

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
LEASEHOLD VALUATION TRIBUNAL**

**Property** : 133 and 133A Queens Road,  
Watford,  
Herts WD17 2QL

**Applicant** : Andrew Berstein

**Respondent** : Reo Estates and Property Investment  
Company Ltd.

**Case number** : CAM/26UK/OC9/2009/0005 & 6

**Date of Application** : 4th August 2009

**Type of Application** : To determine the costs payable on  
enfranchisement (Sections 33 and 60 of  
the Leasehold Reform and Urban  
Development Act 1993 ("the 1993 Act"))

**The Tribunal** : Mr. Bruce Edgington (lawyer chair)  
Mr. David Brown FRICS MCI Arb

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**DECISION**

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1. The reasonable legal costs and disbursements of the Respondent payable by the Applicant pursuant to Section 33 of the 1993 Act are £1,530.00 plus VAT if applicable.
2. The reasonable costs of valuation of the Respondent payable by the Applicant pursuant to Section 33 of the 1993 Act are £730.00 plus VAT if applicable.
3. The reasonable legal costs and disbursements of the Respondent payable by the Applicant pursuant to Section 60 of the 1993 Act are £148.75 plus VAT if applicable.
4. The reasonable costs of valuation of the Respondent payable by the Applicant pursuant to Section 60 of the 1993 Act are £50.00 plus VAT if applicable.
5. It is a matter for the solicitors to sort out the VAT. If the Respondent is registered for VAT purposes then no VAT can be claimed from the Applicant as the legal service has been supplied to the Respondent.

If payable, the rate will have to be determined following recent changes.

## Reasons

### 6. Introduction

This dispute arises from the service of two Initial Notices seeking a lease extension in respect of 133A Queens Road and then the collective enfranchisement of 133 Queens Road by the Applicant as the purchaser. In these circumstances there is a liability on the nominee purchaser to pay the lessor's reasonable costs.

7. The Tribunal decided that this was a case which could be determined on a consideration of the papers without an oral hearing. This information was conveyed to the parties in the Directions Order issued on the 2<sup>nd</sup> September 2009. In accordance with Regulation 5 of **The Leasehold Valuation Tribunals (Procedure)(Amendment)(England) Regulations 2004**, notice was given to the parties (a) that a determination would be made on the basis of a consideration of the papers including the written representations of the parties on or after 27<sup>th</sup> October 2009 and (b) that a hearing would be held if either party requested one before that date.
8. No such request was made but when the Tribunal came to consider the evidence it found that there was insufficient information upon which to reach conclusions. A letter was sent to the Respondent's solicitors seeking further information and this eventually arrived on the 26<sup>th</sup> January 2010.

### The Law

9. It is accepted by the parties that the Initial Notices were served and therefore Sections 33 and 60 of the 1993 are engaged. The two Sections are similar but not exactly the same. As the vast majority of the costs claim are under Section 33, this is the detailed law described. The Applicant has to pay "*...to the extent that they have been incurred in pursuance of the notice...*" the Respondent's reasonable costs of and incidental to:-
  - (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 the 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*

10. What is sometimes known as the 'indemnity principle' applies i.e. the Respondent is not able to recover any more than he would have to pay his own solicitors or valuer in circumstances where there was no liability on anyone else to pay (Section 33(2)).
11. With solicitors representing each party, the Tribunal is disappointed that they cannot follow clear instructions which has made the Tribunal's task that much more difficult. The fault lies with the Respondent's solicitors. They were months late in the filing of their final evidence and they do not endorse their replies to the objections on the objections form despite space being left for that purpose. Even firms of solicitors with a small litigation department are perfectly used to dealing with costs assessments in the county court where objections are routinely e-mailed and replies are then endorsed in the appropriate places and returned so that the Judge has one document to deal with, much like a Scott Schedule.

#### **Legal fees**

12. The charging rate for the legal costs is disputed to the extent that the charging rates used and claimed are unclear from the individual items claimed. In a short statement attached to the replies to the objections it is said that the fee earner is Andrew Storer who is a solicitor with more than 30 years experience including many years dealing with enfranchisement. It is also said that his charging rate is £212.50 per hour plus VAT. In the original costs schedule and the revised one submitted with the replies to the objections, the charging rate used is £215 per hour and this is confirmed in the schedule attach to the replies to the objections. There is no explanation for the discrepancy.
13. Mr. Storer appears to be a Grade A fee earner and the Tribunal agrees that a Grade A fee earner is appropriate for enfranchisement work. The general band of rates claimed is not challenged.
14. There is one point of principle raised in the objections which is that claims for incoming letters should not be allowed. This objection is upheld. It has long been the general rule in costs assessments in the courts – even costs payable on an indemnity basis – that routine incoming letters are not chargeable unless they are so long and/or complex that they justify a separate attendance note.
15. The objections deal with matters by numbered paragraphs and these reasons will do the same as this would seem to be the most convenient way of dealing with matters. It should be noted that when the objections were prepared, there was very little detail of what letters had been written and received. Fresh schedules have been supplied with the replies and these are the schedules used by the Tribunal:-

#### **133A Queens Road**

Para 2 The dispute here is that the letters are not described and 3 units for considering the Initial Notice are unreasonable.

The letters have now been described and it would appear that all outgoing letters are within the provisions of Section 60 save for the acknowledgement of the Section 13 Notice. 3 units are reasonable for considering an Initial Notice as the law has to be checked, as does the title and the Applicant's entitlement to a lease extension. The incoming letters are disallowed. By removing the incoming letters and the last outgoing letter, and allowing the time and the outgoing letters at £212.50 per hour, the reasonable costs allowed are £148.75 i.e. 7 units @ £21.25 per unit.

### **133 Queens Road**

Para 3 This dispute is much the same as that for 133A, namely that insufficient detail has been provided and 4 units are excessive for perusal of the Initial Notice. The Tribunal now has the benefit of a description for each item. A read through the items claimed shows that they are all within the provisions of Section 33 save for the telephone call to the Tribunal and all appear to be reasonable. Despite the comments of the Respondent's solicitors, this Tribunal has seen claims far in excess of the claim here for 9 units for considering the Initial Notice, the title deeds and preparing the Counter-Notice. The claim here for these items is reasonable and proportionate. The only item not allowable is the letter to the valuer asking him to approve the draft Counter-Notice. However, this is balanced out by allowing a further letter out to acknowledge receipt of the Initial Notice which was disallowed under Section 60. Under objection 3.5, the Respondent's solicitors say that there were letters and the Tribunal accepts that. Under 3.6 it seems to the Tribunal that the letters were incidental to the Initial Notice and therefore claimable. By removing the incoming letters and the telephone call to the Tribunal on the 10<sup>th</sup> September 2009 and allowing the remaining time, telephone calls and outgoing letters at £212.50 per hour, the reasonable costs allowed are £1,530.00 i.e. 72 units @ £21.25 per unit.

### **Valuer's fee**

16. The valuer's fee claimed for 133A Queens Road is £150.00 plus VAT which is under the heading of '133 Queens Road' but clearly seems to be relating to the Section 60 claim. It is for what are described as abortive costs i.e. for receiving instructions, preparing the files and gathering information. The only fee which is recoverable is for the valuation. Some of this claim may have been preparatory to the valuation but it is difficult to see how this could amount to £150.00. The offer in the objections is £50.00 plus VAT and this would seem to this Tribunal to be a reasonable and sensible offer and is adopted as being reasonable.
17. As far as 133 Queens Road is concerned, the claim is accepted by the Applicant save for a comment that it should include the work undertaken in respect of 133A Queens Road. This is not agreed by

the Tribunal. The figure claimed is for the valuation of 133 Queens Road and appears to be reasonable.



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**Bruce Edgington**  
**Chair**  
**28<sup>th</sup> January 2010**