



**First-tier Tribunal
Property Chamber
(Residential Property)**

Case reference	:	CAM/26UK/OC9/2016/0008
Property	:	Flats 1-10 Woolwych Court, Queens Road, Watford, WD17 2PQ
Applicant	:	Freehold Properties 23 Ltd.
Respondent	:	Derek Sheena
Date of Application	:	26th July 2016
Type of Application	:	To determine the costs payable on a proposed enfranchisement (Section 33 of the Leasehold Reform and Urban Development Act 1993 (“the 1993 Act”))
The Tribunal	:	Bruce Edgington (lawyer chair) David Brown FRICS

DECISION

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1. The reasonable legal costs of the Applicant payable by the Respondent pursuant to Section 33 of the 1993 Act are £997.50
2. The reasonable costs of valuation of the Applicant payable by the Respondent pursuant to Section 33 of the 1993 Act are £1,216.20.
3. The Tribunal makes no order that the Respondent should reimburse the Tribunal fee to the Applicant.

Reasons

Introduction

4. This dispute arises from the service of an Initial Notice seeking collective enfranchisement of the property by qualifying tenants. In these circumstances there is a liability on the Nominee Purchaser to pay the landlord's reasonable legal and valuation costs. In this case, the facts are not clear but the sequence of events which emerges from the objections and replies is that an Initial Notice was served, a counter notice was served alleging that the Initial Notice was invalid and a

further 'without prejudice' counter notice was also served dealing with the terms put forward. The Respondent then applied to the court, presumably for a declaration that the Initial Notice was valid. That application terminated when a notice of discontinuance was filed.

5. In the intervening period, there were 'without prejudice' negotiations in the hope that agreement could be reached, but that was not possible.
6. Directions were given by the Tribunal on the 16th August 2016 which included a statement that the Tribunal would be content to deal with this matter upon a consideration of the papers and written representations only (sometimes called a 'paper determination') and notice was given to the parties that a decision would not be made before 13th October 2016. It was pointed out that if either party wanted an oral hearing, one would be arranged. No such request was received.
7. One of the Applicant's statements of costs included a claim for the Respondent to reimburse the £100 Tribunal fee. It is not absolutely clear from the replies to the objections whether this is being pursued but the Tribunal will assume that it is.

The Law

8. It is accepted by the parties that an Initial Notice was served and therefore Section 33 of the 1993 Act is engaged. For the reasons set out below, the Respondent therefore has to pay the Applicant'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;*

(Section 33(1) of the 1993 Act)

9. What is sometimes known as the 'indemnity principle' applies i.e. the Applicant is not able to recover any more than it would have to pay its own solicitors or valuer in circumstances where there was no liability on anyone else to pay (Section 33(2)). Another way of putting this is to say that any doubt is resolved in the receiving party's favour rather than the paying party.
10. Of relevance to one of the issues in this assessment is the case of **Sidewalk Properties Ltd. v Twinn** [2015] UKUT 0122 LC), where the Deputy President of the Upper Tribunal considered the question of

whether costs recoverable pursuant to provisions of the 1993 Act could include work undertaken by the solicitor in respect of the valuation. He said:-

“36. I agree with the appellant that the task of instructing a surveyor is incidental to a valuation. Nevertheless in a case such as this it is an administrative rather than a professional task which no doubt relies on the use of standard instructions given to a surveyor who is very familiar with the requirements of statutory valuations under the 1993 Act. Where those administrative tasks are entrusted to a solicitor the client would not expect to be charged an additional fee, but would expect the expense to be subsumed instead in the fee payable to the solicitor for his or her own work.

37. I also accept that considering the valuation report of the surveyor is a task incidental to the valuation itself. Moreover, it is not an administrative task and it is legitimate, in my opinion, for the client to expect the solicitor who gave the instruction to consider the valuation and to be satisfied that it is in accordance with the basis of valuation required by the Act. I can see no reason why a client would not reasonably and willingly pay for the task to be undertaken, even where he is liable to meet the cost personally.

11. In fact the Upper Tribunal was told that the solicitor took 12 minutes to advise on a single report which it held to be ‘reasonable’. In fact the case involved a consideration of 7 valuation reports and the Tribunal allowed a total of 20 minutes for the solicitor to consider and advise on all 7 reports.

Legal fees

12. A costs schedule has been produced in accordance with the Tribunal’s directions. The calculation of costs totals £1,242.75 for 6 hours 3 minutes’ work. The directions order stated that the objections and the replies should be e-mailed as one document in a way similar to a detailed assessment in the court, so that the Tribunal could endorse its decision against each objection on the same document. This was not done although the letter enclosing the bundles said that the solicitors would e-mail the bundle. This was impractical because the Tribunal members were actually engaged on the assessment before they saw that letter.
13. Thus, the numbered objections will have to be set out and considered as follows:-
 - (i) There were 2 fee earners, namely a licensed conveyancer (£195 per hour) and someone called a ‘principal’ (£265 per hour). It is assumed that this was a Grade A solicitor. There is an objection to the hourly rate which says that a Grade A fee earner would expect to be allowed £201 per hour

in Norfolk where the solicitors are situated. The objection adds that the matter should have been dealt with by a Grade B solicitor. The total rate claimed for all the time spent is about £207 per hour. This Tribunal considers that clients would expect this sort of specialist work can be undertaken by Grade A fee earners although exceptional efficiency and ability would also be expected. The overall hourly rate is reasonable.

- (ii) It is said that 60 minutes spent on taking initial instructions, obtaining Land Registry entries and considering the Initial Notice is unreasonable and 30 minutes should be allowed. One of the Initial Notices in the bundle is, for some reason, dated 3rd March 2016. This cannot be right as the counter notices are dated 2015. Assuming that this is a simple error, the other copy of the Notice is 5 pages long and contains details of 10 leases i.e. 9 participating and 1 non participating. 60 minutes is reasonable and is allowed
- (iii) This objection is linked with (iv) and (vi). In essence it says that a valuer should not have been instructed if the Applicant's position was that the Initial Notice was invalid. The Tribunal does not accept that because one of the other complaints is that the Applicant should have negotiated anyway. It did negotiate and could not have done that without a valuation. However a total of 2 hours 12 minutes appears to be claimed for work involving the valuation. For reasons set out in the **Sidewalk** case above, the amount allowed is 30 minutes i.e. 12 minutes to consider the report and the balance for the correspondence incidental thereto.
- (iv) See (iii)
- (v) This makes the point that the time spent on the without prejudice counter notice should not be allowed. The Tribunal agrees with this proposition in principle. Section 21 of the 1993 Act refers throughout to "a" counter notice which means that only one should have been served. The notice served should have included the Applicant's alternative position. A total of 1 hour 18 minutes is claimed. For an experienced practitioner, 1 hour should have been sufficient for a composite counter notice and that is what is allowed.
- (vi) See (iii)
- (vii) This relates to the disbursements claimed of the Tribunal fee plus "Land Registry fees/Postage/Incidentals". The objection is that only the Land Registry fees of £3 are recoverable. The reply is "*The £20 figure is the total cost of relevant Land Registry and Postage costs incurred. It was entirely reasonable to serve documents upon the Respondent by special delivery in view of their importance. All of the £20 is payable*". The Tribunal determines that, generally, postage is an overhead. No breakdown is given. The Tribunal is not satisfied that all the sum claimed is reasonable and allows the £3 offered.
- (viii) This is a complaint that the usual VAT certificate is not given. The reply gives the certificate

- (ix) This objection simply asks the Tribunal to consider the Applicant's 'conduct...when assessing costs'. The bundle submitted does contain some items of correspondence but the Tribunal really has little detailed information to support the accusation. At the end of the day, the Respondent clearly accepted that the Initial Notice was invalid and the Applicant did enter into negotiations with the Respondent albeit such negotiations did not result in an outcome the Respondent wanted. The Tribunal cannot see that conduct is sufficient of an issue to influence this assessment.
14. Accordingly, in summary, the amount of legal costs and disbursements claimed is reduced by £351.90 (iii), £62.10 (v) and £17 (vii) making a total deduction of £414.00 to profit costs and £17 to disbursements. The balance payable is therefore £828.75. The legal fees, VAT and disbursements payable are therefore £997.50.

Valuer's fee

15. The valuer's fee claimed is £1,000 plus an unidentified disbursement of £13.50 plus VAT. The invoice contains no relevant information save that it says that the fee is payable for valuing the premiums to be paid by the Leaseholders for lease extensions. This is not what the valuation should have been for but the point is not taken by the Respondent and, once again, the Tribunal will assume that it is a simple error.
16. The directions order required the Applicant to provide details of the qualification and experience of the fee earner plus a breakdown of the number of hours spent. Neither was supplied initially but in its replies to objections, the Applicant says that the valuer was Andrew Balcombe FRICS FCARB who spent 5 hours visiting the report and preparing the report plus 1 hour travel time.
17. The objections are (a) that a valuer should not have been instructed and (b) no report has been disclosed. For these reasons the fee should be assessed at 'nil'. The Tribunal has already found that a valuation was reasonably undertaken. The valuer's report should have been disclosed to the Tribunal for it to establish exactly what he was instructed to do and what he did. Privilege does not apply to disclosure to the Tribunal.
18. However, there is no comment from the Respondent on quantum such as a comparison of this fee with the Respondent's valuer's fee. Doing the best it can, and relying on its considerable knowledge and experience in these matters, the Tribunal notes that advice was clearly needed on the value of the freehold and the whole issue of what land was to be included in the enfranchisement with values of the main property and the appurtenant land. There would have had to be inspections of the various flats and the common parts. Research would have been needed and a report would have had to be prepared to include plans showing the main building and the appurtenant land.
19. With 5 hours time spent plus 1 hour travel time, the charging rate is about £180 per hour assuming travel time at half rate. The valuer is

from central London but this charging rate would be reasonable even in Watford. The Tribunal concludes that whilst the amount of time spent is high, it is not unreasonable for a transaction of this nature with the stated complexities. Assuming that the disbursement is for travel expenses, the figure claimed is found to be within the range of reasonableness and is allowed in full.

Tribunal fee

20. Rule 13 of **The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013** (“the rules”) applies. This provides that a Tribunal can order a party to reimburse another party for a Tribunal fee paid.

21. Although the Respondent has made some unreasonable points, he has also made some valid ones. Overall, the Tribunal takes the view that the basic principle that Tribunal proceedings do not involve the ‘winning’ party being able to recover any fees or costs should apply. There will be no order for the fee to be reimbursed.

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Bruce Edgington
Regional Judge
13th October 2016

ANNEX - RIGHTS OF APPEAL

- i. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
- ii. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
- iii. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- iv. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.