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

Case Reference : LON/00AQ/OC9/2013/0020

Property : Maison Alfort 251 High Road
Harrow HA3 5EL

Applicant : Kamlesh Kumar Anand (1)
Buttercup Building Lts (2)

Representative : Ms R Cattermole , Counsel

Respondent : Maison Alfort Freehold Ltd and
Others

Representative : Mr D Moore , Solicitor

Type of Application : Costs under s33 Leasehold Reform
Housing and Urban Development
Act 1993

Tribunal Members : Mrs F J Silverman Dip Fr LLM
Mr L Jarero BSc FRICS

**Date and venue of
Hearing** : 25 September 2013, 10 Alfred Place,
London WC1E 7LR

Date of Decision : 09 October 2013

DECISION

The Tribunal allows the Applicants the sum of £5180 plus VAT in respect of their costs under s33 Leasehold Reform Housing and urban Development Act 1993 . This sum is payable by the Respondent .

REASONS

- 1 This decision relates to an application for costs assessable under s 33 Leasehold Reform Housing and Urban Development Act 1993 (the Act) made by the landlord reversioners of the property situated and known as Maison Alfort 251 High Road Harrow HA3 5EL (the property) where a notice for collective enfranchisement had been served but not pursued by the Respondent.
- 2 The matter had been set down for a costs hearing to be decided on paper submissions in August 2013 but had been adjourned and re-listed for an oral hearing because the Applicants' papers were in disarray.
- 3 The hearing took place before a Tribunal sitting in London on 25 September 2013 at which the Applicants were represented by Ms R Cattermole of Counsel and the Respondent by Mr D Moore, Solicitor. Four bundles of documents were presented to the Tribunal on the Applicants' behalf and one for the Respondent.
- 4 At the commencement of the hearing on 25 September 2013 the Applicants' counsel had not received all the documents from her own client and the Respondent had not been served with some parts of the Applicants' case. The commencement of the hearing was therefore delayed to permit copies of the missing documents to be made and perused by the respective parties.
- 5 The issues before the Tribunal were firstly whether the Applicants were entitled to costs at all (ie whether s33 applied to the present situation) and secondly, if s33 did apply, whether the costs demanded by the Applicants were reasonable .
- 6 The factual background to the application is that the Respondent served a notice asking for collective enfranchisement of the property on 10 September 2012. A counter notice rejecting the Respondent's claim was served by the Applicants citing as the sole reason for rejection the fact that more than 25% of the property was subject to commercial usage.
- 7 The letter accompanying the Applicants' counter notice suggested that the Respondent's notice had been defective on two separate grounds unconnected with the reason cited in their counter notice.
- 8 No further action was taken by the Respondent on that notice but a new notice was served by them in July 2013 . The Applicants' time for service of a counter notice under the new notice had not expired as at the date of the present hearing .
- 9 The Respondent argued that the original notice served by them in 2012 had been defective or invalid and had therefore been void ab initio. They asserted that if the notice had been a nullity from the outset , it had never existed and therefore could not fall within the definition of the word 'notice' in s33 of the Act. In such a case the Respondent

could not be liable for costs claimed under that section. The Respondent relied on the *Poets Chase* case in support of their contention.

10 The Applicants rejected the Respondent's assertions saying that it was clear on the face of the initial notice that the Respondent was representing that they had served a valid notice under s 13 of the Act and that they clearly expected the Applicants to rely on that representation. Secondly, the Applicants did rely on that representation as evidenced by the fact that the Applicants then instructed both lawyers and surveyors. The costs incurred in so doing were an obvious and tangible detriment to the Applicants. Fourthly, it would be wholly inequitable to allow the Respondent to renege on their representation that their notice had been validly served.

11 Although the Tribunal has some sympathy with the logic of the Respondent's arguments, having considered the documentary evidence and case law referred to by the respective parties, the Tribunal concludes that in the present case the stronger argument lies with the Applicants and the Tribunal therefore holds that the Applicants are entitled to claim costs under s33 of the Act. The Tribunal did not consider that the issues in the *Poet's Chase* case were on a direct parallel to the present scenario and Mr Moore very correctly pointed out to the Tribunal that a similar case recently adjudicated on by a differently constituted Tribunal had come to the decision that s33 would apply in circumstances almost identical to those under discussion in this case. The Tribunal considers that the failure to act on the notice served in September 2012, coupled with the service of a new notice in 2013 amounts to a deemed withdrawal of the 2012 notice. The notice must have been withdrawn implicitly at the latest on the date of the service of the second notice in July 2013. For the purpose of this decision the precise date is not relevant because the only costs put forward by the Applicants for consideration after the date of service of the counter –notice clearly relate to the preparation for the cost hearing itself and so are not claimable under s 33.

12 That being so , the Tribunal went on to consider the schedules of costs submitted by the Applicants.

13 Item: Douglas and Gordon invoice 14 November 2012

This item relates to the valuer's fees for inspecting the property . The amount claimed by the Applicant was £6,720 (inc VAT) and the Respondent was prepared to pay £2000 plus VAT for this item. The Tribunal considers that some of the work undertaken by Douglas and Gordon was not necessary at this stage of the proceedings ie it was not necessary to research comparable sales evidence settlements etc when it would have been evident from having measured the property that the Respondent's notice must fail because of the percentage of commercial usage of the property. Similarly, it was probably not

necessary for the valuer to have visited every flat in the block when the agreed evidence was that there were only two different flat types in the block and all flats of each type were identical except as to the floor on which they were situated (Bundle A4 p 2). The Tribunal allows a sum of **£2,500 plus VAT** as a reasonable sum for this valuation .

14 Item: Anderson Gover invoice dated 12 November 2012.

This invoice is disallowed in total (bundle A3 page 14). The invoice purports to relate to advice given on an enfranchisement valuation report prepared by others. It is unspecific as to who the 'others' are but the only other reference in the supplied documentation to an enfranchisement report relates to that prepared by Douglas and Gordon (above) which is dated 14 November 2012 ie after the date of the invoice under discussion .

15 Item: Cheal Asset Management Account

Mr Anand, one of the landlord reversioners is himself the Director of Cheal Asset Management Ltd and also of Buttercup Building Ltd and seems with this invoice to be seeking to pay himself for work done by him on his own behalf and that of his company (Bundle A3 p 13). This is not permissible and is further disallowed on the grounds that the Applicants instructed qualified lawyers to undertake this work for them and are seeking also to obtain reimbursement of those lawyers' charges .

16 Item: Counsel's fees : Ellodie Gibbons

The Applicants obtained an advice from Ms Gibbons on 9 October 2012 in respect of which the Tribunal is prepared to allow the full fee of **£1000 plus VAT** (bundle A3 p 11) . A second opinion was sought by the Applicants on 16 November 2012 for which Counsel charged £750 plus VAT (bundle A3 p12) . That second advice included the drafting of a notice which it is presumed relates to the single page counter notice which was later served on the Respondent. The Respondent was prepared to offer £250 plus VAT in respect of the second advice. The Tribunal considers that **£500 plus VAT** would be reasonable for this work and allows that sum.

17 Item: Costs of Sykes Anderson LLP

The Applicants instructed Sykes Anderson to act for them in relation to this matter. The firm did not appear and was not represented at the costs hearing. The solicitors' time costing schedule (bundle A3 pages 1-9) shows an itemised breakdown of costs incurred by the firm. The Tribunal was told that Mr Sykes , a partner, charged £375 per hour, Ms Mear, an assistant solicitor had an hourly charging rate of £325 and Ms Tabenko, presumed to be a para-legal, was charged at £100 per hour. The Tribunal considers that an hourly rate of £250 is more appropriate for a solicitor practising in the suburbs of north London and accordingly applies that rate to Mr Sykes's charges. Ms Mear's only charges were logged on 1 and 2 November and related to

just over 4 hours' work (£1127.50) for 'perusal/consideration'. There is no indication as to what Ms Mears might have perused or considered. Ms Mear's time is therefore disallowed in total. The Tribunal agrees Ms Tabenko's hourly rate of £100 but disallows the three items for 'drafting' on 8, 9 and 12 November 2012. The only item which needed drafting in this case was the Applicants' counter-notice which was drafted by Counsel. The Tribunal does however allow **18 units** on 8 November 2012 where Ms Tabenko seems to have attended a client meeting with Mr Sykes (described as 'conference'). The Tribunal disallows Ms Tabenko's items on 20 November for 'perusal/consideration' and 'travel and waiting' because there is no indication as to what these relate or why they were necessary. The entries on Mr Sykes' time sheets were not presented in chronological order, and no details other than the bare entries on the time sheet were available to the Tribunal. A number of items listed appear not to relate to the collective enfranchisement (eg 'telephone call to clarify re s42 notice Flat 2') and clearly cannot be claimed as part of the s33 costs in this application. Other items were so imprecisely described that the Tribunal was unable to ascertain whether or not they were valid chargeable items (eg 'time spent for period 29/10 to 6/11 inc'). These items too have been disallowed because they cannot be directly linked with the necessary work on the collective enfranchisement and it was not the intention of parliament under s33 to burden a nominee purchaser or the tenants of flats with a landlord's extraneous costs. For that reason, the only items of costing allowed to Mr Sykes are : 8 November **20 units** for preparation for and attendance at a meeting with the client including 3 units for perusing the documents ; 12 November **8 units** for dealing with advice to the client ; 15 November drafting instructions to Counsel , **4 units**; 19-20 November **8 units** for dealing with the counter notice , its signature and service. In total therefore the Tribunal allows **18 units @£100 for Ms Tabenko = £180 and 40 units @£250 for Mr Sykes = £1000** (in both cases plus VAT).

18 Item : Miscellaneous costs

The only costs items for which the Respondent can be liable are those allowed by s33 of the Act (see 'The Law' below). Included in the Applicants bundles were a number of miscellaneous invoices some of which did not relate to the property (eg Bundle A1 p48, Anderson Gover bill relating to Flat 8) others of which cannot relate to the initial notice and counter notice at all eg (bundle A2 unnumbered page -payment of fee of £3600 to Counsel on 3 June 2013). With the exception of those items discussed and for the avoidance of doubt, only the fees discussed in paragraphs 13-17 inclusive above are allowed . All other costs and fees are disallowed for the reasons stated in this paragraph.

19 The total sum allowed to the Applicants and payable by the Respondent is therefore :
Sykes Anderson £1180
Douglas and Gordon £ 2500
Counsel's fees £1500

Total = £5,180 plus VAT .

The Law

20 S33 Leasehold Reform Housing and Urban Development Act 1993 provides:

- (1) Where a notice is given under s13 , then (subject to the provisions of this section and sections 28(6), 29(7) and 31(5)) the nominee purchaser shall be liable, to the extent that they have been incurred in pursuance of the 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 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 that notice;
 - (b) Deducing, evidencing and verifying the title to any such interest ;
 - (c) Making out and furnishing such abstract 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 ;

But this sub-section 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 sub-section (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) Where by virtue of any provision of this chapter the initial notice ceases to have effect at any time , the (subject to sub-section (4)) the nominee purchaser's liability under this section for costs incurred by any person shall be a liability for costs incurred by him down to that time.
- (4) The nominee purchaser shall not be liable for any costs under this section if the initial notice ceases to have effect by virtue of section 23(4) or 30(4).
- (5) The nominee purchaser shall not be liable under this section for any costs which a party to any proceedings under this Chapter before a leasehold valuation Tribunal incurs in connection with the proceedings.

Judge F J Silverman as Chairman
Date 09 October 2013

Note:

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking