

4162



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

Case Reference : **LON/00BC/OC9/2016/0068**

Property : **70 & 72 Lechmere Avenue,
Woodford Green, Essex IG8 8QQ**

Applicant : **Darren Andrew Gayer & Ghulam
Ashgar Alahi**

Representative : **Thirsk Winton LLP**

Respondent : **(1) Grand United Trustees Limited
(Freeholder)
(2) Shulem B Association Limited
(Intermediate Landlord)**

Representative : **(1) Chestertons
(2) Hamlins LLP**

Type of Application : **Costs**

Tribunal Members : **Judge Tagliavini**

**Date and venue of
hearing (paper)** : **10 Alfred Place, London WC1E 7LR**

Date of Decision : **13 April 2016**

DECISION

- (1) The tribunal determines that the sum of £3,943.50 (plus VAT @ 20 %) is payable by the Applicant in respect of the Freeholder's legal costs.
- (2) The tribunal determines that the sum of £1,460.00 (plus VAT @ 20%) is payable by the Applicant in respect of the Freeholder's valuation costs.
- (3) The tribunal determines that the sum of £1,960.00 (plus VAT @ 20%) is payable by the Applicant in respect of the Intermediate Landlord's legal costs.
- (4) The tribunal determines that the sum of £250.00 (plus VAT @ 20%) is payable by the Applicant in respect of the Intermediate Landlord's valuation costs.
- (5) The tribunal determines that the Land Registry fee of £36.00 is payable by the Applicant.

The application

1. The Applicants seek a determination pursuant to section 91(2)(d) of the Leasehold Reform, Housing and Urban Development Act 1993 for a determination of the costs to be paid under either section 33(1) or section 60(1).

The hearing

2. Neither, the Applicants or the Respondents requested an oral hearing and therefore the tribunal's determination was carried out with the use of the Bundle of Documents prepared and submitted on behalf of the Applicants.

The issues

3. In a Statement of costs (summary assessment), a Schedule of work done on the documents, and a Schedule of costs of Intermediate Landlord**, the Respondents set out their claim for reasonable costs as follows:
 - (i) Chestertons legal fees: £3,943.50 (plus VAT)
 - (ii) Chestertons valuation fees: £1,406.00 (plus VAT)*

(iii) Chestertons negotiation fees: £2,500.00(plus VAT)

(iv) Land Registry Fees: £36.00

Total: £7,885.50 (plus VAT @ 20%)

(v) Hamlins legal fees: £3,715.00 (limited to £3,222.00 plus VAT)

(vi) Hamlins valuation fees: £250.00 (plus VAT)*

Total: £3,474.00 (plus VAT)

**NB: The valuation fees incurred by both Respondents were agreed by the parties*

***Theses schedules were accompanied by the relevant invoices.*

4. The Applicants disputed the above claims for legal costs submitted by both Respondents.

The Applicant's case – Chestertons legal fees

5. The Applicants disputed the hourly rates charged by these centrally located Manchester solicitors and asserted they exceeded the Solicitors Guideline hourly Rates from 14% to 34% (depending on the grade of the fee earner). The Applicants also challenged the detail provided in the schedule of attendance, the length of time spent on documents, the inclusion of items that do not fall within 33(1)(a)(b) and (c) of the 1993 Act. Further, the Applicants disputed the recoverability of the 'negotiation' fees.
6. The Applicants queried the inclusion of fees referring to the grant of a new lease and liaison with nominee purchaser's solicitor as being irrelevant and inaccurate respectively. The Applicants also challenged the hourly rate of the Freeholder as being 36% in excess of the guidance rates. Time spent on documents is challenged as excessive and four entries post-date the agreement on terms of acquisition.

The Freeholders case

7. It was submitted by the Freeholder that the hourly rates set by the Solicitors Guideline Hourly Rates 2010 are for guidance only, and the tribunal is not bound to apply them, and the hourly rates charged are in any event, reasonable. The Freeholder also asserted that all of the items claimed fall with section 33(1)(a)(b) or (c) and should be allowed. The application and valuation was complex due to freehold is unregistered land, two properties were involved and therefore additional documentation was required, the presence on an intermediate landlord required contact and review of title documents. The Freehold denied that excessive time had been taken either in the attendances or spent on the documents.

The Intermediate Landlord's case

8. In a written response to the Applicants' written submission the Intermediate Landlord provided the tribunal with a Time History of the legal costs incurred and submitted that the hourly rate of £430 (plus VAT) was not excessive and that reference to liaising with 'nominee purchaser' was an error which, more correctly should have read 'competent landlord'. The Intermediate Landlord asserted that the time spent was not in excess of what can be considered reasonable as error were made by the Applicants in the claim notice which required investigation. Deductions for the post agreement fees had already been made as the legal costs sought were capped at £3,222 (plus VAT) and not the £3,715 (plus VAT) fees actually incurred by the Intermediate Landlord.

The tribunal's decision

9. In reaching its decision the tribunal has regard to the requirements of section 33 of the 1993 Act and the provision for the landlord(s)' reasonable costs of and incidental to, 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 that initial notice, or

- (ii) f 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 purchase may require;
- (d) any valuation of any interest in the specified premises or other property;
- (e) any conveyance of any such interest.

The Freeholder's legal fees

10. The tribunal notes that neither Respondent has attempted to categorise its costs in accordance with the subsections of section 33 as set out above. The tribunal finds that the work carried out on behalf of the Freeholder was in the majority carried out by a Grade B fee earner at £160.00 per hour (plus VAT). This is below the £192.00 (plus VAT) suggested by the Solicitors Guideline Hourly Rates for central Manchester. The tribunal notes that the Applicants do not assert that it was unreasonable for a Grade B fee earner to have dealt primarily with this matter and the tribunal finds this rate to be reasonable. Although the tribunal has not been provided with documents other than those relation to costs, the tribunal accepts that this matter was raised some issues of some complexity that required investigation in excess of what might be reasonably expected in an otherwise uncomplicated application.
11. The tribunal finds that the hourly rates of the other fee earners are also within the range of reasonableness and the tribunal is satisfied that the Grade A fee earners have had minimum input and dealings in this matter. Therefore, the tribunal makes no adjustments to the hourly rates charged. The tribunal accepts the rates and time spent on attendance and documents as reasonable and within the ambit of section 33, but finds that time spent on negotiations does not fall within section 33 of the 1993 Act. Therefore the tribunal allows the sum of £3,942.00 (plus VAT) and disallows the sum of £2,500 (plus VAT).

The Intermediate Landlord's legal fees

12. The Tribunal finds that it is unreasonable to have used a partner at the hourly rate of £320.00 for the purposes of this transaction for the majority of attendances and work on documents. The tribunal finds that the work could have been reasonably carried out, by a lower paid fee earner with oversight of a partner as demonstrated by the Freeholder. Therefore, the tribunal, having regard to the Guidelines finds that an overall reasonable hourly rate to be applied is £200. The tribunal finds the time spent by the Intermediate Landlord legal advisors to be within the realms of reasonableness (omitting the time spent post agreement). The tribunal finds this equates to 9.8 hours spent on this matter and provides a total cost of £1,960 (plus VAT @ 20%).

13. In conclusion the tribunal allows the valuation costs as agreed plus the Land Registry Fee together with legal costs of £3,943.50 (plus VAT) and £1,960 (plus VAT) incurred by the Freeholder and Intermediate Landlord respectively and to be paid by the Applicants.

Signed: Judge LM Tagliavini

Dated: 13 April 2016