr Chevalier's charges for initial work were :

- |  |                |
|--|----------------|
| a. personal attendances on Respondent obtaining instructions and advising (1 hour)     |                |
| b. considering the lease of each of 2 flats (20 minutes)                               |                |
| c. drafting notices under sections 17 and 20 (20 minutes)                              |                |
| d. instructing valuer (30 minutes)   |                |
| e. considering 3 sets of office copy entries (10 minutes)                              |                |
| f. considering initial notice and researching right to enfranchise (1 hour 15 minutes) |                |
| g. drafting counter-notice (15 minutes)  |                |
| h. considering valuation (30 minutes)  |                |
| i. discussing valuation with Respondent (15 minutes)                                   |                |
| j. discussing valuation with valuer (15 minutes)                                       |                |
| k. fee for total of 4 hours 50 minutes   | £966.66        |
| l. 4 letters to Respondent   |                |
| m. 2 letters to valuer   |                |
| n. 2 letters to DTW  |                |
| o. 2 telephone calls to Respondent   |                |
| p. fee   | <u>£220.00</u> |
| q. sub-total   | £1186.66       |

r. VAT	<u>£207.66</u>
s. total	<u>£1394.32</u>

15. Mr Chevalier's charges for conveyancing work were "estimated" as follows :

a. drafting and agreeing contract; deducing title; exchanging contracts; approving transfer; preparing completion statement; completing sale (2 hours 30 minutes)	
b. correspondence about arrears of service charge (30 minutes)	
c. correspondence about money payable on completion, undertakings on completion, and money subject to lien under section 32 (1 hour 30 minutes)	
d. fee for total of 4 hours 30 minutes	£900.00
e. VAT	<u>£157.50</u>
f. total	<u>£1057.50</u>

16. Mr Chevalier referred to Tribunal decisions in Hampden Court (not copied for the Tribunal, and no decision date given), 72 Penge Road (26 April 2004), Chivelston (5 May 2004), and Thornbury Court (26 August 2004)
17. Letters dated the 1 April 2004, and 10 and 24 October 2005, between Mr Chevalier and the Respondent agreed a charging rate of £200 an hour, and fees of "at least" £1394.32 in connection with the initial notice, £705 for conveyancing costs, and "at least" £300 for the correspondence with DTW about money payable on completion, undertakings to be given on completion, and money subject to a lien
18. DTW contended that this was a low-value transaction with no complications. However, the value was not relevant in connection with indemnity costs, where the charges could exceed the consideration, and a thorough investigation was needed before being able to confirm that there were no complications
19. The reasonable expectation test under section 33 was even higher than the indemnity costs test in a court
20. The Respondent was not a willing seller, so that, according to Professor Farrand's comments in Tribunal decisions, it would be surprising if reversioners were to be further out of pocket in respect of their inevitable expenditure incurred in obtaining the professional services of valuers and lawyers for a transaction and proceedings forced upon them

**DTW's points of dispute dated the 16 December 2005**

21. The charging rate of £200 an hour was agreed
22. The stages of the enfranchisement process which were relevant to costs were :
- the initial notice had attached to it a proposed form of transfer
  - the counter-notice admitted the Applicant's right to acquire the freehold, and agreed the Applicant's proposals apart from the price, and apart from slightly different wording for the Applicant's indemnity covenant

- c. the Respondent was not willing to instruct its valuer to negotiate the price until after the Applicants had applied to the Tribunal and the Tribunal had directed that the parties' surveyors should meet
  - d. Mr Chevalier agreed the price by letter dated the 8 July 2005, and the Applicants withdrew the application to the Tribunal
  - e. the parties were unable to agree the Respondent's costs
  - f. DTW gave a written undertaking dated the 26 August 2005 to pay the Respondent's legal fees under section 33 in the amount determined by the Tribunal within 14 days of the determination
  - g. the Applicant made this present application to the Tribunal on the 30 September 2005 as the Respondent had failed to do so
  - h. The transfer was completed on the 24 October 2005
23. The Applicant's liability under section 33 was limited to the investigations reasonably undertaken about whether the freehold interest was liable to acquisition; any other question arising out of the initial notice; and any conveyance of that interest
  24. The Tribunal decisions relied on by the Respondent dated from 2004 and before. The Applicant relied on recent decisions which were generally considered to be more accurate representations of the law
  25. This was an uncomplicated, straightforward, low-value transaction. There were only 2 flats. They were both let to qualifying tenants, who had all signed the initial notice. The freehold and leasehold titles were all registered. There was no head lease
  26. The relevant question was the extent of the legal fees which the Respondent might reasonably be expected to have incurred in investigating the claim to acquire the freehold if the Respondent had been personally liable for all such costs
  27. The Applicant was liable under section 33 for the Respondent's valuer's fee, but not for negotiating the purchase price. The Respondent chose not to instruct its valuer to do so. The inference was that this was after a cost/benefit analysis. A similar cost/benefit analysis would have resulted in the Respondent limiting its instructions to its solicitor
  28. The cost of the section 17 notice should be disallowed. The unexpired lease terms exceeded 80 years, so that the enfranchisement price would not include marriage value. The valuer did not in fact inspect
  29. The cost of the section 20 notice should be disallowed. It was a pro-form notice, and did not require drafting by a solicitor
  30. Only one unit of 6 minutes, namely £20, should be allowed in relation to Mr Chevalier's costs relating to the valuation. The Respondent's surveyor was Mr Nisbett. He was experienced in enfranchisement work. In accordance with the Tribunal decisions in 144 Connell Crescent (18 March 2004) and 467 to 469a Fairfax Drive (13 October 2005), it was not necessary for Mr Chevalier to do anything more than send a letter of instructions to the valuer enclosing the initial notice and the 2 leases and requesting a valuation
  31. A reasonable allowance for investigating the Applicant's right to enfranchise was £200 :

- a. considering initial notice (12 minutes)
  - b. considering both leases (24 minutes)
  - c. considering the freehold title and the 2 leasehold titles (9 pages and plans) (12 minutes)
  - d. investigating other questions arising out of the initial notice (12 minutes)
32. The cost of the counter-notice should be disallowed in accordance with the Tribunal decisions in Serlby Court (3 August 2005) and Offord Close (8 November 2005), which should be preferred to the contrary decision in Hampden Court because of the “very specific” limiting provisions of section 33
33. It was agreed in principle that the Applicant was liable for the work set out in paragraph 14 l-o of these reasons, but the total of 8 letters and 2 telephone calls totalled 10 units, for which the allowable fee should be 1 hour, namely £200
34. The total reasonable fee which the Respondent would have agreed for investigation work if the Respondent had been liable would have been £420 plus VAT
35. So far as conveyancing costs were concerned :
- a. the Respondent did not deduce title because the Applicant obtained office copies
  - b. contracts were not exchanged because the matter proceeded direct to completion in the usual way
  - c. correspondence about the money payable on completion and undertakings post-dated the applications to the Tribunal to determine the price (31 May 2005) and costs (30 September 2005) and were not recoverable by virtue of section 33(5) as being costs incurred in connection with proceedings before the Tribunal
  - d. the transfer was agreed quickly, as evidence by the exchange of letters dated the 16 and 17 May 2005
  - e. a reasonable fee for the conveyancing work was £300
36. The Applicant’s total liability under section 33 was £720 plus VAT, which was the maximum which the Respondent would have reasonably wished to have incurred in a transaction with a value of £4050

**Mr Chevalier’s response dated the 23 December 2005**

37. The test in section 33 was whether the Respondent would have paid the costs if personally liable
38. The difference between standard costs and indemnity costs under the CPR was explained by the Court of Appeal in the extract from **Excelsior Commercial & Industrial Holdings Ltd v Salisbury Hammer Aspden & Johnson and others** [2002] EWCA Civ 870 at pages 9 to 13 of Mr Chevalier’s bundle
39. The burden of proof was on the Applicant to establish that the Respondent would “without a shadow of a doubt” not have paid such costs if it had been personally liable
40. The Applicant had not provided evidence that it was inconceivable that the Respondent would pay Mr Chevalier’s costs as outlined

41. Section 33 was in very general terms
42. Just because investigation showed that a particular matter did not exist, such as a head lease, did not mean that its existence should not have been investigated
43. The initial notice might have been no more complex than other initial notices, but all initial notices gave rise to complex questions which had to be considered no matter irrespective of the size of the property or the amount of the consideration
44. The section 17 notice was served before making a decision whether an inspection was necessary in view of the time limits
45. The section 20 notice was an important document requiring a solicitor to draft it
46. The valuer had to be fully instructed, and the valuation fully considered, and instructions taken. The solicitor's duty was not to check the valuation method but the data on which it was made and the factors taken into account
47. There was no evidential basis for DTW's figure of 24 minutes for considering the initial notice
48. DTW had not proposed an allowance for attendances on the Respondent
49. Section 33 included costs "of and incidental to" the matters listed, and costs of any investigation "of any other question arising out of [the initial notice]". That included preliminary notices, the counter-notice, the correspondence with the Respondent
50. There were 10 letters out, not 8
51. The conveyancing correspondence was copied at pages 14 to 64 of Mr Chevalier's bundle
52. Title was deduced by producing office copies of the freehold title (page 14)
53. The correspondence was directly referable to completion, and the application to the Tribunal was withdrawn beforehand

## **The Tribunal's findings**

### **Preliminary issues**

54. The Tribunal has taken account of all Mr Chevalier's submissions and of the decisions in the previous Tribunal cases referred to
55. However, the Tribunal finds that the provisions of section 33 are very far from providing for the Respondent to be able to claim indemnity costs from the Applicant, in that :
  - a. in the first place, section 33 does not seek to limit those costs which are payable by the Respondent, but seeks only to identify such of those costs which are payable by the Applicant
  - b. in the second place, it would have been very easy for Parliament to have provided for the Applicant to have been liable for all the Respondent's costs, and then on an indemnity basis, if that had been Parliament's intention
  - c. in the third place, and on the contrary, subsection 33(1) provides only that the Applicant is to be liable for:



- reasonable costs
  - of and incidental to the specific matters set out
- d. in the fourth place, the reasonableness test in subsection 33(2) is couched in terms of “costs.....shall only be regarded as reasonable if.....”, and not, as Mr Chevalier appears to the Tribunal to be contending, “costs.....shall not be regarded as unreasonable unless.....”
- e. in the fifth place, the reasonableness test in subsection 33(2) is based on what the “[Respondent] might reasonably be expected to have.....incurred”, and not, as Mr Chevalier appears to the Tribunal to be contending, on what the “Applicant proves that the Respondent would not have incurred”
56. The Tribunal notes from DTW’s points of dispute that the Applicant agrees Mr Chevalier’s charging rate of £200 an hour, and adopts that figure accordingly
57. It is not clear from Mr Chevalier’s submissions on what charging unit his charging rate of £200 an hour is based. Charging units are not referred to in his exchange of letters with the Respondent about costs. At the end of paragraph 10 of his statement he refers to “the 15 minute periods”. However, earlier in paragraph 10 he referred to periods of 10 minutes (paragraph 10A5) and 20 minutes (paragraphs 10A2 and 3), and in paragraph 10B, he seeks to charge £220 for 8 letters and 2 telephone calls. DTW base their points of dispute on a charging unit of 6 minutes. Drawing on the Tribunal’s collective experience and expertise in these matters, including the way in which courts approach the assessment of costs, the Tribunal finds that it is reasonable for the costs payable by the Applicant in this case to be based on :
- a. a charging unit of 6 minutes in respect of items of preparation and perusal
  - b. one charging unit for each letter written by Mr Chevalier in respect of which the Applicant is liable and in respect of which there is no evidence before the Tribunal of a specific preparation time
  - c. no separate allowance for any letters received by Mr Chevalier in respect of which there is no evidence before the Tribunal of a specific time for perusal
58. There is no evidence before the Tribunal about whether or not the Respondent is registered for VAT, but, if not, then VAT will be added to the figures found by the Tribunal to be payable by the Applicant

**Mr Chevalier’s claim for fees of investigations – paragraph 10A of Mr Chevalier’s statement**

**Personal attendances on Respondent obtaining instructions and advising (1 hour)**

59. The Tribunal finds that :
- a. this is not a specific matter listed in subsection 33(1) in respect of which the Applicant is liable for the Respondent’s costs
  - b. it is not “of or incidental to” any of those matters
  - c. in any event, it is not reasonable for the purposes of section 33 for the Applicant to

pay anything under this heading in addition to the “4 letters to Respondent” and “2 telephone calls to Respondent” referred to later in these reasons

- d. the Applicant is not liable for this item

**Considering the lease of each of 2 flats (20 minutes)**

- 60. The Tribunal notes and accepts DTW’s comment that 24 minutes was a reasonable time for this item for the purposes of section 33

**Drafting notices under sections 17 and 20 (20 minutes)**

- 61. The Tribunal finds that :
  - a. in relation to the section 17 notice, the Tribunal accepts Mr Chevalier’s submission that it was reasonable for the purposes of section 33 for the notice to be served, in that it was incidental to the valuation of the property, the time limits were short, and the test of reasonableness was foresight, not hindsight, so that the fact that no inspection actually took place did not render it unreasonable for the Applicant to pay the cost of the notice
  - b. it was reasonable for Mr Chevalier to prepare the notice
  - c. however, the notice was a straightforward notice, and a reasonable time for this item for the purposes of section 33 was only 6 minutes
  - d. in relation to the section 20 notice, the deduction of the Applicant’s leasehold title was part of the investigation into the question of the Applicant’s entitlement to enfranchise, and it was therefore reasonable for the purposes of section 33 for the notice to be served
  - e. it was reasonable for Mr Chevalier to prepare the notice
  - f. however, this notice too was a straightforward notice, and a reasonable time for this item for the purposes of section 33 was only 6 minutes

**Instructing valuer (30 minutes)**

- 62. The Tribunal accepts DTW’s submissions that Mr Nesbitt was an experienced valuer, and that instructions to him required only copies of the initial notice and the leases
- 63. The Tribunal finds that that a reasonable time for this item for the purposes of section 33 was only 6 minutes

**Considering 3 sets of office copy entries (10 minutes)**

- 64. The Tribunal notes and accepts DTW’s comment that 12 minutes was a reasonable time for this item

**Considering initial notice and researching right to enfranchise (1 hour 15 minutes)**

- 65. The Tribunal finds that :
  - a. in relation to Mr Chevalier’s check-list at paragraph 7 of his statement, this was a straightforward case, involving only 2 leases, with no head-lease
  - b. the time spent in perusing the leases and office copy entries was itemised separately

- c. a reasonable additional time for this item for the purposes of section 33 was only 12 minutes

**Drafting counter-notice (15 minutes)**

66. The Tribunal finds that :

- a. this is not a specific matter listed in subsection 33(1) in respect of which the Applicant is liable for the Respondent's costs
- b. the cost of this item cannot be "of or incidental to" any investigation referred to in subsection 33(1)(a) because by its very nature the counter-notice can be served only after that investigation
- c. it is not "of or incidental to" any of the other matters referred to in subsection 33(1)
- d. the Applicant is not liable for this item

**Considering valuation (30 minutes)**

67. The Tribunal finds that :

- a. it was reasonable for Mr Chevalier to check that the valuation was of the right interest in the right property
- b. that work was "of or incidental to" the valuation
- c. however, it was only reasonable for Mr Chevalier to spend a very small amount of time in doing so, particularly in view of Mr Nesbitt's experience in carrying out valuations of this kind
- d. a reasonable time for this item for the purposes of section 33 was only 6 minutes

**Discussing valuation with Respondent (15 minutes)**

68. The Tribunal finds that :

- a. this is not a specific matter listed in subsection 33(1) in respect of which the Applicant is liable for the Respondent's costs
- b. a discussion between Mr Chevalier and the Respondent about the valuation, as distinct from a discussion between the valuer and the Respondent, was not "of or incidental to" the valuation
- c. it was not "of or incidental to" any of the other matters referred to in subsection 33(1)
- d. in any event, it is not reasonable for the purposes of section 33 for the Applicant to pay anything under this heading in addition to the "4 letters to Respondent" and "2 telephone calls to Respondent" referred to later in these reasons
- e. the Applicant is not liable for this item

**Discussing valuation with valuer (15 minutes)**

69. The Tribunal finds that :

- a. this is not a specific matter listed in subsection 33(1) in respect of which the Applicant is liable for the Respondent's costs

- b. there is no evidence before the Tribunal that the discussion between Mr Chevalier and the valuer about the valuation, as distinct from a discussion between the valuer and the Respondent, was “of or incidental to” the valuation
- c. it was not “of or incidental to” any of the other matters referred to in subsection 33(1)
- d. in any event, it is not reasonable for the purposes of section 33 for the Applicant to pay anything under this heading in addition to the “2 letters to valuer” referred to in the next paragraph of these reasons
- e. the Applicant is not liable for this item

**Sub-total under paragraph 10A of Mr Chevalier’s statement**

70. The Tribunal finds that the total reasonable time for these items for the purposes of section 33 was 1 hour 12 minutes, and that that was equivalent to £240 at the charging rate of £200 an hour

**4 letters to Respondent, 2 letters to valuer, 2 letters to DTW, 2 telephone calls to Respondent £220 – paragraph 10B of Mr Chevalier’s statement**

71. The Tribunal finds that :

- a. the claim in Mr Chevalier’s statement was for the work listed in the heading of this paragraph
- b. DTW agreed in principle that the Applicant was liable for that work, but submitted that the total of 8 letters and 2 telephone calls totalled 10 units, for which the allowable fee should be 1 hour, namely £200
- c. Mr Chevalier stated in his response dated the 23 December 2005 that there were 10 letters out, not 8
- d. that comment is unpersuasively generalised and lacking in detail, and the Tribunal is not persuaded that Mr Chevalier had made an error in the very specific numbers of letters referred to in his statement
- e. a reasonable amount of work for this item was as stated in the heading of this paragraph

**Sub-total under paragraph 10B of Mr Chevalier’s statement**

72. 8 letters written and 2 telephone calls were equivalent to £200 at the charging rate of £200 an hour

**Total investigation costs**

73. The total investigation costs for which the Applicant is liable for the purposes of section 33 is £440, namely £240 under paragraph 10A of Mr Chevalier’s statement, and £200 under paragraph 10B

**Mr Chevalier’s claim for conveyancing fees**

**Drafting and agreeing contract; deducing title; exchanging contracts; approving transfer;**

**preparing completion statement; completing sale (2 hours 30 minutes) paragraph 11.1 of Mr Chevalier's statement**

74. The Tribunal finds that :

- a. a contract, as distinct from a conveyance, is not a specific matter listed in subsection 33(1) in respect of which the Applicant is liable for the Respondent's costs
- b. the price of the enfranchisement and the form of transfer were agreed between the parties in correspondence
- c. it was not necessary or reasonable for the purposes of section 33 for there to be a separate, additional contract document, rather than for matters to proceed straight to completion following the agreement reached in correspondence
- d. in the event, matters did proceed directly to completion, in that there is no evidence in the correspondence before the Tribunal that contracts were ever actually exchanged
- e. although Mr Chevalier sent office copy entries with his letter dated the 8 July 2005, there is no evidence before the Tribunal that the Applicant required them pursuant to subsection 33(1)(c), and the Tribunal accepts DTW's comment that the Applicant had already obtained them
- f. the form of transfer was prepared by DTW; it was attached to the initial notice; and it was approved by Mr Chevalier with only slight amendment
- g. completion took place by post
- h. the Applicant is liable under this heading only for those items of work referred to later in these reasons

**Correspondence about arrears of service charge (30 minutes) paragraph 11.2 of Mr Chevalier's statement**

75. The Tribunal finds that :

- a. there is no evidence before the Tribunal that any separate work was actually carried out in relation to this item, other than the correspondence referred to in the next paragraph of these reasons
- b. the Applicant is not liable for this item as a separate item

**Correspondence about money payable on completion, undertakings on completion, and money subject to lien under section 32 (1 hour 30 minutes) paragraph 12 of Mr Chevalier's statement**

76. The Tribunal finds that :

- a. the only correspondence before the Tribunal in respect of this item and the item referred to in the previous paragraph of these reasons is the correspondence in Mr Chevalier's bundle on pages 14 to 64
- b. in relation to DTW's comment that correspondence about the money payable on completion post-dated the 2 applications to the Tribunal and was therefore not the liability of the Applicant by virtue of subsection 33(5) :

- the first application to the Tribunal related only to the price payable, not to other money payable on completion
  - that application was in any event withdrawn by letter to the Tribunal on the 25 July 2005
  - this present application to the Tribunal was made on the 30 September 2005, so that the costs of correspondence before that date were not incurred “in connection with the proceedings” for the purpose of subsection 33(8)
  - the present application related only to the liability of the Applicant to pay the Respondent’s costs, not to other money payable on completion
  - the costs of correspondence after the date of the present application relating to other money payable on completion were not incurred “in connection with the proceedings” for the purpose of subsection 33(8)
- c. the Applicant is liable for the purposes of section 33 for the following 16 letters written in 2005 by Mr Chevalier and paginated in his bundle :
- 8 July at page 14
  - 14 July at page 17
  - 19 July at page 19
  - 27 July at page 21
  - 2 August at page 24
  - 5 August at page 28
  - 15 August at page 32
  - 26 August at page 37
  - 26 August at page 39
  - 2 September at page 42
  - 21 September at page 44
  - 26 September at page 48
  - 19 October at pages 56 and 57
  - 24 October at page 60
  - 24 October at page 62
  - 24 October at page 63
- d. there is no particularised evidence from Mr Chevalier whether any of those letters took longer than the charging unit of 6 minutes to prepare, other than the general comment at paragraph 12 of his statement that he “spent 1.5 hours considering the letters received and replying”
- e. on the basis that each letter took no more than the charging unit of 6 minutes to

prepare, the costs relating to the 16 letters would be £320

- f. in addition to that sum, the Applicant is liable for the reasonable costs of Mr Chevalier for
- considering the legal and factual position during the course of that correspondence
  - approving the draft transfer, and preparing a completion statement
- g. having taken account of Mr Chevalier's comment at paragraph 12 of his statement that he "spent 1.5 hours considering the letters received and replying", and drawing on the Tribunal's collective experience and expertise in these matters, a reasonable additional time for the purposes of section 33 was one hour, for which the costs would be £200

**Total conveyancing costs**

77. The total conveyancing costs for which the Applicant is liable for the purposes of section 33 is £520, namely £320 for the 16 letters, and a further £200 for additional work

**Summary of the Tribunal's findings**

78. The Applicant's liability for the Respondent's costs for the purposes of section 33 is £960, made up as follows :

a. investigation costs	£440.00
b. conveyancing costs	<u>£520.00</u>
c. total	<u>£960.00</u>

79. If appropriate, VAT is payable in addition

Dated the 5 January 2006



.....  
Peter Boardman  
(Chairman)

A Member of the Southern Leasehold Valuation Tribunal  
appointed by the Lord Chancellor

**SOUTHERN RENT ASSESSMENT PANEL**  
**LEASEHOLD VALUATION TRIBUNAL**

**Case No. CHI/00HP/OC9/2005/0001**

**REFUSAL OF PERMISSION TO APPEAL**

**Application** : Section 33 Leasehold Reform, Housing and Urban Development Act 1993 (“the 1993 Act”)

**Applicant** : Gary Peter Ireland (Flat 1), and Andrew Gordon Ferguson and Emma Louise Skyrme (Flat 2)

**Respondent**: Sinclair Gardens Investments (Kensington) Limited

**Building** : 120 Surrey Road Branksome Poole BH12 1 HJ

**Date of Application** : 30 September 2005

**Members of the Leasehold Valuation Tribunal** : Mr P R Boardman MA LLB (Chairman), and Mr K M Lyons FRICS

**Date of Tribunal’s Reasons** : 4 January 2006

**Party Applying for Permission to Appeal** : Respondent

**Date of Application for Permission to Appeal** : 20 January 2006

**Date of Tribunal’s Refusal of Permission to Appeal** : 30 January 2006



## **Decision**

1. The Tribunal refuses permission to appeal

## **Reasons**

2. The Tribunal has considered the grounds of appeal set out in the application for permission to appeal, and the Court of Appeal decision in **Gomba Holdings UK Ltd v Minorities Finance Ltd** (No 2) [1992] 4 All ER 588 referred to
3. The grounds of appeal are effectively no more than a restatement of the submissions made by the Respondent in respect of the original Application, which were considered in detail and at length by the Tribunal in the Tribunal's Reasons dated the 4 January 2006
4. The Tribunal has reviewed the Tribunal's Reasons dated the 4 January 2006, but finds that the grounds of appeal set out no basis for any reasonable prospect of a successful appeal

Dated the 30 January 2006

  
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Peter Boardman  
(Chairman)

A Member of the Southern Leasehold Valuation Tribunal  
appointed by the Lord Chancellor