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RESIDENTIAL PROPERTY TRIBUNAL (WALES)

LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0030/12/17

Property: Ocean Reach, Havannah Street, Cardiff Bay, Cardiff, CF10 5SD

Application: An application for costs under section 33 of the Leasehold Reform, Housing and Urban Development Act 1993

Applicant: Ocean Reach Limited (Respondent to the application for costs)

Respondents: (1) Albacourt Limited (Applicants to the application for costs)
(2) Charlton Nominees Limited

Panel: Judge Christopher McNall (Chairperson)
Mr Roger Baynham MRICS (Surveyor-Member)
Mr Hefin Lewis FRICS (Surveyor-Member)

Hearing: Dealt with on the papers, 9 March 2021

DECISION

Ocean Reach Limited shall pay the Respondents' costs under section 33 of the Leasehold Reform Housing and Urban Development Act 1993, summarily assessed in the sum of **£25,875 plus VAT.**

REASONS

1. In this decision, we deal with the Respondents' claim for their costs of enfranchisement under section 33 of the Leasehold Reform Housing and Urban Development Act 1993 (**'the 1993 Act'**). The Respondents are the freehold reversioners (there is a split reversion). We have considered a 139 page bundle with which we have been helpfully provided.

2. Insofar as material, section 33 of the 1993 Act reads:

> "(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 (RTE Company) shall be liable, to the extent that they have been incurred in pursuance of 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 any 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 (RTE Company) 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. The total sum of costs claimed is £44,444, together with VAT (we are told by the Respondents' representatives, being officers of the Senior Courts of England and Wales, that neither Respondent is registered for VAT): see the breakdown in the Respondents' (undated) note at page 1 of the bundle. We have worked from this breakdown, and not from the different sum (£48,126.70 plus VAT) which is set out on the N260 Summary Statement of Costs (which contains some costs which the Respondents accept were included twice). But Ocean Reach's solicitors point out, in our view to some extent fairly, in their note dated 12 October 2020 that the N260 (i) should have been accurate (which it was not); and (ii) should enable us, and the paying party, to identify with ease and segregate which costs are genuinely referable to these proceedings and which fall within section 33, and not to the County Court proceedings (which it does not). Nonetheless, and despite these features, we consider that the appropriate and proportionate way of dealing with this is to do the best we can on the basis of the documents before us, including the parties' representations.

4. The underlying claim, made on 4 December 2017, was for the collective enfranchisement of a development known as Ocean Reach in Cardiff Bay, built in about 2003, and containing 49 apartments on 9 floors together with lower ground/ground floor parking and adjacent restaurant premises.

5. The substantive application, to determine the terms of acquisition, was listed to be heard on 26 and 27 November 2019. By 19 November 2019, the terms of the transfer and the interests falling to be acquired had been agreed. What remained in dispute was the price to be paid for each interest. But on 25 November 2019, the parties - despite their differences as to the proper treatment of the split reversion and the

effect of the rent review provisions - came to terms as to the price to be paid. However, that was at such a late stage (indeed, after the Tribunal's inspection, and after the preparation of trial bundles and exchange of Skeleton Arguments) that the Tribunal convened on 26 November 2019 to hear Counsel for the parties as to the form of the order. The price agreed was £380,000 (being a compromise as against £174,674 in the notice, and £498,700 in the counter-notice).

6. There is no dispute as the principle of costs: namely, that the Applicants should pay the Respondents' costs of and incidental of the claim.

7. We should have regard to the guidance in section 33(2); but this does not mean that, if a receiving party says that he would have personally incurred the costs, that bars us from considering reasonableness. A bare assertion that the section 33(2) test is satisfied is not evidence, and section 33(2) is not a self-certification which ousts the Tribunal's jurisdiction. We have also considered the guidance in the decision of the Lands Chamber of the Upper Tribunal in The Trustees of John Lyon's Charity v Terrace Freehold LLP [2018] UKUT 0247 (LC) (HHJ Stuart Bridge).

8. Against that background, this is a summary assessment where we must, so far as possible, ensure that the final figure is not disproportionate and/or unreasonable having regard to the need to conduct litigation justly and at proportionate cost. We are expected to apply our practical experience of the conduct of claims of this kind to decide whether the costs claimed are reasonable: see John Lyon, Para [28]. We have a generous discretion in determining what is reasonable: *ibid.* Para [40].

The legal costs

9. This assessment is to be on the standard, and not the indemnity, basis. On the standard basis, it is for the Respondents as the receiving parties to satisfy the Tribunal that the costs sought are reasonable and proportionate.

10. There are a number of issues of principle which we must determine.

11. The first is whether the Respondents instructed the right firm of solicitors - i.e., whether this was really work appropriate for a firm on Chancery Lane in central London. Of course, this Tribunal does not control the firm of solicitors which a party chooses to use - that is entirely a matter for the party. But we do control the amount of costs which the paying party must pay the receiving party in relation to those costs.

12. The issue is whether instruction of a central London firm was objectively reasonable. We do not consider that it was. The building is in Cardiff. Cardiff, as the capital city of Wales, and as its commercial and governmental heart, and as a city which has undergone much redevelopment in recent years, has a thriving cohort of prestigious firms of solicitors. We do not accept that the solicitors' work involved in this case was of such complexity or specialism that no firm in Cardiff could have dealt with it, or that the expertise to deal with it could be found only in London: see (for example) Sullivan v Cooperative Insurance Society Ltd [1999] 2 Costs LR 158, and the other authorities

referred to in CPR 47.14.9 commentary. The fact that there was a split reversion is not a feature which puts this case out of the ordinary; nor does the fact that this is a large and prestigious building: there are many such buildings in Cardiff. The fact that the same solicitor happened to have been instructed in 2012, in relation to this same building, makes no difference to this analysis, one way or the other. Nor, to avoid any doubt, does the assessment conducted by the Tribunal in 2012 have any bearing on our assessment now, one way or the other.

13. Our decision as to location of solicitor then has an impact on the rates to be used by us in our assessment. The Respondents are seeking hourly solicitors' rates of £350 (Grade A) and £130 (Grade D). The 2010 rate for Grade A work in Band One: Cardiff (inner) is £217: see The Guideline Rates for Summary Assessment set out in Schedule 2 of the Guide to the Summary Assessment of Costs.

14. But the approach to the rates due in summary assessment has now changed: see the recommendations of the Civil Justice Council's Working Party on Guideline Hourly Rates (chaired by Stewart J) in January 2021 which recommends National 1 rates of £261 (A), £218 (B), £178 (C) and £126 (D) - the first revision of rates which had been fixed in 2010. Also see the remarks of HHJ Hodge QC (sitting as a Judge of the High Court) in Cohen (executor of Hermes) v Fine and others [2020] EWHC 3278 (Ch) (1 December 2020) which describes his approach to uplifting the 2010 rates in appropriate cases.

15. We consider that the approach most recently articulated - of applying an uplift to the 2010 rates to reflect 2018 and 2019 conditions - is the right one.

16. We do consider that the engagement of Grade A fee earners was appropriate, albeit we look to see that the Grade A fee earner has not been charging to include work more appropriately done by a lesser grade fee earner. Here, very little work is recorded on the N260 as having been done by the Grade D fee earner.

17. The work done on documents is claimed at £28,436.37. 38 hours of Grade A time is claimed for 'investigation of right to acquire freehold'. 37.7 hours of Grade A time is claimed for 'work on conveyancing documents'. Both equate to one complete working week for a solicitor. The hours spent are too much for the tasks. Although this was Grade A work, it was relatively routine.

18. Looking at matters in the round, we consider that the appropriate sum payable in relation to solicitors' costs, including work done on documents, is £18,000 plus VAT.

19. Counsel's fees of £9,134.03 said to be "for investigating title and the validity of the initial notice" are claimed. This is the sum total (net of VAT) shown on Counsel's fee note dated 15 October (and not 15 December) 2018. It was appropriate to have instructed specialist Counsel of 1997 Call. However, Counsel's fee note includes sums in connection with proceedings where the validity of the notice was in issue, including the brief fee for hearing in the County Court at Cardiff (£3,500) as well as expenses for that, and a matter about the jurisdiction of the County Court.

20. The County Court proceedings were settled, by consent, on the basis of no order as to costs: see the order dated 29 June 2018, and approved by District Judge Vernon on 17 October 2018.

21. Costs incurred solely in relation to the County Court proceedings - whether solicitor costs or Counsel's fees - are not recoverable in this Tribunal. If they were to have been claimed, that claim should have been made in the County Court.

22. We accept that there was work done by Counsel in relation to this claim, in this Tribunal, which work was not part of the County Court proceedings which is recoverable in these proceedings. Doing the best that we can, we allow £3,500 plus VAT.

The surveyor's costs

23. £8,575 is claimed for the valuation by 'My Leasehold'. That was calculated on the basis of £175 per flat plus VAT. The hours spent are said to have been 35 (which, £8,575 divided by 35 = £245/hr).

24. Even taking account of the fact that the surveyor ended up having to chase his counterpart (see the Tribunal's decision dated 25 September 2019) which will have caused some modest additional work, we consider that these figures, looked at in the round, are too high and not reasonable. As we know from our own inspection, many of the flats were identical, or near-identical, and there is no evidence before us that the surveyor did inspect 49 flats, although he will have had to inspect some, and undertake work in drawing up his expert report. We consider the correct approach to be to allow the hours claimed, 35, at the rate of £125/hr - we allow £4,375 plus VAT.

Outcome

25. This comes to £25,875 plus VAT. Stepping back, we consider this sum, overall, to be both reasonable and proportionate. The total sum payable in relation to costs of and incidental to the Application shall be £25,875 plus VAT.

Dated this 10th day of March 2021

C McNall
Chairman