



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

Case Reference : **LON/00AE/OC9/2018/0360**

Property : **18 Leopold Road, London, NW10
9LH**

Applicant : **Leopold London Ltd**

Representative : **G & D, Solicitors**

Respondent : **Hyde Lane Properties Ltd**

Representative : **TWM LLP, Solicitors**

Type of Application : **Section 33 of the Leasehold
Reform, Housing and Urban
Development Act 1993**

Tribunal Members : **Judge I Mohabir
Mr D Jagger MRICS**

**Date and venue of
Decision** : **5 February 2019
10 Alfred Place, London WC1E 7LR**

DECISION

Introduction

1. This is an application made by the Applicant under section 91 of the Leasehold Reform, Housing and Urban and Development Act 1993 (as amended) (“the Act”) for a determination of the statutory costs payable to the Respondent under section 33 of the Act to acquire the freehold interest in relation to the property known as 18 Leopld Road, London, NW10 9LH (“the property”).
2. The Respondent’s entitlement to its costs under section 33(1) of the Act arises in the following way. Pursuant to section 13 of the Act, the Applicant, as the nominee purchaser, served in total 5 Initial Notices on the Respondent to acquire the freehold interest of the property. These are dated 8 October 2015, 31 October 2017, 21 December 2017, 9 January 2018 and 25 May 2018 respectively. As can be seen, the last 4 notices are relatively close in terms of chronology. The Respondent served counter notices in relation to the first, third, fourth and fifth initial notices, with the second initial notice being agreed as being invalid.
3. The Tribunal was not told if the parties were able to agree the purchase price and the terms of acquisition and whether the matter proceeded to completion.
4. In respect of the first initial notice, the Respondent instructed Mr Simon Brook of South East Leasehold as his valuer who was assisted by Mr Richard Innis of Richard Innis Ltd. Their fees came to £1,500 plus VAT and £375 (no VAT) respectively. Thereafter, Mr Brook charges a valuation fee of £1,900 plus VAT for the second initial notice and £950 plus VAT for the fifth notice. No fee is being claimed for the third and fourth notices. In addition, the Respondent is claiming fees of £375 of £234 including VAT for the managing agent’s administration costs incurred in connection with the lease extension.
5. The total legal costs claimed by the Respondent are £4,260 including VAT plus total disbursements of £23,011. The Applicant contends that costs of £5,125 are reasonable in respect of all of the notices.
6. A breakdown of the Respondent’s legal costs has been provided by its solicitors pursuant to the Tribunal’s Directions. This sets out the level of fee earners and hourly rates claimed in respect of each of them.
7. Both parties have filed written submissions in relation the costs claimed, which have been considered by the Tribunal.

Relevant Statutory Provision

8. This is set out in Appendix 1 annexed to this decision.
9. Judicial guidance on the application of section 33 was given in the case of ***Drax v Lawn Court Freehold Ltd*** [2010] UKUT 81 (LC), LRA/58/2009. That case concerned the proper basis of assessment of costs in

enfranchisement cases under the 1993 Act, whether concerned with the purchase of a freehold or the extension of a lease. The decision (which related to the purchase of a freehold and, therefore, costs under section 33 of the Act, but which is equally applicable to a lease extension and costs under section 60) established that costs must be reasonable and have been incurred in pursuance of the initial notice and in connection with the purposes listed in sub-sections [60(1)(a) to (c)]. The applicant tenant is also protected by section 60(2) which limits recoverable costs to those that the respondent landlord would be prepared to pay if it were using its own money rather than being paid by the tenant.

10. In effect, this introduces what was described in *Drax* as a “(limited) test of proportionality of a kind associated with the assessment of costs on the standard basis.” It is also the case, as confirmed by *Drax*, that the landlord should only receive its costs where it has explained and substantiated them.
11. It does not follow that this is an assessment of costs on the standard basis (let alone on the indemnity basis). This is not what section 60 says, nor is *Drax* an authority for that proposition. Section 60 is self-contained.

Decision

12. The Tribunal’s determination took place on 5 February 2019 and was based solely on the written representations filed by the parties. The Tribunal’s approach was to conduct what effectively amounts to a summary assessment of the Respondent’s costs.
13. This matter relates to the Respondent’s costs incurred in what can be described as a “standard” collective enfranchisement with no particular complication revealed on the papers.

Fee Earner & Hourly Rate

14. Whilst this may have appeared to be a relatively straightforward matter, the Tribunal’s view was that this is a highly technical area of law mainly conducted by firms of solicitors with the requisite knowledge and experience, of which the Respondent’s solicitors are one.
15. Having regard to the technical nature of the work and the location of the firm, the Tribunal considered the use of a Senior Associate was appropriate and that an overall hourly rate of £250 plus VAT was reasonable and this was the rate at which the Tribunal determined the Respondent’s legal costs.

Work Incurred

16. The Tribunal found the legal costs of £1,300 plus VAT claimed by the Respondent in respect of the first initial notice were reasonable. This appears to have included all of the legal work carried out until the Applicant's notice was deemed to have been withdrawn.
17. The Tribunal disallowed the managing agent's fee of £375 claimed in respect of this notice on the basis that "administration costs" do not fall within the ambit of section 3(1)(a) to (e) of the Act. In addition, no explanation was provided by the Respondent about what the administration costs were or how they arose as a consequence of the notice. For the same reasons, the additional fee of £234 claimed is also disallowed.
18. In relation to the second to fifth initial notices, it seems that the only material work carried out by the Respondent's solicitors was the preparation and service of counter notices to the third to fifth notices. Therefore, the Tribunal found that the legal cost of £2,250 plus VAT was not reasonable. Assuming that an hour of time was incurred for preparing each of the 3 counter notices, the Tribunal determined that total legal costs of £750 plus VAT (£900) was reasonable.
19. The Tribunal also determined that the £18 disbursement incurred for obtaining was a necessary part of investigating title generally and was reasonable. However, the Tribunal disallowed the postage costs of £5.01 as not being reasonable incurred, as this was an overhead cost of the Respondent's solicitors.
20. Accordingly, the Tribunal determined that the total legal costs payable by the Applicant to the Respondent are £2,050 plus VAT of £410 making a total of £2,460.

Valuation Fees

21. The Tribunal found that the initial valuation fees of £1,500 plus VAT incurred by Mr Brook in relation to the first initial notice for valuing the two flats in the building and the purchase price was reasonable. The Tribunal was satisfied that he would have had to prepare the statutory valuation including an analysis of comparable evidence in his report, which also involved a site visit.
22. However, there appears to be no particular reason why Mr Brook required the assistance of Mr Innis to assist him with his valuation. As stated earlier, the Tribunal regarded this transaction as being a routine collective enfranchisement with no particular complication and the valuation should have been well within the expertise of Mr Brook alone. Therefore, the Tribunal found the fees of Mr Innis in the sum of £375 had not been reasonably incurred and were disallowed.

23. In relation to the fees of £1,900 plus VAT claimed by Mr Brook for preparing a valuation for the second initial notice, the Tribunal found those costs to be unreasonable. The Tribunal accepted that Mr Brook would have been required to prepare a second valuation as his earlier valuation was approximately 2 years out of date by the time the second notice was served by the Applicant.
24. However, the Tribunal was of the view that the valuation exercise required by Mr Brook in relation to the second notice was simply to update his earlier valuation, which could be done by preparing a desktop valuation. No further inspection was required. The Tribunal was, therefore, satisfied that only the sum of £750 plus VAT (£900) should be allowed for Mr Brook's second valuation.
25. Given that Mr Brook's final valuation regarding the fifth initial notice was prepared only a few months after the fourth initial notice was claimed (for which no valuation fee is claimed by him), the Tribunal did not consider it necessary for him to prepare an updating valuation report for the purpose of serving the counter notice. Therefore, the Tribunal found that the fee of £950 plus VAT claimed for a third valuation was not reasonable and was disallowed.
26. Accordingly, the Tribunal determined that the total legal fees payable by the Respondent are £2,460 including VAT plus disbursements of £18 and valuation fees of £2,700 including VAT.

Tribunal Judge I Mohabir

5 February 2019

Appendix 1

Leasehold Reform, Housing and Urban Development Act 1993

S33.— Costs of enfranchisement.

(1) Where a notice is given under section 13, 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 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 any such interest;

but this subsection 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 subsection (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, then (subject to subsection (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 [the appropriate tribunal] 1 incurs in connection with the proceedings.

(6) In this section references to the nominee purchaser include references to any

person whose appointment has terminated in accordance with section 15(3) or 16(1); but this section shall have effect in relation to such a person subject to section 15(7).

(7) Where by virtue of this section, or of this section and section 29(6) taken together, two or more persons are liable for any costs, they shall be jointly and severally liable for them.