



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

Case Reference : **LON/00AE/OCE/2015/0111**

Property : **23 & 23A Reeves Avenue London
NW9 8LN**

Applicant : **Victor Henry Bulley**

Representative : **TWM Solicitors LLP**

Respondents : **Shulem Association Ltd**

Representative : **Hammins LLP**

Type of Application : **Costs under Rule 13 (4) Tribunal
Rules of Procedure**

Tribunal Members : **Mrs F J Silverman Dip Fr LLM**

**Date and venue of
hearing** : **3 November 2015, 10 Alfred Place,
London WC1E 7LR**

Date of Decision : **03 November 2015**

DECISION

The Tribunal also orders the Respondent to pay to the Applicant the sum of £1,900 plus VAT by way of wasted costs under Rule 13 of the Tribunal Rules of Procedure.

REASONS

- 1 This decision relates to an application for costs assessable under Rule 13 of the Tribunal Rules of Procedure made by the tenant of the property situated and known as 23 & 23A Reeves Avenue London NW9 8LN (the property) in relation to his claim to acquire the freehold. The tenant asked the Tribunal to make an award in his favour under Rule 13 of the Tribunal Rules of Procedure having regard to the Respondent landlord's conduct of the proceedings. Directions relating to the costs application were issued on 7 September 2015.
- 2 The matter was dealt with by way of a paper consideration on 3 November 2015. The Tribunal considered the bundle of documents submitted by the Applicant which contained the submissions and supporting documents of both parties.
- 3 The factual background to the application is that the Applicant served a notice on the Respondent asking to acquire the freehold of the property. Following discussions and correspondence between the parties' solicitors a settlement of the negotiations took place the Applicant sent to the Respondent a draft TR1 form for approval (although it is technically the Respondent's duty to provide the draft). The Respondent failed to comply with Directions issued by the Tribunal on 1 May 2015 which (inter alia) required it to supply a draft transfer to the Applicant. The Respondent refused to accept the Applicant's draft transfer and did not concede until one day before the date scheduled for the hearing of the substantive application that the draft originally provided by the Applicant was in the correct form. In view of this concession the hearing was vacated but by that time the Applicant had expended both time and money in preparation for that event. The Applicant is now claiming that the Respondent's dilatory conduct in failing to agree the transfer was unreasonable and is asking the Tribunal to award it costs under Rule 13.
- 4 The Applicant's schedule of costs (page 3) claims the sum of £9,00 by way of legal costs in preparation for the hearing and £1,850 wasted expenditure on Counsel's fees. Both sums are subject to the addition of VAT.
- 5 The Respondent's solicitor denies that its or its client's behaviour was unreasonable and in its defence states that the delay on its part was caused by an inability to obtain instructions from the client over the holiday period and the Applicant's failure to engage with the Respondent in discussion of the terms of the transfer.
- 6 It is clear from the papers submitted to the Tribunal that the form of transfer eventually agreed to by the Respondent was substantively in the same form as that proffered by the Applicant in May 2015 and that the form of transfer offered by the Respondent to the Applicant was (as a transfer of part of the registered title and

imposing fresh restrictive covenants) wholly inappropriate to the transaction in hand. In such circumstances the Applicant's reluctance to negotiate with the Respondent over the terms if the transfer is understandable. By submitting the wrong basic form of transfer form the Respondent had made an inexcusable error and one which they did not seek to correct for a considerable period of time.

- 7 Further, the Tribunal does not consider that inability to contact the client over the holiday season is a valid excuse for delay. The Respondent does not explain in detail why it was not possible to communicate with its own client by telephone or email over the 'holiday season' and does not define how much of the period between May and September 2015 it classifies as being affected by 'holiday'. This excuse is specious and unacceptable as a reason for the delay.
- 8 In the light of the above the Tribunal finds that the Respondent's conduct of the case which started with their failure to comply with the Tribunal's Directions in May 2015 and continued with largely unexplained delay until September 2015 was unreasonable and is minded to make an award against them under Rule 13.
- 9 The Applicant's solicitor's charging rate as shown on their schedule is £200 per hour (recently qualified assistant solicitor) which in the view of the Tribunal is within the bands of reasonable charges for solicitor in Surrey undertaking work of this particular kind and is prepared to allow the claimed rate to stand without deduction.
- 10 Similarly, the total bill for legal work of £900 demonstrates a reasonable and sensible number of hours devoted to what should have been a simple and straightforward conveyancing transaction where title was registered and the transfer comprised standard documentation. This sum is therefore allowed in full.
- 11 The Tribunal does however find that Counsel's preparation fee of £1,850 is somewhat excessive for what should have been a straightforward case and reduces that to £1,000.
- 12 The Tribunal makes an order against the Respondent for its vexatious and unreasonable conduct of the transaction in the sum of £1,900 plus VAT.

13 The Law

The Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013

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

'(1) The Tribunal may make an order in respect of costs only—

(a) (b) under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;

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.’

Judge F J Silverman as Chairman

Date 03 November 2015

Note:
Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.