



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case reference : **LON/00AU/OC9/2014/0114**

Property : **Flats 1 and 2, 61 Rawstorne Street,
London EC1V 7NJ**

Applicant : **Greta Jurado (1)
Philippe Jurado (2)**

Representative : **Harper & Odell Solicitors**

Respondent : **Lalji Naran Patel (1)
Kesharben Lalji Patel (2)**

Representative : **Thirsk Winton LLP**

Type of application : **For the determination of
reasonable costs pursuant to
section 33**

Tribunal members : **Judge O'Sullivan**

Date of decision : **6 February 2015**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the reasonable costs allowed under section 33(1) of the 1993 Act are as follows;
 - i. Legal fees of Thirsk Winton LLP are allowed in the sum of £425 plus Vat;
 - ii. Counsel's fees are allowed in the sum of £750 plus Vat;
 - iii. Managing agents fees are allowed at £50 plus Vat; and
 - iv. Valuation fees are allowed at £1,500 plus Vat.
- (2) The total costs allowed are therefore £2,725 plus Vat making a total of £3,270.

Introduction and background

1. This is an application for the determination of the reasonable costs payable by the applicants to the respondents pursuant to section 33(1) of the Leasehold Reform, Housing and Urban Development Act 1993 (the "1993 Act") in connection with a notice dated 8 October 2012 claiming to exercise the right to acquire the freehold interest in the property known as Flats 1 and 2, 61 Rawstorne Street, London EC1V 7NJ.
2. The notice served under section 13 was subsequently deemed to be withdrawn as the terms of acquisition had been agreed on 12 August 2013 and a period of four months had expired without either a binding contract or an application having been made to the court.
3. By way of background the tribunal would mention that the Applicants had previously argued that a comprehensive purchase agreement had been reached covering all aspects of the enfranchisement and that there was no stand alone agreement relating to the level of costs recoverable. The Respondents argued that when completion did not occur the other

elements of the agreement fell away leaving only the agreement in relation to costs. The tribunal considered this matter at a hearing on 12 November 2014 and concluded that there was no contractual agreement in place in respect of the payment of the costs and that accordingly the tribunal has jurisdiction to consider an application for determination of those costs under section 33(1) of the 1993 Act.

4. This determination is made on the basis of written representations and without an oral hearing according to the procedure set out in regulation 13 of the Leasehold Reform, Housing and Urban Development Act 1993. The landlord has provided a bundle of documents relating to costs in accordance with the tribunal's pre-determination directions. Both parties have lodged submissions.

The law

5. By section 33(1) of the Act, where a notice under section 13 is given, the nominee purchaser is liable, to the extent that they have been incurred in pursuance of the initial notice, for the reasonable costs of and incidental to the following:
 - (a) *any investigation reasonably undertaken -*
 - (i) *of the question whether any interest in the specified premises or any other property is liable to acquisition in pursuance of the 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 may require;*

(d) any valuation of any interest in the specified premises or other property;

(e) any conveyance of such interest.

6. The costs in issue are legal costs in the sum of £720, Counsel's fees in the sum of £1920, managing agents' fees in the sum of £300 and valuation costs in the sum of £2,500 all inclusive of VAT making a total of £5,340.

Legal costs

7. Legal costs claimed by Thirsk Winton LLP total £600 plus Vat. They were not retained until the conveyancing aspect of the transaction. The Tribunal has been provided with a copy of an invoice which describes the work carried out as "*Services rendered in connection with dealing with a statutory freehold disposal of the above property*". The work was carried out by Jason Winton, a fee earner with more than eight years post qualification experience and therefore said to be a Grade A fee earner pursuant to the Solicitors Guidelines Hourly Rates 2010. The hourly rate applied was £250 per hour plus Vat. A breakdown was provided totalling 24 units as follows;

Attendances on client: 4 units

Attendances on Applicants: 9 units

Drafting transfer: 5 units

Preparing completion statement: 3 units

Estimated time in completing transaction: 3 units

8. In reply the Applicants point out that the solicitors were assisted by Counsel and this work should be charged as Grade B or C fee earners at £192 or £161 plus Vat per hour respectively. The Applicants accept the number of units claimed in all respects save for those claimed in

respect of the preparation of the completion statement and estimated time in completing the transaction. The Applicants say that a completion statement can appropriately be prepared by a Grade C fee earner and that given the matter was never completed the time for completing the transaction should be disallowed completely. In response the Respondents say that there were no Grade B or C fee earners at Thirsk Winton at the time and that in any event they were not assisted by Counsel as Counsel was retained in relation to the notices only and Thirst Winton in relation to the conveyancing. The Respondents say that the correct band is the London 3 band in respect of which the range for Grade A is £229-267. Although it is accepted that the transaction did not complete it is said that correspondence was entered into in relation to the deemed withdrawal of the notice which exceeded the 3 units.

Legal costs – the tribunal’s decision

9. The tribunal accepts that the charging rate falls within a reasonable range for a Grade A fee earner in London 3 band and allows the hourly rate of £250 plus Vat.

10. It accepts that the practice had no Grade B or C fee earners at this time and accordingly all work was carried out by a Grade A fee earner. However given the work is being carried out by a Grade A fee earner it would expect the work to be carried out efficiently and for it to take less time than it would a more junior member of staff. 5 units are charged for drafting what the Tribunal imagines would be a straightforward transfer (although it has not been provided with a copy) which seems to be excessive. Some 3 units for drafting a straightforward completion statement also appears to be excessive. The tribunal agrees that the claim for completing the transaction should be disallowed given that the transaction did not complete. Accordingly the work is allowed as follows;

Attendances on client: 4 units

Attendances on Applicants: 9 units

Drafting transfer: 2 units

Preparing completion statement: 2 units

Estimated time in completing transaction: disallowed

11. The total units allowed are therefore 17 units at a cost of £25 per unit making a total of £425 plus Vat.

Counsel's fees

12. Counsel's fees are claimed in the sum of ££1,620 plus Vat. A fee note was provided which detailed the work carried. This included on 5 December 2012 taking instructions and perusing documents, advising in relation to the initial notice, the basis of valuation and rights and obligations under the initial notice. 4.2 hours is claimed in respect of the above at a rate of £250 plus Vat per hour. On 10 December 2013 a further 2.2 hours at £250 plus Vat per hour is charged for "*settling notice in reply*".
13. The Applicants say that Counsel's fees are excessive for the provision of advice and service of a counter notice. It is said that the initial notice and counter notice are no different from the routinely produced notices commonly used and it is suggested 1.5 hours is allowed. In response the Respondents say that there were four flats which dictated the time necessary for a thorough investigation of title and is considered a reasonable time to reflect the particular complexities of the case. The complexities are said to arise from the differing leases between three of the flats and one of the flats. Further it is submitted that 2.2 hours is a reasonable amount of time to spend on preparation of a crucial notice where any mistake could lead to serious loss by the freeholder.

Counsel's fees – the tribunal's decision

14. The tribunal found itself at somewhat of a disadvantage given it had not been provided with copies of the leases and could not assess the complexities of the case. It has however had sight of the initial notice and counter notice.
15. No criticism is made by the Applicants of the hourly rate applied and the tribunal agrees that £250 plus Vat is a reasonable charge for a specialist in this field.
16. The tribunal agrees that the time spent by Counsel appears to be wholly excessive even in the light of what is said to be a complex case. Doing the best it can on the basis of the information provided the tribunal allows 2 hours in relation to the time spent on 5 December 2012 and 1 hour in relation to the time spent in drafting the counter notice on 10 December 2012 making a total of 3 hours allowed. The total costs allowed are therefore £750 plus Vat.

Managing agent's fees

17. Fees in the sum of £250 plus Vat are claimed. An invoice was provided which describes the work as

“Receiving your instruction and office meeting regarding Leaseholder Reform Notices section 13- assisting, discussion matters on the procedure etc, service of notices.

Faxing the landlord's response 12 December 2012 to Harper Odell Solicitors

*Special Post of Landlords Section 21 Notice to Harper Odell Solicitors
11 Dec 2012*

Total cost £50

Providing details on Ground rent and Service charge arrears for 3 flats to solicitors and client

*Narration of works : Professional services in connection with above
Surveyor P Patel”*

18. The Applicants contend that there was no need for the managing agents to carry out any work in relation to this matter save for the provision of routine accounting information which should have in any event been readily available. The Applicants contend that £50 plus Vat should be allowed. In response the Respondents say that the managing agents assisted with postage and fax facilities and later provided appointments to enable preparation of the completion statement and were “*essential*” in compiling the completion statement.

Managing agent’s fees – the Tribunal’s decision

19. The narrative prepared by the managing agents appears to suggest that they acted in an advisory capacity, there are references to “*discussion on the procedures*” and “*services of notices*” and the fee earner involved appears to be a surveyor. Given that Counsel was advising in relation to these matters this would not be recoverable as this would be duplication. The tribunal is not clear why it is said that offices were provided for the purposes of preparing a completion statement when Thirsk Winton LLP prepared and charged for the completion statement. The tribunal has not been provided with a copy of the management agreement and is unclear on what matters are covered by the general management fee and the fee basis agreed for matters beyond that. This would have been helpful. The tribunal considers that some time should be allowed for the time spent serving the notices and a small amount of time for accessing what should be readily available information in relation to the ground rent and any service charge arrears. Accordingly it allows a fee of £50 plus Vat.

Valuation costs

6. The valuation costs total £2,000 plus Vat and comprise of work carried out by Richard John Clarke, Chartered Surveyors. This work was said to be carried out on a fixed fee basis, based on the size and location of the

property to be valued and the likely work to be undertaken in carrying out the research required to provide the necessary valuation and advice. The Applicants says the Applicants' own surveyor's fees were £400 plus Vat for the valuation and the fees for negotiation were £700 plus Vat. Copies of those invoices were provided. The Applicants therefore propose a similar fee not exceeding £1200 plus Vat to be appropriate. In response the Respondents point out that fees for negotiation are not recoverable. It is said however that a fee of £2,000 plus Vat for valuing a large development comprising four flats is not sustainable which equates to £500 plus Vat per flat.

7. The Tribunal did not have the benefit of seeing either the Applicants' or Respondents' valuation reports as they had not been provided. These would have been helpful. The tribunal allows the sum of £1,500 plus Vat which it considers a reasonable sum for a valuation of this type.

Name: S O'Sullivan

Date: 6 February 2015