

IN THE FIRST TIER TRIBUNAL (PROPERTY CHAMBER)

B E T W E E N:

COLUMBIA HOUSE PROPERTIES (No.3) LIMITED

Applicant

AND

IMPERIAL HALL FREEHOLD LIMITED

Respondent

**WITNESS STATEMENT OF
ROGER HARDWICK**

I, **ROGER HARDWICK** of Brethertons LLP, Strathmore House, Waterperry Court, Middleton Road, Banbury OX16 4QD will say as follows:

Introduction & background

1. All the matters contained herein, which are within my knowledge, are true, and those which have been obtained as a result of speaking to others and from reading documents are true to the best of my knowledge and belief.
2. From 12th December 2011, I have been employed by Brethertons LLP as the Head of Enfranchisement. My department presently consists of two qualified solicitors, one trainee solicitor, two legal assistants, one full time secretary and two part time secretaries.
3. I was instructed by the Applicant, and their agents: Sterling Estates Management, to act on the Applicant's behalf in connection with a collective enfranchisement claim to

acquire the freehold of the building and appurtenant land known as Imperial Hall, 104 – 122 (even) City Road, London, and registered at the Land Registry under Title Number NGL655333 (“the Building”); under Part I, Chapter 1 of the Leasehold Reform, Housing & Urban Development Act 1993.

4. The claim was made by way of an Initial Notice dated 20th January 2012. The Applicant served a Counter Notice admitting the claim (but disputing the terms of acquisition) on 22nd March 2012. An Application to the LVT was submitted at the beginning of August 2012 to determine the terms of acquisition. The LVT hearing had been listed for two days (27th and 28th November). Terms were agreed on 26th November and the hearing was vacated. Contracts were exchanged on 13th February 2013 and the sale of the freehold completed on 10th April 2013.
5. I make this statement in support of the Application brought by the Applicant pursuant to s.91(2)(d) of the Leasehold Reform, Housing & Urban Development Act 1993 (“the Act”), for a determination as to the reasonableness and recoverability of the Applicant’s costs in respect of sums it has paid to its agent: Sterling Estates Management (“SEM”).
6. In particular, I make this statement in response to the Respondent’s Statement of Case dated 9th January 2014, which was sent to me by email on 10th January 2014, timed at 16.37 (I was out of the office at the time); and which arrived in the post on the morning of Monday 13th January 2014.
7. I will adopt the headings used in the Respondent’s Statement for ease of reference.

Whether amounts claimed are within s.33 of the Act

8. I understand that Philip Sherreard will be attending the hearing to provide evidence in support of the cost schedule provided by SEM. If there are any matters which are unclear to the Respondent, they can be put to Mr Sherreard in cross-examination. It is not for me to comment on those specific items.

9. I would only add that SEM's involvement included assisting (e.g. in describing the premises) and providing instructions (on the Applicant's behalf), in connection with my investigations concerning the Respondent's right to acquire the freehold of the Building; questions relating to the extent of the interests proposed to be acquired by the Respondent; the conveyance of those interests, and the terms of the conveyance (and contract); the Applicant's right to a discretionary leaseback (and the terms of that leaseback); and my own instructions to Eric Shapiro of Chesterton Humberts (the Applicant's valuer). All of those matters are, in my view, "incidental" to the items listed in Section 33(1) of the 1993 Act.

Alleged Duplication of Solicitors' and Valuer's Work

10. The Respondent avers in its statement of case that neither the Respondent nor its solicitors received any correspondence from SEM. That may be correct, but it is hardly surprising. Nor does it detract from the extent of SEM's involvement in the process. Party to party correspondence is generally between solicitors, who negotiate and make representations on behalf of their clients. I would not expect the nominee purchaser and the landlord or their agent to communicate directly on matters relating to the enfranchisement claim, where those parties are legally represented. Moreover, the Respondent's solicitors should not be corresponding with my landlord client or its agent, as a matter of professional conduct (Indicative Behaviour 11.4, *Solicitors Code of Conduct 2011*).
11. The role of agent is that of an intermediary. That is the role that SEM fulfilled in this instance (and it is a role for which they were entitled to be paid). They were not holding themselves out to be solicitors or surveyors. Rather, they interacted with us, on the Applicant's behalf. Although the Applicant made all the key decisions; on a day to day basis, the majority of our instructions came through the agency of SEM. SEM was better placed to answer queries about the building at the outset, given its direct experience in managing the building over a number of years. This was particularly useful, for example (but by no means an exhaustive list), when it came to providing a preliminary assessment of the Respondent's satisfaction of the qualifying conditions for enfranchisement; and in attempting to determine or agree (with the Respondent) the number of parking spaces in the communal areas, which were let on

long leases (Land Registry searches proved unreliable for this purpose). They also had the time and the resources to answer my queries promptly, where the directors of the Applicant Company were frequently abroad or otherwise unavailable.

Alleged Inconsistencies Between SEM Timesheet & Costs Schedule

12. Brethertons' Schedule of Costs is by no means a full account of my time (or that of the other fee earners in my team) undertaken in consequence of the Respondent's claim. When preparing the timesheet, I was very careful to exclude any elements, which I considered to be irrecoverable, either because they fell outside the scope of Section 33, or because they would be considered a duplication of work. The Tribunal will note that our Schedule of Costs contains comparatively few emails in and out. By contrast, the number of actual emails to and from SEM (on the Applicant's behalf) was quite extensive. At the time of preparing the Schedule of Costs, I was in possession of SEM's timesheet. It is no coincidence that the vast majority of their entries do not appear on our Schedule.

Costs Limited to £5,000 plus VAT

13. The Applicant incurred *and paid* (as I understand it) SEM's costs the sum of £10,305 plus VAT. It is true that the Completion Statement specified a figure of £6,000 (inc. VAT). As I explained in my email of 26th March 2013 (a copy of which is attached as exhibit "RAH1"), this was no more than an attempt at compromise. There is a history of litigation between the Applicant and SEM on the one hand, and the Respondent on the other; including a dispute over costs incurred in connection with a right to manage claim (which has recently been heard by the Upper Tribunal (Lands Chamber)). It was considered that the Respondent would be much more likely to agree £6,000 than the actual value of their time, avoiding the need for yet further proceedings before the Tribunal, although (regrettably) this proved not to be the case.

Conclusion

14. For the above reasons, I would respectfully ask that the Tribunal award the full amount set out in the Schedule of Costs.

15. Finally, I was not expecting to provide a statement in support of this Application and do so only because I feel that the allegations contained in the Respondent's statement

require some input from me. Unfortunately, with the hearing date less than a week away, I am unable to attend the hearing due to other pressing professional commitments. Should the Respondent or their Counsel wish to cross-examine me, I would ask that, in the alternative, questions be put to me in the form of written submissions following the hearing, which I would be happy to respond to. Alternatively, the Applicant will have no option but to request an adjournment to a future date at which I am able to attend. I mean no disrespect to the Tribunal and apologise for any inconvenience this may cause.

STATEMENT OF TRUTH

I believe that the facts stated in this witness statement are true to the best of my knowledge and belief.

Signature:



ROGER HARDWICK

Dated this 16th day of JANUARY 2014

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EXHIBIT

This is the exhibit marked "RAH1" referred to in the Witness Statement of Roger Hardwick dated this 16th day of January 2014.

Roger Hardwick

Subject: FW: Imperial Hall
Attachments: S36C-113032518100.pdf

From: Roger Hardwick
Sent: 26 March 2013 15:32
To: 'Joyce Cooper (j.cooper@maxwellwinward.com)'
Subject: FW: Imperial Hall

Dear Joyce,

I attach SEM's timesheet with respect to the above. The (much) lower figure of £5,000 was simply an attempt at compromise, in the knowledge that your client would be unlikely to accept the full amount.

Kind regards,

Roger