

**THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE**

**DECISION OF THE LONDON LEASEHOLD VALUATION TRIBUNAL AS  
TO THE LANDLORD'S RECOVERABLE COSTS**

**Leasehold Reform, Housing and Urban Development Act 1993, section 60**

**Property:** Flats 12 and 31, 37/38 Clarges Street, London W1

**Applicants:** Kendrick Philip Cheong  
Eugene Cheong  
Norma Cheong (tenants)

**Respondent:** Veena S A (landlord)

**Date heard:** 20 and 21 December 2006

**Appearance:** Kendrick Philip Cheong for the tenants.

The landlord did not appear and was not represented at the hearing but sent written representations from its solicitors, P Chevalier & Co

**Members of the leasehold valuation tribunal:**

Lady Wilson  
Mr J R Humphrys FRICS

**Date of the tribunal's decision:** 21 February 2007

## **Background**

1. This is a determination of the landlord's recoverable costs in relation to the tenants' applications for new leases of Flats 12 and 31, 37/38 Clarges Street London W1.

2. Mr E and Mrs N Cheong are the tenants of Flat 12 and Mr K P Cheong, their son, is the tenant of Flat 31. Mr K P Cheong represents himself and his parents in these proceedings. Veena S A, the landlord, is represented by P Chevalier & Co, solicitors. Initial notices under section 42 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") were given on 11 February 2004 and the landlord's counter-notices were dated 10 May 2004. On 9 November 2004 the tenants applied to the tribunal under section 48 of the Act for the price and terms of acquisition to be determined. The application was heard on 10 and 11 May 2005 and the decision issued on 23 August 2005. The landlord's solicitors served a statement of costs on or about 21 August 2006 and on 1 November directions were given for their determination. The tenants lodged a statement of their objections to the costs claimed on or about 28 November 2006 and the landlord's solicitors lodged a witness statement from Mr Paul Chevalier of P Chevalier & Co, together with a number of documents, judgments and tribunal decisions, shortly before the hearing.

3. At the hearing on 20 and 21 December 2006 the landlord, in order to save costs, did not appear and we were asked to rely on Mr Chevalier's witness statement and the documents lodged with it, which we agreed to do. Mr K P Cheong appeared for the tenants. He gave evidence and called Ms Mary Beck as a witness.

4. Before the hearing Mr Cheong had asked the landlord to disclose its solicitors' client care letter, the terms of its retainer and instructions to its valuer and evidence that it had paid the costs which it sought to recover. Despite an interlocutory direction of a tribunal, the landlord's solicitors had refused to disclose these documents on the grounds that they were either privileged or irrelevant but, although Mr Cheong maintained that they should have been disclosed, he elected to proceed rather than to

apply for an adjournment. We were satisfied that we were able to determine the costs without the documents, whether or not they were privileged.

### **The law**

5. The landlord's recoverable costs are those which fall within subsection 60(1) of the Act as limited or extended by subsections 60(2) to (6). Subsections 60(1) and (2) provide:

*(1) Where a notice is given under section 42, then (subject to the provisions of this section) the tenant by whom it is given shall be liable, to the extent that they have been incurred by any relevant person in pursuance of the notice, for the reasonable costs of and incidental to any of the following matters, namely –*

*(a) any 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 or any other amount payable by virtue of Schedule 13 in connection with the grant of a new lease under section 56;*

*(c) the grant of a new lease under that section;*

....

*(2) For the purposes of subsection (1) any costs incurred by a relevant person 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.*

### **General approach**

6. Mr Chevalier argued that the tribunal's approach in making determinations under section 60 (and under section 33 in relation to the costs of collective enfranchisements) should be to determine as reasonable all the costs which the landlord was contractually liable to pay on an indemnity basis for the reasons given by the Court of Appeal in *Gomba Holdings UK Ltd v Minorities Finance Ltd (No 2)* [1992] 4 All ER 588. This was a case where a mortgagee was contractually liable to costs on an indemnity basis and, according to the judgment of the Court it, "any doubts as to whether the costs have been unreasonably incurred or are unreasonable in amount [must be] resolved in favour of the [mortgagee]". Mr Chevalier relied also on a decision of a tribunal in relation to *Chivelston, 78 Wimbledon Parkside, London SW19* (LON/ENF/1005/03) which tended to support the view that the landlord's costs under section 33 were recoverable on an indemnity basis because, it was said, collective enfranchisement was in the nature of compulsory purchase.

7. Mr Cheong said that such an approach was incorrect, and that the purpose of the Act was to be fair both to landlords and to tenants.

8. We do not agree with Mr Chevalier as to the general approach to be applied in determining the landlord's recoverable costs. In our view no assistance can be derived from the judgment in *Gomba Holdings*, which was on an entirely unrelated point, and we find no support in the Act for the proposition that costs under section 60 are to be determined on an indemnity basis. The proper approach for the tribunal to take is, we consider, to determine whether the costs claimed not only fall with subsection 60(1) but are objectively reasonable, remembering that there is a range of reasonable costs and that the cheapest is not necessarily the only reasonable option. We do not regard the words of subsection 60(2) as in any way extending the tenant's liability, set out in subsection 60(1), to pay "reasonable costs". If anything, they appear to limit the liability rather than extend it.

**Section 60(1)(a)**

9. Mr Chevalier said that the costs recoverable under this head were £1089.81, including VAT, in respect of each of the two claims. He gave a breakdown of these costs in paragraph 11(A) of his statement. He said that his hourly rate was £210 per hour plus VAT which he considered to be reasonable for a solicitor admitted in 1974 who was the sole fee earner in the firm.

10. Mr Cheong said that costs recoverable under the subsection were less extensive than those recoverable under section 33(1)(a) and did not extend to investigating the tenant's right to exercise the right to a new lease but only to investigating his right to a new lease. Such recoverable costs, he submitted, were confined to the issues whether the tenant was the owner and had been the owner for two years and did not include investigation of the validity of the notice.

11. He also submitted that there was an element of duplication in the costs claimed. He considered that the costs had been unreasonably doubled because there were two flats which were the subject of claims, which was, he said, unreasonable because the two claims raised virtually the same issues.

12. He said that the claim for the drafting of two preliminary notices in relation to each of the claims (one in each case requiring deduction of title and proof that the claimant had been a qualifying tenant for two years, and the other requiring access to be given to the landlord's valuer to inspect the premises) was unreasonable and did not fall within the subsection for a number of reasons: first, because the notices had been served without prejudice to the validity of the notice of claim, whereas the landlord's solicitors should have satisfied themselves as to the validity of the claim before serving the notices; second, because the notices were in standard form and did not need the attention of a partner; third, because there was no need for either notice. The notice requiring deduction of title was, he said, unnecessary because the landlord had already obtained the relevant official copy entries. The notice requiring access to be granted to the valuer was, he said, not a statutory notice for which provision was made in the regulations and was "just a cost-bumping exercise", because access by the valuer had not been refused.

13. Mr Cheong also submitted that the drafting of the counter-notice clearly did not fall within the subsection.

14. In relation to the landlord's solicitors' hourly rate he drew our attention to the decision of a leasehold valuation tribunal, which Mr Chevalier himself had produced, in relation to *467, 467a, 469 and 469a Fairfax Drive, Westcliff-on-Sea, Essex* (reference not given) from which it appeared that Mr Chevalier's hourly charging rate in 2005 or thereabouts was £200 plus VAT (which the tribunal had accepted as reasonable) and not £210 as now claimed, the relevant work in the present case having been carried out in 2004.

15. Mr Cheong did not accept that instructing the valuer and considering the valuation fell within subsection 60(1)(a), although he accepted that these items fell within subsection 60(1)(b).

16. Finally, he submitted that the number of letters out (11 in each case) and telephone attendances (4 in each case) were excessive.

17. We have come to the conclusion that the amounts recoverable under subsection 60(1)(a) are, in respect of each of the two claims, £415 plus VAT. We do not accept Mr Cheong's ingenious argument as to the fundamental difference between costs recoverable under section 33(1)(a) and under section 60(1)(a), and we consider that under each of the subsections the reasonable costs of considering the validity of the initial notice are recoverable. We accept that Mr Chevalier's hourly rate of £200 per hour as given in evidence to the tribunal in relation to the *Fairfax Drive* case should apply in the present case, since we see no special difficulty in the present case or any other reason to depart from what appears to have been his usual charging rate at the relevant time (other than that, as Mr Chevalier correctly says, Mr Cheong is "a very able litigant in person", which we do not regard as apt to increase the costs recoverable under section 60(1)(a)). We have allowed as reasonable (in respect of each case and excluding VAT) 30 minutes for obtaining instructions, as claimed (£100), 15 minutes as claimed (£50) for considering the lease and official copy entries, 12 minutes (£40) for drafting a notice to deduce title, which we regard as a reasonable action to take because the tenant must, if required by the landlord, take his

own responsibility for establishing his right to a new lease, 45 minutes as claimed (£150) for considering the initial notices etc, £50 for letters out, and £25 for telephone attendances. We do not regard the cost of the notices requiring access to be given to the landlord's valuer as reasonably incurred in the absence of any evidence or suggestion that access was being denied. We do not consider that the drafting of the counter-notices falls within the provisions of the subsection. Nor do we regard the costs of instructing the valuer and considering the valuation as falling within it. In the absence of details of the letters sent and telephone calls made or received we have made our own summary assessment. We do not consider the question of whether or not the amounts demanded have yet been paid to be relevant: the question is whether the landlord is liable to pay them, and we see no reason to suppose that it is not.

**Section 60(1)(b)**

18. The landlord has claimed a valuation fee of £750 plus VAT in respect of each flat, being the fees of Mr Laurence Nesbitt BSc (Hons) FRICS MCI Arb of Nesbitt & Co, chartered surveyors, for preparing valuations dated 10 May 2004, said to be for the purpose of the counter-notices. For the purpose of the present application Mr Nesbitt has provided a breakdown of his time spent (page 7 of the exhibits to Mr Chevalier's statement).

19. Mr Cheong said that no valuation fees were recoverable because the premiums proposed in the counter-notices (£79,700 for Flat 12 and £64,200 for Flat 31) differed from those in the valuations which Mr Nesbitt had provided to him on 11 August 2004 (£68,000 for Flat 12 and £48,650 for Flat 31) which, to him, suggested that the valuations had not been made for the purpose of the counter-notices. He disputed that Mr Nesbitt had spent 3.5 hours carrying out inspections and taking measurements and site notes, and he called Ms Beck, the sub-tenant of Flat 12, to give evidence. She had said in a written statement that Mr Nesbitt had spent no more than 10 – 15 minutes per flat when he inspected them in early 2004 and that she did not see him taking any measurements. In her oral evidence she said that Mr Nesbitt "could have taken measurements". Mr Cheong also questioned whether Mr Nesbitt had in fact

undertaken any research into comparable transactions as he claimed in his breakdown. He suggested that, as Mr Nesbitt carried out many valuations on the instructions of P Chevalier & Co, he might well be prepared to act for a fee of less than £750 plus VAT, and he invited us to draw adverse inferences about Mr Nesbitt's contribution because the instructions to him had been withheld from production although their disclosure had been directed by a tribunal and an interlocutory stage. He did not challenge Mr Nesbitt's hourly rate of £150 plus VAT inclusive of travelling expenses and disbursements.

20. We accept from Mr Nesbitt's invoice and breakdown of his work that he in fact charged the landlord £750 plus VAT to value each of these flats for the purpose of the counter-notice, and we also accept, as Mr Cheong did, that £150 is a reasonable hourly charging rate. We further accept that Mr Nesbitt is an experienced and conscientious valuer. However, these were relatively straightforward valuations of two small flats, (one member of the present tribunal has had the advantage of inspecting them in connection with a service charge dispute), and we are satisfied in all the circumstances that 10 hours is wholly excessive for the work involved. We consider that 6 hours should have been ample for the task of valuing both flats. We therefore determine as reasonable a fee of £450 plus VAT for each of the two flats. We also allow as reasonable and recoverable under the subsection 15 minutes of the solicitors' time (£50 plus VAT) in respect of each flat for instructing Mr Nesbitt, because we regard instructing the valuer to be an integral part of the valuation. We do not consider that considering the valuation and discussing it with the client falls within any of the relevant subsections.

#### **Section 60(1)(c)**

21. The landlord's claim is for £703.50 plus VAT for conveyancing in respect of each flat. Mr Chevalier said that the time charged was less than the actual time spent: it was rounded down to the nearest 15 minute period and excluded time spent which it was not considered reasonable to charge the client.



22. Mr Cheong said that by 13 January 2006 all the terms of the new leases were either agreed or otherwise disposed of, and that, thereafter, all that was required of the landlord was to produce drafts of the new leases, work which had already been carried out in the previous year. He agreed that the 30 minutes claimed for drafting each of the new leases was reasonable, but submitted that most of the correspondence relating to the terms of the new lease was part of a tactical delaying exercise by the landlord's solicitors to try to manoeuvre the tenants into a deemed withdrawal. He regarded 6 letters out for each flat as excessive.

23. We have read the correspondence relating to the terms of the new leases. It is clear that Mr Cheong was instrumental in raising many of the issues relating to the terms of the new leases, and we do not read the correspondence as demonstrating underhand tactics on the part of the landlord's solicitors. We regard the conveyancing fees claimed as within the band of reasonable fees and we allow them in full.

#### **Determination**

24. Accordingly, we allow the following fees as reasonable incurred in respect of each flat:

- i. under section 60(1)(a), £415 plus VAT;
- ii. under section 60(1)(b), £500 plus VAT; and
- iii. under section 60(1)(c), £703.50 plus VAT.

Thus the total recoverable costs are £1618.50 plus VAT, and £1901.74 including VAT, in respect of each flat.

CHAIRMAN.....

DATE..... 26 February 2007