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

Case Reference : **LON/00AL/OCR9/2016/0438**

Property : **29 Manthorpe Road, London SE18
7SZ**

Applicant : **29 Manthorpe Road Limited**

Representative : **Bishop & Sewell LLP**

Respondents : **Tablebrook Nominees Limited (1)
Buttondream Limited (2)**

Representative : **Geoffrey Leaver Solicitors LLP**

Type of Application : **Section 91(2)(d) Leasehold Reform,
Housing and Urban Development
Act 1993 – determination of costs
payable pursuant to section 33 of
the Act**

Tribunal Members : **Judge John Hewitt
Ms Marina Krisko BSc (EstMan)
FRICS**

**Date and venue of
determination** : **11 January 2017
10 Alfred Place, London WC1E 7LR**

Date of Decision : **11 January 2017**

DECISION

Decisions of the tribunal

1. The tribunal determines that the amounts payable by the applicant to the respondents are:

1.1	Pursuant to section 33 (1) (a), (b) and (e)	£1,700.00
1.2	Pursuant to section 33 (1) (d)	£1,000.00

VAT of £540.00 is payable in addition subject to the respondents' solicitors filing with the tribunal and serving on the application the certificate mentioned in paragraph 22 below.

2. The reasons for our decisions are set out below.

Procedural background

3. The respondents are the registered proprietors of the freehold interest in the Property.
4. The Property comprises two self-contained flats both of which have been sold off on long leases.
5. The two long lessees sought to exercise the right to collective enfranchisement of the freehold interest. Originally, the two long lessees were named as the nominee purchaser but late in the process they nominated the applicant to be the nominee purchaser.
6. On 22 July 2016 the terms of acquisition (premium £27,000) had been agreed and also the terms of the draft transfer had been agreed. That was confirmed in an exchange of email between the respective solicitors. The respondents' solicitors were invited to provide details of 'your clients recoverable costs'. By email dated 27 July 2016 the respondents' solicitors replied:

"My client's costs from service of the initial notice to service of the counter-notice, plus costs from date of settlement to completion, including surveyors fees are £2,494.50 + VAT. These will need to be paid on or before completion."

Evidently those costs were made up as to solicitors' costs £1,494.50 and valuation fees of £1,000.

7. The matter did not complete promptly. We have not been told why. In the interim the long lessees nominated the applicant to be nominee purchaser. We infer this will have necessitated the respondents' solicitors taking instructions and acting thereon to prepare a revised form of transfer.
8. By email dated 1 September 2016 the applicant's solicitors informed the respondents' solicitors that they were in funds and ready to complete. The email stated that those funds included the amount previously stated as regards costs, but went on to say:

“If you do not agree to complete at the previously agreed level [of costs] please confirm that you will complete ... on the basis that I will undertake to pay costs as determined by the tribunal and I will make an application ... for the costs to be determined.”

9. By email also dated 1 September 2016 the respondent’s solicitors stated that the legal costs had been increased by £625.50 evidently due to the delay in completion, the need to chase for progress and the change in the identity of the nominee purchaser. The email also stated:

“We are awaiting confirmation that our client is registered for VAT. Assuming they are please either pay £3,120 to our client account, details below, or undertake to pay this sum on completion.”

10. We have not been told whether or not the transaction completed and, if so, on what basis of payment of, or undertaking to pay, costs.
11. On 19 October 2017 the tribunal received an application pursuant to section 91(2)(d) for the costs to be determined.
12. Directions were given on 24 October 2016. The parties were informed that the tribunal proposed to determine the application without an oral hearing unless by a request for an oral hearing was made within 14 days. The tribunal has not received any such request.
12. The respondents were directed to serve a schedule of costs by 7 November 2016. We are told by the applicant’s solicitors that no such schedule has been served upon them.
13. The tribunal file does not show that the respondents have participated in these proceedings in any way.
14. The applicant’s solicitors have provided us with a brief file of papers which include the email traffic we have mentioned above.

Discussion

15. There does not appear to be any dispute over the valuation fees of £1,000.
16. The applicant’s solicitors submit that they have four months from agreement of terms of acquisition to complete and that the applicant is not required to pay costs incurred by the respondents during that period in chasing up completion. We are minded to agree because such costs are not mentioned in section 33(1) of the Act.
17. The applicant’s solicitors have not made any submissions on additional costs incurred in consequence of the substitution of the applicant as nominee purchaser. We infer that the applicant’s solicitor anticipated that some additional costs might have been incurred from the terms of the undertaking offered and mentioned in paragraph 8 above.

18. We have little doubt that a request to substitute a nominee purchaser will have caused additional costs due to the need to take instructions, act on them and to prepare an amended form of transfer. Such additional costs plainly fall within section 33(1)(e) being costs of ‘any conveyance of any such interest’.
19. Unhelpfully the respondents have not participated in these proceedings and have not identified the additional costs incurred. The respondents have not cited charge-out rates. The applicant’s solicitor, who is in central London, has stated that his charge-out is £280. Given the imperfect materials before us, we can but draw on our experience and expertise in these matters and arrive at a broad conclusion. We conclude that an additional 45 minutes work will have been reasonably and properly incurred. Given the location of the respondents’ solicitors office we find that such costs will amount to about £200.
20. We therefore determine that the amounts payable are:
- | | |
|----------------|-----------|
| Valuation fees | £1,000.00 |
| Legal costs | £1,700.00 |
21. VAT will be payable in addition if the respondents are not registered for VAT. In her email dated 1 September 2016 the respondents’ solicitor makes the assumption that her client is registered for VAT. If that is right, then no VAT is payable.
22. However, that assumption may not be right. In the circumstances, we determine that if by **5pm Friday 27 January 2017** the respondents’ solicitors have filed with the tribunal and served on the applicant a certificate given by them to the effect that the respondents are not registered for VAT, then VAT of £540.00 is payable in addition to the sum of £2,700.00 mentioned in paragraph 20.

Judge John Hewitt
11 January 2017