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

Case Reference : LON/00AN/OC9/2016/0433
Property : 16 Barons Court Road, London, W14 9DT
Applicant : 16 BCR Limited

Representative : Wason Lawrance Holder
Respondents : Fuad Joseph Kateb and Stella Kateb
Representative : Wallace LLP
Type of Application : Enfranchisement
Tribunal Members: Judge Robert Latham
Mr Luis Jarero BSc FRICS

**Date and venue of
Determination** : Paper determination on 12 December 2016 at
10 Alfred Place, London WC1E 7LR
Date of Decision : 14 December 2016

DECISION

The Tribunal finds that the following costs sought by the landlord are payable: (i) Legal Costs of £5,538 (inclusive of VAT and disbursements) and (ii) Valuation Costs of £3,420 (inclusive of VAT).

Introduction

1. This is an application under section 13 of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”). The current application by the Applicant is for the determination of the costs payable to the landlord under section 33(1) of the Act.

2. On 12 October 2016, the Applicant issued its application for the reasonable costs incurred by the Respondent to be determined by this Tribunal. On 17 October, the Tribunal gave Directions pursuant to which:

(i) On 31 October, the Respondent sent the Respondent their Schedule of Costs. The Respondent claims: (i) legal costs in the sum of £5,500 or £6,729.60 (inclusive of VAT and disbursements) and (ii) valuation costs of £5,054 or £6,064.80 (inc VAT).

(ii) By 14 November, the Applicant sent the Respondent: (i) their Statement of Costs (undated); and (ii) an undated report from Jason Mellor, their Surveyor, assessing the reasonableness of the costs claimed by the Respondent’s Valuer. Mr Mellor suggests that a figure of £2,400 (exc VAT) would be reasonable.

(iii) On 21 November, the Respondent sent the Applicant (i) a detailed Statement in Response extending to 121 pages, and (ii) Submissions on the Valuation Fees. The Respondent makes a detailed response to the points raised by the Applicant.

3. By 28 November, the Applicant was required to send to the Tribunal two copies of a bundle of Documents, which was to be numbered and indexed. The Applicant failed to comply with this Direction. This is the Applicant’s application to the Tribunal. An applicant has a duty to comply with Directions to enable the Tribunal to determine their application in a fair and proportionate manner. A Solicitor that fails to do so runs the risk of prejudicing their client’s case.

The Background

4. On 8 June 2015, the Applicant served their first of three initial notices pursuant to Section 13 of the Act seeking to acquire the freehold of the premises. On 19 June, the Respondent invited the Applicant to confirm that the Notice was invalid for four specified reasons. On 19 June, the Applicant accepted that their Notice was invalid and of no effect.

5. On or about 3 July 2015, the Applicant served a second Initial Notice. On about 3 September, the Respondent served a Counter-Notice without prejudice to their contention that this Notice was also invalid for two specified reasons. The Applicant was invited to accept that this Notice was invalid. On about 12 November, the Respondent wrote again inviting the Applicant to accept that this Notice was invalid.

6. On about 13 November, the Applicant served their third Initial Notice. On about 12 January 2016, the Respondent served a Counter-Notice admitting the Applicant's entitlement to acquire the freehold of the premises. The terms of the freehold acquisition were agreed on about 6 October 2016.

The Statutory Provisions

7. Section 33 provides, insofar as relevant for the purposes of this decision:

(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 incurs in connection with the proceedings.

The Principles

8. *Drax v Lawn Court Freehold Limited* [2010] UKUT 81 (LC) established principles for the assessment of costs under Section 33. In summary, costs must be reasonable and have been incurred in pursuance of the section 13 notice in connection with the purposes listed in sub-paragraphs 33(1)(a) to (e). The nominee Applicant is also protected by section 33(2), which limits recoverable costs to those that the Respondent would be prepared to pay if he were using his own money rather than being paid by the Applicant.

9. This does, in effect, introduce 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 Respondent should only receive his costs where it has explained and substantiated them.

10. It does not follow that this is an assessment of costs on the standard basis. That is not what section 33 says, nor is *Drax* an authority for that proposition. Section 33 is self-contained.

The Tribunal’s Determination

The Landlord’s Entitlement to Costs

11. Hague on “Leasehold Enfranchisement” (6th Edition) at [28.32] states: “It is considered that where a purported initial notice is served which turns out to be invalid, the nominee purchaser and participating tenants are estopped from denying that s.33 costs are payable at any time while they assert that it is a valid notice”. The Tribunal has no hesitation in accepting this contention. The consequences of a landlord failing to serve a Counter-Notice are draconian (see Section 25). The legislature could not have contemplated that a landlord who believed that an Initial Notice might be invalid, could not protect their position by serving a Counter Notice. If a landlord is to serve a Counter Notice, a valuer needs to be instructed to provide a valuation of the freehold of the property and a solicitor needs to investigate and advise on the Initial Notice with a view to drafting and serving the Counter Notice.

The Legal Fees

(i) The First Notice

12. The Respondent claims a total of £786.60 (inc VAT). This consists of legal fees of £618.00 + VAT of £123.60 + a Land Registry fee of £45. The legal fees are

claimed at the rate of £420 per hour for a partner (1.4 hours) and £300 for an assistant (0.1 hrs).

13. The Applicant suggests that the rate claimed for the partner is excessive and should be reduced to £400. We reject this. Wallace LLP have acted for the Respondent for a number of years dealing with enfranchisement matters. The rates charged are consistent with charge out rates in Central London. However, where an experienced partner is used who is familiar with a landlord's portfolio, the Tribunal would expect the partner to deal with the case more efficiently and expeditiously than a less experienced solicitor.

14. The Applicant suggests that the time engaged has been excessive. It notes that there is reference to time engaged in respect of an application "for lease extension", where the notice was rather served to acquire the freehold. The Respondent responds that this was no error, but that there was still an outstanding application for a lease extension that was relevant.

15. We accept that the 1.4 hours claimed by the partner is excessive and reduce this to 1 hour. For example, a brief perusal of the notice should have established that it was invalid, whereas 0.8 hours is claimed for this. We reduce the fees from £618 to £450 to which VAT of £90 and Land Registry fees of £45 are to be added making a total of £585. We accept that the landlord was entitled to carry out its own Land Registry check.

(ii) The Second Notice

16. The Respondent claims a total of £3,228.60 (inc VAT). This consists of legal fees of £2,658 + VAT of £531.60 + a Land Registry fee of £15 + courier fees of £24. The legal fees are claimed at the rate of £420 increasing to £450 per hour for a partner (5.9 hours) and £180 for a paralegal (0.3 hrs). We again accept that the hourly charge out rates are reasonable.

17. The Applicant again suggests that the time engaged has been excessive, for example 0.5 hours is claimed for preparing a transfer which could have been carried out by someone more junior. It was not reasonable for a partner to e-mail the valuer.

18. We accept that the 5.9 hours claimed by the partner is excessive and reduce this by 1.2 hours. For example, 1.5 hours is claimed for preparing a draft Counter-Notice, 0.5 hours for preparing the transfer and 1 hour for finalising the Counter-Notice. The effect of this is to reduce the fees claimed by £450 or £540 (inc of VAT). We allow the sum of £2,688.60.

(iii) The Third Notice

19. The Respondent claims a total of £2,714.40 (inc VAT). This consists of legal fees of £2,227 + VAT of £445.40 + a Land Registry fee of £18 + courier fees of £24. The legal fees are claimed at the rate of £450 for a partner (3.1 hrs); £350 for an assistant (2.3 hours) and £180 for a paralegal (0.2 hrs).

(vii) December 2015: Updating research on values, revising calculation, preparing new report dated 22 December: £400 (namely 1 hour for the valuer and 0.5 hours for the senior partner.

25. We therefore allow a total of £2,700 (exc VAT) + £540 VAT: £3,420 (inc VAT). We consider that this overall figure is the appropriate remuneration for the work involved. This is also consistent with the detailed analysis of tribunal decisions annexed as JM6 and JM7 to Mr Mellor's report.

**Judge Robert Latham,
14 December 2016**

RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.