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

Case reference : **CAM/26UJ/OCE/2014/0013**

Property : **16, 17 and 18 Woodhouse Lodge,
Woodhouse Eaves, Northwood,
HA6 3NF**

Applicant : **Enna Dinker Vadera**

Representative : **Ashley Wilson Solicitors LLP**

Respondent : **Woodhouse Lodge Management
Limited**

Representatives : **Lynch Hall & Hornby Solicitors**

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

Tribunal members : **Mrs H Bowers MRICS**
**Miss M Krisko BSc (Est Man)
FRICS**
Mr J Sims LLM

Date of determination : **15th January 2015**

Date of reasons : **6th February 2015**

DECISION

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- **Costs of £4,770.00 (including VAT) are determined as payable under section 33 of the Leasehold Reform, Housing and Urban Development Act 1993.**
 - **No order for costs is made under Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules.**
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REASONS

Background

1. This decision relates to an application made under the provisions of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”). The initial application made by Enna Dinker Vadera (the Applicant) was dated 10th September 2014 and relates to 16, 17 and 18 Woodhouse Lodge, Woodhouse Eaves, Northwood, Middlesex, HA6 3NF (the subject property). The Respondent in this matter is Woodhouse Lodge Management Limited.

The Law

2. Section 33 of the Act is reproduced in the Appendix to this decision.

The Hearing/Determination

3. The Tribunal issued Directions to the parties on 26th September 2014. The Directions identified that the issues in dispute related to the costs under section 33 of the Act, the transfer and the premium payable for the collective enfranchisement. Correspondence subsequently received by the Tribunal indicated that all issues had been agreed other than the costs under section 33. Indeed, the Applicant made a further application on the 11th December 2014 seeking a determination of the statutory costs. The hearing date for the consideration of the premium for enfranchisement was vacated and the Tribunal considered the remaining issues on the papers that had been submitted in accordance with the Directions.

Respondent’s Submissions:

4. The Respondent provided a Statement of Costs that was dated 15th October 2014. This statement indicates that the work was undertaken by a Grade A solicitor at an hourly rate of £250. Attendance on the Respondent was detailed as amounting to 1.7 hours at a figure of £425; 0.2 hours attendance on opponents - £50; 0.90 hours attendance on others £225; the schedule of work done on documents described that 5.1 hours and this equated to £1,275 with a further anticipated work of then hours, to equal a sum of £2,200 (total £3,775). These sums totalled £4,475. There was a further £750 in respect of the surveyor’s fee and with VAT on both the surveyor’s fee and the legal fees, the total being claimed was £6,270.00.

5. In response to the Applicant’s “Points of Dispute served by the Applicant” the Respondent states there is some confusion regarding the

£3,775 as this sum incorporates the work done to date on the documentation and the £2,500 for the anticipated work. In response to the claim for £2,500 it is explained that the following work is anticipated: - review of the Applicant's draft transfer, which has been improperly and ineffectually prepared and fails to attach any plan; consider the rights that the Applicant needs to put the transaction into proper effect; consider covenants and obligations that are necessary; consider the enforceability of covenants; review the wording in leases to accommodate such provisions; prepare the rider to the transfer; prepare a file note to explain and justify each term (it is stated that this note is available for the Tribunal); negotiate agreement on terms and plan and this includes telephone attendance, correspondence and the consideration and preparation of necessary documentation and all other work to effect completion.

6. Included in the papers is a copy of the transfer and the rider, a file note dated 7th November 2014 and a witness statement prepared by Graham Sharpe dated 2nd December 2014. The file note and the witness statement explain that the transfer produced by the Applicant did not reflect the matters included in the original initial notice or the counter notice or deal with the practical arrangements for on-going estate maintenance once the enfranchisement has been completed. The arrangements are included in the fourth schedule to the lease. Mr Sharpe has extracted the relevant provisions from the lease and reproduced these in the rider. He explains that the wording that he has used is taken directly from the fourth schedule of the lease. It is stated that the Applicant had failed to provide a plan and the plan attached to the initial notice was inadequate. The Respondent has prepared a plan with the appropriate colouring to reflect the terms of the transfer and the rider.

7. The Respondent also made an application for costs under Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules. The claim is for the preparation of a witness statement and this amounted to £500 plus VAT, calculated at two hours at an hourly rate of £250. It is submitted that the Applicant had acted unreasonably in the conduct of proceedings. It is stated that the Applicant's form of Transfer was insufficient. The Respondent had to prepare a Rider, this was not accepted until after the Respondent had prepared and served a witness statement.

Applicants' Submissions:

8. In a document entitled "Points of Dispute served by the Applicant" and dated 24th November 2014, the Applicant takes issue with the sum of £3,775 and states as this equates to 15 hours that this is excessive. They also dispute the sum of £2,500 as the anticipated costs dealing with the completion of the transfer.

9. However in the application made by the Applicant dated 11th December 2014, this identified that the amount in dispute was £2,500, which was identified as being for the anticipated work to complete this transaction. Of this sum the Applicant agrees to £500 for anticipated work dealing with the drafting of the transfer and this leaves £2,000 as the disputed sum. It is noted that in respect of work done that appears to be agreed item 8, a sum of £325 specifically deals with the transfer clauses. It is suggested that the anticipated time of ten hours to complete this matter is excessive and that an appropriate time estimate would be three hours and this would equate to £750.

Tribunal's Determination:

10. The only aspect of dispute regarding the section 33 costs is the anticipated work for the completion of this matter and for which the Respondent claims £2,500. The Applicant states a sum of £500 is already agreed in respect of the drafting of the transfer and that a further £750, for three hours work to complete the matter (total £1,250 plus VAT) would be a reasonable sum. This would suggest a total of five hours as the anticipated time to complete.

11. We accept the Respondent's position that they have incurred additional time in this matter. They have drafted the rider and prepared the plan to facilitate the estate management arrangement after completion. However, as Mr Sharpe acknowledges in his witness statement, much of the wording is taken directly from the lease covenants and is produced in the counter notice. It is also noted that an element of the section 33 costs, which is not disputed by the Applicant is work in March 2014 of 1.3 (£325) hours for the transfer clauses. Given the sums already claimed and the extent of the work, the Tribunal agree with the Applicant that the reasonable anticipated time to complete this matter would be a further five hours. At an hourly rate of £250 this will total £1,250 plus VAT.

12. Accordingly, the Tribunal assesses as reasonable and payable statutory costs as follows: overall the total legal fees of £3,225 plus VAT of £645 plus a Valuer's fee of £750 plus VAT of £150. This gives the total costs under section 33 as £4,770 including VAT.

13. The Respondent's solicitors made a generic "rule 13" costs application and claimed that the Applicant had acted unreasonably in the conduct of the main application. It was explained that the rider was only accepted after the witness statement had been prepared and served and that this was unreasonable. However, with regard to the negotiations surrounding the draft transfer, the Applicant's solicitors were entitled to argue points and to agree terms at their convenience. The costs under section 33 already recognise that

the Respondent undertook further work than is normally anticipated in this type of case. At the time that the witness statement was prepared on 2nd December 2014, the case was on track to be heard at the Tribunal and therefore it is likely that costs would be incurred. This is a normal activity in front of the Tribunal and the failure to agree terms before the preparation of the witness statement is not unreasonable.

14. Accordingly, the Tribunal make no award for costs under Rule 13.

Name: Chairman - Helen Bowers **Date:** 6th February 2015

Appendix

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.

**Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules
2013/1169**

Rule 13.— Orders for costs, reimbursement of fees and interest on costs

- (1) The Tribunal may make an order in respect of costs only—
- (a) under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;
 - (b) if a person has acted unreasonably in bringing, defending or conducting proceedings in—
 - (i) an agricultural land and drainage case,
 - (ii) a residential property case, or
 - (iii) a leasehold case; or
 - (c) in a land registration case.
- (2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.
- (3) The Tribunal may make an order under this rule on an application or on its own initiative.
- (4) A person making an application for an order for costs—
- (a) must, unless the application is made orally at a hearing, send or deliver an application to the Tribunal and to the person against whom the order is sought to be made; and
 - (b) may send or deliver together with the application a schedule of the costs claimed in sufficient detail to allow summary assessment of such costs by the Tribunal.
- (5) An application for an order for costs may be made at any time during the proceedings but must be made within 28 days after the date on which the Tribunal sends—
- (a) a decision notice recording the decision which finally disposes of all issues in the proceedings; or
 - (b) notice of consent to a withdrawal under rule 22 (withdrawal) which ends the proceedings.
- (6) The Tribunal may not make an order for costs against a person (the “paying person”) without first giving that person an opportunity to make representations.
- (7) The amount of costs to be paid under an order under this rule may be determined by—
- (a) summary assessment by the Tribunal;
 - (b) agreement of a specified sum by the paying person and the person entitled to receive the costs (the “receiving person”);
 - (c) detailed assessment of the whole or a specified part of the costs (including the costs of the assessment) incurred by the receiving person by the Tribunal or, if it so directs, on an application to a county court; and such assessment is

to be on the standard basis or, if specified in the costs order, on the indemnity basis.

(8) The Civil Procedure Rules 1998, section 74 (interest on judgment debts, etc) of the County Courts Act 1984 and the County Court (Interest on Judgment Debts) Order 1991 shall apply, with necessary modifications, to a detailed assessment carried out under paragraph (7)(c) as if the proceedings in the Tribunal had been proceedings in a court to which the Civil Procedure Rules 1998 apply.

(9) The Tribunal may order an amount to be paid on account before the costs or expenses are assessed.