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Ref LON//00AP/OC9/2012/0056

**LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT
ASSESSMENT PANEL**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON APPLICATION
UNDER SECTION 33 and 91(2) (d) OF THE LEASEHOLD REFORM,
(HOUSING AND URBAN DEVELOPMENT) ACT 1993**

Applicant Merrick Property Corporation Limited

Respondent: 11 Bruce Grove Limited

Re: 11 Bruce Grove London N17 6RA

Application date: 18th June 2012

Hearing date: 15th August 2012

Appearances: For the Applicants:
Mr C Brooks counsel instructed by Coole &
Haddock solicitors

For the Respondent
Mr G Stevenson solicitor of Stevensons

Members of the Leasehold Valuation Tribunal:

Mr P L Leighton LLB(Hons)
Mr R Potter FRICS

Date of Tribunal's decision: 16th August 2012

DECISION

- 1 By an application dated 18th June 2012 the Applicant applied to the tribunal for an order for costs under section 33 of the Leasehold Reform (Housing and Urban Reform) Act 1993 following enfranchisement proceedings in connection with the property known as 11 Bruce Grove Tottenham London N17 6RA ("the property")
- 2 The claim is for £4209 plus VAT for solicitors and valuer's costs which are £1500 plus VAT the costs of the valuers Austin Gray .Messrs Stevensons the solicitors for the nominee purchaser maintain that the costs claimed are excessive and that a reasonable figure of between £1500 and £2000 for legal and valuation costs
- 3 At the hearing on 15th August 2012 the Applicant was represented by Mr C Brooks of counsel instructed by Messrs Coole and Haddock solicitors and Mr G Stevenson of Stevensons appeared for the Respondent.

The Law

- 4 Section 33(1) of the Act provides that where a notice is given under Section 13 , then subject to the provisions of the section the tenant is liable for the landlord's costs" *to the extent that they have been incurred by any relevant person in pursuance of the notice for the reasonable costs of and incidental to any of the following matters namely:-*
 - (a) *any investigation reasonably undertaken of the tenant's right to a new lease and*
 - (b) *any valuation of the tenant's flat obtained for the purpose of fixing the premium ... in connection with the grant of a new lease under Section 56 and*
 - (c) *the grant of a new lease under that section ""*
- 5 Section 33(2) provides
"For the purpose of subsection (1) any costs incurred by a relevant person 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 be incurred by him if the circumstances had been such that he was personally liable for the costs."

- 6 In the case of **Daejan Properties –v- Twin LON 00BK/OC9/20070026** Mr Carrott (Chairman) made the following helpful observation at paragraph 24
- "..... the function of the Tribunal on an application for the determination of the landlord's reasonable costs..... is to carry out a reasonable assessment... This involves a broad brush approach in resolving the items in dispute between the parties .It is not the function of the tribunal to carry out a detailed assessment of the landlord's costs .the function of the Tribunal in such cases is simply to determine the landlord's reasonable costs that have been incurred. In accordance with the section. Where there is a dispute between the parties, such dispute can readily be resolved summarily by the tribunal."*
- 7 In the recent decision of **Drax-v- Lawn Freehold Limited (2010) UKUT 81 (LC)** A J Trott FRICS was asked to consider a number of issues regarding costs including whether action taken by the freeholder's solicitors in connection with the recovery of service charges amounted to costs recoverable under section 33 of the Act.
- 8 He said at paragraph 25
- "The appellant should only receive his costs where he has explained and substantiated them.". At paragraph 27 he said "while it is reasonable for a solicitor to keep her client informed about progress and to seek instructions as necessary I think that there is excessive number of such contacts in this appeal."*
- 9 The tribunal which had heard the original application decided that service charge issues did not come within the meaning of "incidental" for the purposes of section 33 (1) of the Act.

10 At paragraph 35 of the decision Mr Trott said: –

"There is no reason in principle why the costs of dealing with service charge matters cannot fall within these criteria (under section 33) but they will not be covered by section 33 unless they are incurred in pursuance of the notice rather than in pursuance of disputes under the leases of the tenants. In the present appeal it seems to me that there was a continuing dispute between the tenants and the freeholder about service charge issues. This was exacerbated by the fact that the managing agents appointed by the appellant had apparently misappropriated the service charge monies. The legal costs arising out of this were not in my opinion incurred in pursuance of the notice nor incidental to the matters set out in subsections 33 (1) (A) to (E). They were matters which would have had to be addressed regardless of the section 13 notice.

11 In adopting this line of reasoning the tribunal considers that where questions of service charges are to be dealt with as a conveyancing matter as part of the final account between the parties they may be recoverable but negotiations to settle a dispute which would otherwise come before the tribunal under Section 27A of the Landlord and Tenant Act 1985 or under terms of acquisition under section 24 of the 1993 Act are not recoverable where they are incurred in pursuance of a dispute or anticipated proceedings

Disputed Items

12 The tribunal considered the items in dispute under 9 different heading as set out in the schedule prepared by Mr Brooks and for the sake of brevity the tribunal will refer to those headings for the decision

13 The items included the following disputed matters

- a. The hourly rate
- b. Time spent on initial notice 1 hour 54 minutes agreed I

- c. Considering and advising on second notice 2 hour 30 minutes
- d. Valuer's fee £1,500 plus VAT
- e. Drafting second counter notice 18 minutes agreed
- f. Preparing and amending contract and transfer 1 hour 36 minutes
- g. Letters to applicant , surveyor and managing agents and telephone conversations with applicant 2 hours 48 minutes 42 minutes
- h. Correspondence to respondent's solicitors and surveyor 4 hours 36 minutes
- i. Consideration of service charge accounts 48 minutes agreed

(a) Hourly rate

14 The Applicant's solicitor contended for an hourly rate of £215 based on the rates payable Grade A Fee earners for 2009 amounts to £213 per hour .Mr Stevenson conceded that Mr Everett who is an experienced solicitor who is able to deal in this type of work is entitled to charge at the rate of £215 per hour but maintains that since the client is of long standing that a lower figure of £185 could be negotiated. The tribunal did not accept this and ruled at an early stage that the figure of £215 per hour was reasonable and would be relied upon in all the calculation

Items (b) (e) and (i)

15 As the time spent on these items has been agreed , once the hourly rate is fixed it follows that the amounts recoverable under these headings are as follows (b) £408.50 (e) £64.50 (i) £172

Item (c)

16 The time claimed for this work was 2 hours 30 minutes and Mr Stevenson agreed that in principle it might well take this period of

time to carry out the detailed checking including consideration of whether a particular piece of land fell within the scope of the notice .The second notice raised more complex issues than the first notice which was invalid. Mr Stevenson for the Respondent conceded that a period of 1 1/2 hours would be reasonable and that there would inevitably have been an element of duplication.

- 17 The tribunal agreed and considered that one and a half hours together with the time allowed on considering the previous notice would be sufficient for both notices.

Item (d)

- 18 Mr Brooks conceded that no details had been given of the work undertaken by the expert or the basis on which he had charged. He accepted that the burden was on him to prove the invoice for £1500 .However, the tribunal noted that the instructions given in the letter on page 38 were fairly detailed and that it should be assumed that he had carried them out. As this was a collective enfranchisement involving flats the tribunal considered the sum of £1000 plus VAT was reasonable having regard to the lack of disclosure of detail..

Item (f)

- 19 The Applicant's solicitor claimed 1 hour 36 minutes for preparing the contract and considering amendments proposed by the respondent solicitor. The Respondent conceded that a period of one hour would be reasonable and pointed out that the contract was in a standard form and that the amendments put forward were readily accepted by the solicitor. Tribunal therefore considered that the period of one hour would be sufficient to carry out this element of the work and for the respondent pay the sum of £215 plus VAT

Items (g) and (h)

- 20 These items fall to be dealt with together because they relate largely (though not exclusively) to correspondence between

solicitors about the level of disputed service charges prior to completion of the transfer.

- 21 The Applicant claims 2 hours and 48 minutes under item (g) and 4 hours 36 minutes under item (h) the claim amounted to £602 under item (g) and £989 under item (h)
- 22 The Respondent conceded 42 minutes under item (g) and 10 letters or 1 hour in relation to item (h) these figures amounted to £150.50 under item (g) and £215 under item (h).
- 23 The tribunal considered the remarks made by Mr Trott in Drax –v- Lawn Freehold Limited above but concluded that his remarks specifically excluded any reference to costs incurred in dealing with disputed service charges under the lease.
- 24 Mr Brooks sought to argue that because Mr Everett the solicitor had been prepared to consider a lien on the property in relation to the service charges that this was part of the transfer arrangements and therefore fell within Section 33. The tribunal disagreed and indicated that to allow costs in a disputed matter would go behind the clear principle that disputed matters which would normally be dealt with by a tribunal or a court were not intended to be covered by that section even if the discussion centred on a lien as a means of enforcement.
- 25 The tribunal considered that Mr Stevenson had properly conceded a period of time which reflected a consideration of the service charge but excluded that period of time which was related to the disputed. . The dispute over service charges had been going on over many years and did not arise directly out of the notice.. . Therefore the tribunal awards the sum of £150.50 under (g) and £215 under (h)

Conclusion

The amounts recoverable under the schedule therefore are as follows

a.	£215 per hour	
b.	£1 hour 54 minutes agreed total	£408.50
c.	1 hour 30 minutes	£322.50
d.	Valuer's fee	£1,000
e.	18minutes agreed	£64.50
f.	1 hour	£215
g.	42 minutes	£150.50
h.	1 hour	£215
i.	48 minutes	£172.

The total therefore for legal and valuation cost is £2548 plus the appropriate rate of VAT plus a Land Registry fee of £6

Chairman Peter Leighton
Date 16th August 2012