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HM Courts & Tribunals Service

Leasehold Valuation Tribunal
Case no. CAM/12UB/OCE/2012/0010

Premises:	1-8 Paradise Court; 3-7 City Road; and 45-47 Paradise Street, Cambridge CB1 1DP
Hearing:	13 December 2012
Applicants:	Paradise Court Freehold Ltd
Represented by:	Mr M Hafiaz of Leeds Day, Solicitors
Respondent:	Aztec GR Properties Ltd
Represented by:	Estate & Management Ltd (Managing Agents)
Members of Tribunal:	Mr G M Jones - Chairman Mr N Martindale FRICS Mr G F Smith MRICS FAAV
Type of Case:	Collective enfranchisement of the freehold Leasehold Reform Housing & Urban Development Act 1993 section 13

ORDER

1. The Respondent's reasonable costs recoverable from the Applicant under section 33 of the Leasehold Reform Housing and Urban Development Act 1993 are assessed in the sum of £2,207.97 + VAT (if applicable).

2. The parties have permission (if so advised) to apply to the Tribunal within 30 days from the date of this Order for a determination as to whether VAT is payable.

3. There will be no order as to the costs of the Application so far incurred.

Geraint M Jones MA LLM (Cantab)
Chairman
10 January 2013

REASONS

0. BACKGROUND

The Property

0.1 The subject property is a block of 16 retirement flats all owned by qualifying tenants for the purposes of the 1993 Act. The nominee purchaser is a company set up by the tenants supporting the application to manage the freehold.

The Lease

0.2 The sample lease is for a term of 99 years from 1 January 1993 and 14 of the leases are for an identical term. The freehold title at page 51 of the hearing bundle shows that two leases run from 1 June 1993 for a term of 99 years. The Tribunal was told that the leases are otherwise in identical terms. Under the terms of a planning obligation affecting the development, the flats cannot be lawfully sublet and can be occupied only by persons over 60 years of age. Upon assignment, the landlord is entitled to 1% of the premium and the trustees of the sinking fund to 0.5% thereof. This provides a steady income for the landlord as, for obvious reasons, there is a limit on how long any tenant is likely to retain the lease.

0.3 The Tribunal heard from Mr Hafiaz that the landlord is part of the Group formerly known as the Peverel Group and the management company is also part of the same Group. Mr Hafiaz told the Tribunal that he had conducted relevant company searches and the Tribunal accepted his evidence on that issue.

1. THE DISPUTE

1.1 There has been no issue about the land to be included in the transfer of the freehold or about third party rights or rights over retained land. There are no intermediate leases and the landlord will be entitled to the whole of the price. There were initially valuation issues, including an issue as to the value of the landlord's 1% on assignments. By the date of the hearing, all issues had been agreed except the quantification of the landlord's reasonable costs.

2. THE ISSUES

2.1 By its counter-notice dated 14 November 2011 the Respondent claimed legal and administrative fees of £1,995.00 plus valuation fees if any. Pursuant to a direction of the Tribunal, the Respondent provided a costs schedule (page 38) claiming £1,995.00 legal costs and £1,544.47 by way of valuation fees, in each case excluding VAT. The valuer's invoice, directed to Fairhold Services Ltd (a company in the same group as the landlord) is at page 47. The matters disputed by Mr Hafiaz on behalf of the nominee purchaser have been canvassed in correspondence (see page 32a, a counter-proposal dated 22 November 2012) and will be discussed in the last section of these Reasons. There is no need to summarise them here. However, it should be noted that the oral submissions of Mr Hafiaz went beyond the counter-proposal set out in open correspondence. We have ignored any "without

prejudice" correspondence included in the hearing bundle.

2.2 The Respondent's costs schedule gave a global figure for legal costs, on the basis that a Senior Solicitor had spent 11.5 hrs on the case and that Land Registry searches cost £40.00, the fees being capped at £1,995.00. By an e-mail of 2 November 2012 a breakdown was given to which Mr Hafiaz responded and which the Tribunal has used as a template for considering the time reasonably spent on each stage of the process. Mr Hafiaz for the purposes of his counter-offer (subsequently withdrawn) assessed the total time reasonably employed at 5.4 hrs. He did not take issue with the hourly rate. There is, of course, something of a trade-off on the basis that junior solicitors and paralegals are cheaper but senior solicitors are likely to be (and ought reasonably to be) significantly quicker at reading and analysing the relevant documentation.

3. THE EVIDENCE AND ORAL SUBMISSIONS

3.1 Although Mr Hafiaz naturally has experience of costs assessments, there was no oral evidence at the hearing on the costs issues. The case has been decided on the basis of a statement combined with written submissions from E & M (who chose not to attend) and oral submissions from Mr Hafiaz, mostly pursuant to issues raised in correspondence.

3.2 Mr Hafiaz explained that the day-to-day management of the block has at all material times been in the hands of St Andrews Bureau, so that no issues arose in relation to the handover of service charge funds. He submitted that the case was extremely simple and ought to be routine for the Group to which the landlord company belongs.

3.3 The main thrust of the detailed submission made by Mr Hafiaz on behalf of the Applicant was that: -

(a) The time-based claim for legal costs referred to a Senior Solicitor Mo Bux LLB charging £200.00 per hour. Mr Hafiaz was puzzled by this as all his (not very extensive) correspondence until 1 November 2012 had been with the Sales Department, latterly with Paul Taylor. On 1 November 2012 he received his first letter by e-mail from a lawyer, Lindsay King De Lagrutta, Dispute Resolution Solicitor, with whom he then exchanged a few letters. What part Mo Bux played in the process is unexplained and the time engaged seems excessive. With whom Mo Bux exchanged correspondence amounting to 51 letters and 12 telephone calls is unclear, as we have not been provided with copies of the correspondence, most of which is presumably with the client and the valuer and accordingly privileged and confidential. It is unclear why no charges have been claimed for the work of Ms De Lagrutta, whose seniority is unknown. It appears that no charge is being made for the work of Mr Taylor, which would be administrative rather than legal and certainly chargeable at a lower rate.

(b) Mr Hafiaz takes no issue with the charging rate for a senior solicitor but questions whether the case justifies more than general supervision by a senior solicitor, with routine aspects of the work being dealt with by a junior solicitor or

paralegal.

(c) Mr Hafiaz considers that the fee charged by the valuer is unreasonable bearing in mind the simplicity of the case; the position set out in his counter-proposal was, however, modified. He accepted that it was reasonable to employ the services of a valuer based in Brentwood at an hourly rate of £185.00; but he questioned whether an inspection was necessary and submitted that, in any event, the time engaged was unreasonable.

(d) Mr Hafiaz referred the Tribunal to the decision of the LVT in relation to Flats 2a and 5 Chichester Way, Perry, Cambs PE28 0DR Case References CAM/12UE/OLR/2010/0042 and CAM/12UE/OCE/2010/0004. In that case a strong Tribunal chaired by the Vice-President of the Eastern Panel was dealing with applications for lease extensions in respect of two flats in the same block. Mr Hafiaz, representing the tenants, argued that the landlord, a company owning many freeholds, was providing regular work in this field to the solicitors who dealt with the applications and would, if bearing the costs itself, expect a substantial discount. The LVT held that a discount of 15% was appropriate. Mr Hafiaz submitted that we should allow a discount of at least 15% in this case.

4. THE LAW

Collective leasehold enfranchisement

4.1 Under section 1 of the Leasehold Reform Housing & Urban Development Act 1993, qualifying tenants of a block of flats, acting together, may (subject to certain exceptions) claim the right to purchase the freehold at a price to be determined in accordance with Schedule 6. The tenants must name a nominee purchaser as Applicant. The Applicant must pay the Respondents' reasonable costs in accordance with section 33. The Applicant must serve notice in accordance with section 13 and the Respondent must serve a counter-notice under section 21. It is important to note that any tenant who, either alone or jointly, owns more that two flats is not a qualifying tenant.

4.2 In addition to the price, there may be issues relating to rights and easements and to the effect of enfranchisement upon nearby land retained by the Respondent. If the Applicant's right to purchase the freehold is admitted or has been determined by the court, but the price or other terms cannot be agreed, the LVT has power under section 24 to determine any disputes.

Costs under LRHUDA 1993

4.3 The landlord's reasonable conveyancing and valuation costs are payable by the nominee purchaser (in the case of collective enfranchisement) under section 33. The nominee purchaser is not liable under section 33 to pay costs incurred by the landlord in connection with the application to the Tribunal, save to the extent that costs relating to valuation evidence may have been reasonably incurred for the purpose of fixing the premium, as provided by the relevant subsection. Costs are to be regarded as reasonable only if and to the extent that such costs might reasonably be expected to have been incurred by the landlord if the circumstances

had been such that he was personally liable for all such costs.

4.4 It is clearly established by a series of High Court and Lands Tribunal decisions that, where the landlord or his agent employs the services of an in-house solicitor, legal executive or licensed conveyancer, costs should be assessed in the same manner as if the practitioner were in private practice.

4.5 The Tribunal has only limited power under Schedule 12 paragraph 10 to the Commonhold & Leasehold Reform Act 2002 to award inter-party costs of the application (limited to £500) in the event of misconduct by a party, which may include cases where, by reason of that party's conduct in relation to the application, costs have been wasted.

5. DISCUSSION AND CONCLUSIONS

5.1 The Tribunal accepted the general thrust of the submissions made by Mr Hafiaz. However, we were reluctant to make a finding in relation to point (d) above as this point was not raised in correspondence. While the Respondent could have attended the hearing, the decision not to attend was made, no doubt to save costs, on the basis of the issues known of the Respondent. The issue of a discount for bulk business is an important point of principle that had not been canvassed.

5.2 Moreover, there is a danger of making double deductions. No doubt a commercial client providing repeat business would expect a competitive rate from its solicitors. The solicitors would take into account that their staff would be able to process repeat business of a similar character from the same client quickly and efficiently. The Tribunal assesses the time to be allowed for the work carried out on the basis that those performing the various tasks involved would be familiar with the processes involved and the client's business and ought therefore to be able to do the work more quickly than solicitors in general practice dealing with the matter on a "one-off" basis. The Tribunal is not satisfied in this case that any specific percentage discount would necessarily be negotiated between the Respondent landlord and an independent firm of solicitors in private practice.

5.3 There was one unusual aspect to the case, namely that the initial notice was originally addressed to the wrong company in the Group to which the landlord belongs. The reason for this appears to be changes of name within the Group; but the outcome was that Mr Hafiaz decided to serve a second notice. There was an issue as to how much extra work this series of events made for the Respondent's solicitor.

5.4 Mr Hafiaz criticised the Respondent's solicitor for taking 2.5 hours to deal with the first notice, the only issue being the name of the addressee. However, the Tribunal notes that only 1 hr is claimed for dealing with the second notice, from which the Tribunal concludes that the solicitor (no doubt being aware that a valid notice would inevitably be served soon) decided to conduct a fairly extensive enquiry at the outset. So long as that was done only once, it does not matter at precisely what stage it was done. Nevertheless, the Tribunal accepts the submission of Mr Hafiaz that the overall time claimed for dealing with the two notices, 3.5 hrs, is too high,

bearing in mind that reviewing leases and title documents is separately itemised.

5.5 The Tribunal considers that the counter-offer made by Mr Hafiaz broadly represents a reasonable assessment of the time a senior solicitor would reasonably require to carry out the necessary work. A more junior solicitor carry out the same work would be likely to take longer and the overall cost would be at least as much, if not more. Allowing a modest sum for the administrative and postage costs of correspondence and £40.00 for Land Registry searches, the Tribunal assesses the Respondent's reasonable legal and administrative costs in the sum of £1,200 excluding VAT.

5.6 The Tribunal also accepts the submission of Mr Hafiaz that the time claimed by the valuer is excessive. In the judgment of the Tribunal, a site view would be essential in order to avoid the risk that some relevant feature apparent on the ground but not apparent from the paperwork might be overlooked. The site view at this location ought not to take more than an hour and the investigation of values and preparation of a basic report (all that would be required at this stage) not more than 3 hrs. Allowing the travel time and travel costs as claimed, the Tribunal reaches a total of £1,007.97 excluding VAT.

5.7 The Tribunal is aware of the argument that, if the Respondent is registered for VAT, no VAT will be paid and thus no VAT should be charged to the Applicant. The Tribunal does not decide that issue because it is unclear whether the Respondent is registered for VAT. No doubt that can be sorted out between the parties; if not, they can apply to the Tribunal for a determination (as to which a time limit will be imposed so that the file can then be closed).

5.8 The total costs are thus assessed in the sum of £2,207.97 + VAT (if applicable).

Wasted Costs

5.9 No application was made for a wasted costs order and, accordingly, no order is made as to costs of the Application.

Geraint M Jones MA LLM (Cantab)
Chairman
10 January 2013