



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

Case Reference : LON/00/AG/OC9/2014/0028

Property : 40 ELSWORTHY ROAD, NW3 3DL

Applicant : BEITOV PROPERTIES LTD

Representative : V.A (PROPERTY MANAGEMENT)
LIMITED

Respondent : (1) STEVE MORTIMORE
(2) LYNNETTE KYME

Representative : IN PERSON

Type of Application : Determination of Costs – S.33
Leasehold Reform, Housing and
Urban Development Act 1993

Tribunal Members : Tribunal Judge Shaw

**Date and venue of
Determination** : 29th July 2014
10 Alfred Place, London WC1E 7LR

Date of Decision : 29th July 2014

DECISION

Introduction

1. This case involves an Application made pursuant to section 33 of the Leasehold Reform, Housing and Urban Development Act 1993, for the determination of the reversioner's costs. The reversioner is Beitov Properties Limited (the Applicant) and the purchasers are Steve Mortimer and Lynette Kyme (the Respondents). The property concerned is 40 Elsworthy Road, London NWE 3DL (the property).

2. The application was received by the Tribunal on 23rd May 2014, and relates back to an apparently unsuccessful attempt by the purchasers to acquire the freehold of the property as long ago as 2009. As understood by the Tribunal, costs were claimed on behalf of the reversioner at some earlier stage, but declined on the basis that the costs claimed included expenses irrecoverable by virtue of section 33(5) of the Act. The reversioner was instead advised to make an application for those costs recoverable under section 33, and by way of separate application.

3. There has been a significant delay in the bringing of the application before the Tribunal. According to the Respondents' Statement of Case, an earlier attempt was made to recover costs against them in 2012, possibly in the County Court. The matter was remitted to this Tribunal, and it may have been on that occasion that a portion of the costs claimed was determined to be irrecoverable. There were then some problems in effecting service upon the purchasers, about which there is further disagreement.

Procedure and Evidence

4. The Tribunal gave Directions on 6th June. The Respondents supplied a Statement of Case dated 30th June, and the Applicant has replied to this in a Statement dated 4th July. The Tribunal determined that this matter was appropriate to be dealt with on paper without the attendance of the parties, subject to giving the parties the opportunity of requesting an oral hearing. Neither party has made any such request, and accordingly this matter is dealt with on the basis of the papers supplied to the Tribunal by the parties.

The Applicant's Case

5. The Applicant seeks cost totalling £3338.62. These costs are the Applicant's solicitor's legal costs of £975, land Registry Fee of £8 and VAT of £170.62, totalling £1153.62. These costs appear in the Invoice dated 14th June 2010 attached to the application.
6. In addition, the Applicant seeks the costs of the valuation obtained from Talbots Professional Services Ltd dated 3rd July 2009, in the sum of £1900 + VAT, totalling £2185. The addition of the £2185 and £1153.62, produces the £3338.62 claimed.

The Respondents' Case

7. The Respondents argue that the Talbots' invoice is suspicious, because it was not produced until this application, and is different from an earlier invoice produced. They say that the claim comes too late, is excessive and appears to include costs associated with earlier hearing (which are irrecoverable). They point to the fact that an earlier valuation obtained by themselves was charged (in 2007) at £750 plus VAT.

8. As for the legal fees, they again point to their own legal bill of £270 plus VAT, charged by Ringley, apparently n associated but separate legal service offered by Ringley Chartered Surveyors, to whom the fee is payable. They make the point that no conveyance in fact took place, and the correspondence was minimal.

The Applicant's Reply

9. The Applicant in its reply re-iterates that these sums are in principle recoverable under the Act, subject to reasonableness, and neither the "18 month rule " applicable in another context, nor other statutory bar is applicable to the recovery of these costs.

The Determination of the Tribunal

10. No purpose would be served by setting out the provisions of section 33 in the context of this determination, because photocopies and extracts have already been supplied by both sides, and are well known to both parties. Suffice it to say that the legal costs of investigating the entitlement to acquire the freehold, the notice, and the other matters listed in the Act are in principle recoverable by the Applicant subject to reasonableness (as expanded upon at section 33(2)).
11. The Respondents' solicitors costs are lower than that claimed by the Applicants, but those solicitors waived certain costs (see the narrative of the Invoice dated 3rd June 2009) an moreover, the Applicant's solicitors would have had to consider the Claim Notice, and investigate other matters which either would have been unnecessary, or less time consuming, for the Respondents' solicitors (for example, entitlement to bring the Claim, effectiveness of Claim Notice, preparation of the Counter Notice).

12. Further the Applicant has chosen to instruct West End solicitors, (as it is entitled to) whose charge-out hourly rates could be expected to be greater than the Respondents' more local solicitors. The fee of £975 is at the higher end of the range to be expected by the Tribunal for work of this kind, but is not considered by the Tribunal to be unreasonable. It is allowed as claimed.
13. So far as the valuation fee claimed is concerned, this seems to the Tribunal, on the information supplied, to be very high. Neither party has suggested that there was or is anything complicated about the property – which appears to be an ordinary house in North West London, albeit divided into 2 flats. The Talbot's invoice is laconic, in that no detail is supplied of the hours spent, the work carried out, whether or not the property was inspected (the Respondents say it was not). The Tribunal would have expected a fee much more in line with that incurred by the Respondents, that is to say £750 plus VAT – and this is the sum allowed as reasonable under the Act, by the Tribunal.

Conclusion

14. For the reasons indicated above, the Tribunal's determination is that legal costs are recoverable by the Applicant against the Respondents in the sum of £1153.62 (inclusive of VAT) and valuation fees of £881.25 (inclusive of VAT) producing a total of £2034.87.

Tribunal Judge Shaw

Dated: 29th July 2014