



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

Case Reference : OT/LON/OOBJ/OCE/2015/0125,
00127, 0129, 0130, 0131, 0132, 0133
0135

Property : Blocks 1-5 Chapman Square,
London SW19 5QW and Blocks 6-10
Southlands Drive, London SW19
5QL

Applicant : Southlands College Estate
Wimbledon Limited

Representative : Fairweather Stephenson & Co
Solicitors

Respondent : (1) FIT Nominee Limited
(2) FIT Nominee 2 Limited

Representative : Shakespeare Martineau Solicitors

Type of Application : Assessment of costs under section
33 of the Leasehold Reform
Housing and Urban Development
Act 1993

Tribunal members : Mrs Sonya O'Sullivan
Mrs Sarah Redmond MRICS

Date of Decision : 14 October 2015

DECISION

The background

1. This is an application by the nominee purchaser of Blocks 1-5 Chapman Square London SW19 5QW (“Chapman Square”) and Blocks 6-10 Southlands Drive London SW19 5QL (“Southlands Drive”) to determine the amount of the landlord’s reasonable costs under section 33 of the Leasehold Reform Housing and Urban Development Act 1993 (the “1993 Act”) in connection with a claim by the participating tenants to exercise a right of collective enfranchisement.
2. Some eight different initial notices of the claim was given on or around 8 August 2014. An application was subsequently made to the tribunal under section 24 of the 1993 Act for a determination of the terms of the collective enfranchisement and that decision was issued on or around 12 August 2015. The substantive case involved an application for collective enfranchisement of over 100 flats set out in some 10 blocks on the Southlands College Estate in Wimbledon.

The present application

3. The nominee purchaser applied for an assessment of the landlord’s costs under section 33 of the 1993 Act in the original application for the tribunal’s determination of terms of acquisitions remaining in dispute under section 24(1) of the 1993 Act. After the issue of the tribunal’s decision in relation to the substantive decision directions in relation to the outstanding costs applications were made dated 20 August 2014.
4. In accordance with those directions by letter dated 3 September 2014 the landlord served a copy of its schedule of costs. The Applicant then wrote by letter dated 8 September 2015 to invite the landlord to serve a revised costs schedule excluding costs of the proceedings which it said the landlord was not entitled to recover. A revised costs schedule was served under cover a letter dated 10 September 2015. The Applicant served its statement of case dated 17 September 2015. The Respondent served a statement in relation to the conveyancing charges dated 29 September 2015.
5. Neither party having requested an oral hearing the application was considered by way of a paper determination on 14 October 2015.
6. The costs contained in the first costs submissions submitted to the tribunal were the landlord’s legal costs in the total sum of £13,000 plus VAT, £5,700 Counsel’s Fees (inclusive of VAT), £22,000 plus Vat conveyancing costs and valuation costs in the sum of £5,530 plus Vat. These were subsequently revised to be £22,000 plus Vat legal costs and valuation costs of £5,530 plus Vat.

The Legal costs

7. The total revised costs are £22,000 plus Vat as set out in the costs submission prepared by Shakespeare's Solicitors dated 2 September 2015. This states simply "costs for and incidental in each case relating to eight notices and investigation and title deduction and conveyance relating to the same as set out below for each property the subject of a notice". It goes on to list each block showing a fee of £4,500 for blocks 1,2 and 3 combined and £2,500 plus Vat for blocks 4-10 inclusive. It gives no further detail of the grade of the fee earner involved and the time spent and any narrative as to the work done.
8. The Applicant challenges the Respondents' breakdown as being wholly inadequate and not justifying the fees claimed or any at all. It is said that the Respondents have failed to specify the levels of expertise of the fee earners involved, the hourly rates to be applied, what work was done and the estimated time involved in carrying out that work. It is said further/in the alternative that the Respondents' costs are excessive and should be reduced. It is said that there is no evidence that the Respondents' solicitors have carried out any of the work set out in section 33(10) (a) (b) or (c) and have not deduced or verified title, although they have provided draft transfers and served counter notices. The Applicant says that if it were carrying out that work the hourly rate would be £250 per hour and no more than 2 hours time spent per block including any time spent investigating title. Account should have been taken of repetition. Accordingly it is said that £500 plus Vat is reasonable per block and the total figure should be £4,000 plus Vat in respect of all 8 blocks.
9. In its response dated 29 September 2015 the Respondents maintain they are entitled to their costs of conveyancing. However it is now suggested that 4 hours work is reasonable per block and a total of £8,000 plus Vat should be allowed. In this regard the Respondents place reliance on the decision of the Upper Tribunal in case reference [2013] UKUT 0362 (LC) LT case Number LRX/171/2012.

The Tribunal's decision – legal fees

10. By section 33(1) of the 1993 Act where a notice under section 13 is given the nominee purchaser is liable, to the extent they have been incurred in pursuance of the initial notice, for the reasonable costs of and incidental to the following;
 - (a) Any investigation reasonably undertaken –

- i. *of the question whether any interest in the specified premises or any other property is liable to acquisition in pursuance of the notice, or*
- ii. *of any other question arising out of that notice;*

(b) Deducing, evidencing and verifying the title to 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 such interest.

11. The directions issued in this matter dated 20 August 2015 provided that the landlord should send a schedule of costs sufficient for a summary assessment and went on to provide as follows;

“The schedule shall identify the basis for charging legal and/or valuation costs. If costs are to be assessed by reference to hourly rates detail shall be given of fee earners/case workers, time spent, hourly rates applied and disbursements. The schedule shall identify and explain any unusual or complex features of the case.”

12. In breach of those directions the tribunal has been provided with very little information to assist it in relation to the legal charges. The revised costs schedule does not provide any details of the fee earner responsible. The original costs estimate confirms that a “*Sean Phillip Dempsey Partner and Nicholette Elizabeth Smith fee earner*” conducted the work. We have no information as to the grade of fee earner of Ms Smith or the hourly charge out rates applied by either. We would expect a full narrative detailing the work done and the time spent. The information provided is wholly inadequate.

13. The Respondents appear to concede their revised legal costs claimed of £22,000 plus to the sum of £8,000 plus Vat in their reply of 29 September 2015. This is based on their assertion that 4 hours would be reasonable. They rely on a decision of the Upper Tribunal in which it was said the sum of £1,000 was held reasonable. However this case involved an appeal against a decision of the tribunal to limit the time claimed by an in house solicitor from 8 to 5 hours. The appeal focussed on whether the tribunal was wrong in law to reduce the charging rate on the grounds he was an in-house solicitor. The Upper tribunal found that the tribunal had applied the wrong rate and upheld the decision to allow 5 hours at the rate allowed, correcting what appeared to be a mathematical error. The tribunal is not altogether clear how that decision is relevant to the matter before the tribunal in this instance.

14. The Applicant says that no costs should be allowed given the wholly inadequate information provided. Although we accept that we have been given only the barest of information we are of the view that the landlord clearly would have incurred some costs under section 33 in dealing with this matter. In the absence of any useful information from the Respondent as to the time spent and work carried out we accept the Applicant's estimation of what would constitute reasonable costs in this matter and allow the sum of £500 plus Vat per block representing 2 hours work at a charge out rate of £250 per hour. The total legal fees allowed are therefore £4,000 plus Vat.

Valuation costs

15. Valuation costs are claimed in the sum of £5,530 plus Vat as set out in appendix D to the first costs submissions submitted by the landlord. As the revised costs submissions did not include any copy invoices the tribunal has had regard to those originally submitted. These comprise a number of individual invoices in relation to separate blocks each dated 20 August 2014.
16. Mr Mason submitted a comprehensive costs submission in support of his costs. This set out the scope of his instructions, and the work carried out. It noted that the time spent was significantly reduced to reflect the degree of calculation and reporting process.
17. The Applicant acknowledges that the valuer has confirmed that time and charges have been reduced to reflect a degree of repetition in the calculation and reporting process. However the Applicant notes that the first costs submissions included copy invoices but these were made out to Reverter Plus Ltd, an entity other than the landlord. On that basis it is said that the costs should be disallowed as they have not been incurred by the landlord.

The tribunal's decision - Valuation costs

18. The tribunal has also considered the valuation fees claimed of £5530 plus vat. In principle we considered these fees to be eminently reasonable given the work carried out and we were content that any repetition had been taken into account. However as rightly pointed out by the Applicant the invoices in our bundle were addressed to Reverter Plus Limited rather than the landlord. We had no explanation from the landlord in this regard. As a result our hands are tied and it is with some reluctance that these costs must be disallowed as we have no evidence that the costs were incurred by the landlord.

Name: Sonya O'Sullivan

Date: 14 October 2015