4016

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/OOAN/OC9/2015/0224**
Property	:	**11, Woodstock Grove, London W12 8LE**
Applicant	:	**Dr Peter Bluemel**
Representative	:	**Goldline Limited**
Respondent	:	**11 Woodstock Grove Freehold Limited**
Representative	:	**Mr J S Compton of Comptons Solicitors LLP**
Type of Application	:	**S33 and 91 Leasehold Reform, Housing and Urban Development Act 1993 (the Act)**
Tribunal Members	:	**Tribunal Judge Dutton** **Mr L Jarero BSc FRICS**
Date and Venue of determination	:	**8th July 2015 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**8th July 2015**

DECISION

DECISION

The Tribunal determines that the sum payable by the Respondent shall be £1,560.00 as representing the costs payable under the provisions of section 33 of the Act as set out below.

REASONS

1. This application was made by the freeholder Applicant for a determination of the costs payable by the Respondent pursuant to section 33 of the Act. The matter was to have been dealt with as a paper determination but in the week before the hearing the Respondent requested that the case proceed with an oral hearing. This was objected to but the Tribunal required that the matter proceed as a hearing, which it did on 8th July 2015.

2. We had before us a bundle prepared by the Applicant, which included the application, copies of various orders made by County Courts at Central London and Hammersmith, the Tribunal's directions, emails and correspondence, the Applicant's schedule of costs sought under the provisions of s33 of the Act with such supporting documents as the Applicant thought appropriate. In addition we had a statement by Mr Compton on behalf of the Respondent and a statement from Dr Bleumel. On the morning of the hearing we were provided with a skeleton argument on behalf of the Respondent, to which the Applicant had responded by email on the morning of the hearing

3. The hearing was due to start at 10.00am. However, just before the scheduled start time the Applicant's representative, Miss Evans from Goldline, contacted the Tribunal to say she was delayed and would not be able to attend until 11.00 am. That time came and as Mr Compton had been awaiting the start of the hearing since 10.00 we considered it appropriate to begin in the absence of any representative of the Applicant. We were aware that in objecting to the hearing the Applicant's representative had asked for the case to proceed as a paper determination. It should be recorded that the hearing concluded at 11.35am and Miss Evans arrived at the Tribunal offices at 11.45, some one and three-quarter hours late.

4. The schedule of costs sought by the Applicant totalled £6,445.75. This was made up as follows

    - the solicitors fees of H&PLP for the preparation of a transfer and advice with an hourly rate of £275 plus VAT giving a total sought of £800
    - the solicitors fees of FPH solicitors for advice and preparing the section 21 notice and correspondence with the Applicant in the sum of £730
    - The fee for the appraisal valuation of Justin Bennet of £1,515.75

- The fees of Goldline the Applicant's purported managing agents of £1,560
- Further fees of Goldline incurred, it is said in attending the property on two occasions on 12th and 14th May 2014 when a charge of £340 was sought
- Finally the sum of £1,500 said to be for the Landlord's summarily assessed legal costs for the transfer of the freehold, if it takes place. In support of these claims we were provided with sundry documents which we will refer to in due course.

5. The response to this was contained in the witness statement of Mr Compton, dated 22nd June 2015, the contents of which were noted by us.

6. In addition an application was made by Comptons for costs to be awarded in the Respondent's favour under the provisions of rule 13 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013. We do not need to dwell on this as Mr Compton confirmed that this application was withdrawn, in the hope that it would limit ongoing litigation between the parties.

HEARING

7. The hearing was conducted in the absence of any representative of the Applicant. Although we had received the skeleton argument, to be fair to Mr Compton he did not seek to utilise this to any degree. His challenges were as follows
   - As to the fees of FPH solicitors he accepted that he had contact with them and had received the counter-notice. However, no receipted invoice was produced nor details as to the status of the alleged fee earner or the rate charged. He thought that an estimate of the appropriate fee, given the lack of information, would be £200 plus VAT
   - As to the fees of H&PLP solicitors, he confirmed he was familiar with them and accepted that they had provided a draft transfer, which had been agreed. In fact, as a result of the need for the Respondent to make application to the County Court for a Vesting Order he had prepared another transfer, although conceded that his draft differed little from that provided by H&PLP. He was content that the hourly rate of £275 plus VAT was reasonable but thought £800 for this was excessive. He suggested that a fee of around £150 plus VAT was reasonable. The involvement of these solicitors in organising any inspection of the property did not, he consider, fall within s33 of the Act.
   - The valuation fee of £1,515.75 was challenged. We were referred to the decision of our colleagues in case LON/OOAN/OCE/2104/0068, the determination of the price payable for the freehold, when it is recorded at paragraph 12 that *"at the date of the hearing before us Dr Bluemel did not have a formal written valuation for the purposes of the enfranchisement claim nor did he call any expert evidence in respect of the claim"*. The decision goes on to record discussions between Mr Bennett and Mr Cohen, the valuer for the Respondent. At paragraph 25 the decision states *"According to Dr Bleumel's witness statement and*

the evidence given by Ms Evans, no property valuation had been done for Dr Bluemel. The most investigation that had been carried out was an 'appraisal'. Mr Bennett had not been asked to produce a valuation report". Mr Compton's view was that the denial of having received advice on the valuation meant that any fee associated therewith was irrecoverable. If however, we were against him on that point he thought a fee of around £750 plus VAT would be appropriate.

- As to the fees of Goldline, whilst it was assumed they were the Applicant's managing agents the fees had, he said been 'plucked out of the air'. To illustrate this he referred us to any earlier schedule of costs submitted under cover of a letter dated 5th May 2015 which recorded different figures for telephone calls, £300 originally but now £860 to include postage, printing originally £400 and now £300 and the costs associated with the abortive attendance for which originally £800 was sought but now £340
- Finally on the question of the conveyancing costs sought of £1,500, which had not yet been incurred, he reminded us that a Vesting order had been made, now the subject of appeal and that the monies due to complete the purchase had been paid into Court. There was therefore little or nothing for any solicitor to do to complete the conveyancing process.

8. We considered the papers submitted by the Applicant and did review the email sent on the morning of the hearing in response to the Respondent's skeleton argument. We have borne the information supplied in mind in reaching our decision.

THE LAW see attached appendix

FINDINGS

8. This case has somewhat of a history. Since the decision of our colleagues in October 2014 the case has attracted the attention of the County Court at Central London, both before the District Judge and soon before the Judge on appeal, the Upper Tribunal and the Divisional Court. We are charged in this instance to deal only with the costs that are recoverable by the Applicant under the provisions of s33 of the Act.

9. We turn first to the two sets of legal fees. In support of the liability on the part of the Applicant to pay these we have a copy of a paying in slip with HSBC showing the sum of £800 being apparently paid to Housing & Property Law Partnership, on 16th April 2014. We have no more information. The schedule refers to advice and preparation of TR1 notice at an hourly rate of £275 plus VAT, giving a total claimed of £800. It is difficult what to make of this fee. Mr Compton conceded he had dealings with this firm and that they had prepared a transfer which he had almost immediately approved. This would seem to be the extent of their involvement for costs that could be recovered under s33(1)(e). Any other involvement is unclear. Dr Bleumel says they had to "negotiate access to the property and contact surveyors". There are limited emails passing

between the solicitors on this point. Doing the best we can we conclude that an hour's time would be reasonable at £275 plus VAT.

10. As to the fees of FPH solicitors who prepared the Counter notice we accept that some must be recoverable. The amount sought is £730 but no breakdown is given nor details of the fee earner. The only evidence to support the view is an email from Ceri Jones, a trainee solicitor asking for further monies, £180 to make up the full £730 claimed. There is evidence of this firm's involvement, a letter to the Tribunal dated 28th March 2014 was produced and Dr Bluemel said they were in contact with the Respondents concerning access for the valuation process. It was said that this firm's address in the Wirral meant that it was thought appropriate to switch to London solicitors. It is accepted by Mr Compton that they did produce a Counter-Notice. Again, doing the best we can on the limited information provided we conclude that the time taken to prepare the Counter-notice would be in the region of an hour. An hourly rate commensurate to that charged by H&PLP would be reasonable and we therefore allow £275 plus VAT for this element.

11. The fees of Mr Bennett were problematic. We have cited above the findings of our colleagues on the circumstances surrounding the valuation. It was conceded by Mr Compton, rightly we consider, that a valuation, or rather an 'appraisal' had in all probability been undertaken. The decision records contact between Mr Bennett and Mr Cohen. We are satisfied that Mr Bennett did visit the property. The fact that the appraisal did not see the light of day does not, in our view, preclude the Applicant from recovering some element of the fee. The Applicant's case is not helped by the representation given to our colleagues in October 2014, casting doubt upon the valuation's existence. The fee note of Mr Bennett refers to a 'valuation report' being prepared. Again, doing the best we can we conclude that some form of valuation had been undertaken and that this would fall within the provision of s33(1)(d). We find that a fee of £750 plus VAT would be appropriate for an appraisal, which is what the Applicant says existed at the hearing in October 2014.

12. As to the remaining claims we believe we can take this quite shortly but before we do we will address an issue raised comparing the fees of Comptons in the Court action for a Vesting Order and the fees sought by the Applicant in this case. They are, of course, as different as chalk and cheese. The proceedings before the Court give rise to the usual costs regime associated with civil litigation. The costs were summarily assessed. The fees recoverable under s33 of the Act, the issue we have to determine, is based on different recoverability provisions and excludes costs associated with proceedings before the Tribunal. The fees of Goldline do not, in our finding fall within the provisions of s33. They are not within the provisions of s33 (1) (a) to (e). They appear to relate to the preparation for the hearing, which are not recoverable, see s33(5) and in any event the figures quoted are, as we indicate above, inconsistent, which causes us to doubt the accuracy of same. No evidence, other than a self serving receipt from Goldline has been produced. We accept that the Applicant may have incurred some expense in the way of postage etc., but

the Act refers to costs incurred "in respect of professional services rendered by any person". No evidence was before us of the "professional" relationship between Dr Bluemel and Goldline. The fee claimed in respect of alleged abortive attendances at the property are, in our finding clearly outside the provisions of s33. We understand they may have related to an intended visit with an architect and to other claims considered in October 2014. They relate to dates in May 2014 when it appears accepted that Mr Bennett inspected in April 2014. Finally the claim of £1,500 for anticipated legal costs is unsustainable. The matter is before the Court with regard to a vesting Order. If that is allowed the Court will execute the transfer and we were told that the purchase monies are already lodged. There would not appear to be anything that the Applicant would need to do complete, and certainly nothing to justify a fee of £1,500, which we disallow.

13. We therefore find that the Respondent shall pay the Applicant the sum of £1,560.00 inclusive of VAT for the costs under the provisions of s33 of the Act

Andrew Dutton 8th July 2015

Andrew Dutton - Tribunal Judge

The Relevant Law

33 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 a leasehold valuation tribunal 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.