

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL &
LEASEHOLD VALUATION TRIBUNAL



S.33 Leasehold Reform, Housing and Urban Development Act 1993

DECISION & ORDER

Case Numbers: CHI/00ML/OC9/2008/0008

Property: 21 Upper Rock Gardens
Brighton BN2 1QE

Applicant: Headline Developments Ltd
Solicitors: Osler Donegan Taylor

Respondent: 21 Upper Rock Gardens (Brighton) Ltd
Solicitors: James & Co

Application: 29 October 2008

Directions: 31 October 2008

Consideration: 09 January 2009

Decision: 24 February 2009

Tribunal: Ms J A Talbot MA
Mr R Wilson LLB

Summary of Decision

The Tribunal determines that the total amount payable by the respondent to the applicant in respect of legal costs shall be the sum of £192.50 plus disbursements of £36. VAT is to be added to this figure as appropriate.

Application

1. On 29 October 2008 the applicant applied to the Tribunal pursuant to Section 33 of the Leasehold Reform Housing and Urban Development Act 1993 (“The 1993 Act”) to determine the costs payable by the respondent in connection with leasehold enfranchisement at 21 Upper Rock Gardens, Brighton BN2 1QE (“the property”).
2. Directions were issued on 31 October 2008 to the effect that the costs would be determined by the Tribunal on the basis of written representations. Neither party objected.
3. Mr Donegan of Osler Donegan Taylor, solicitor for applicant, provided a schedule of costs together with copies of documents from his file. Neither party provided any written submissions either supporting or opposing the costs claimed. The application was duly considered by the tribunal on the papers on 09 January 2009.

Law

4. The law is to be found at Section 33 of the 1993 Act, which deals with costs incurred in connection with new leases to be paid by the tenant, and provides, insofar as is relevant:

(1) Where a notice is given under section 13, then (subject to the provisions of this section...) the nominee purchaser shall be liable, to the extent that they have been incurred in pursuance of the notice by the reversioner ... 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 the 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 ...

(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 ... 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 cost.

(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.

Consideration

5. The tribunal carefully considered the schedule of costs and documents. ODT claimed costs of £605.88, inclusive of vat, disbursements and an invoice from Parsons Son & Basley for £146.86.
6. The background facts were as follows. James & Co served a purported Initial Notice for collective enfranchisement under Section 13 of the Act dated 25 March 2008. It was sent both to Headline Developments Ltd and also to Parsons Son & Basley. Mr G Holden of PSB passed the letter on to ODT.
7. On 4 April 2008 ODT wrote to Mr J Hingston (presumably of Headline) that the Notice “appears to be defective”, and having perused the Notice, confirmed this view in a further letter dated 21 April. On 7 May ODT wrote to James & Co stating that the Notice was invalid because it was not signed by qualifying tenants of at least 50% of the flats and asking for the Notice to be withdrawn to avoid costs of serving the landlords’ Counter Notice which was due by 18 May.
8. By letter dated 20 May James & Co accepted that the Notice was invalid and withdrew it. In that letter they also asked whether Headline would be prepared to dispose of the freehold voluntarily. ODT confirmed the position to their client on 21 May. After that, all correspondence and attendance notes in the papers were concerned either with costs or the possible voluntary sale. A telephone note of 3 June between Mr Donegan and Mr Hingston and records that there would be no voluntary sale.
9. James & Co did not agree costs of £605.88, describing the figure as “astounding”, but no further submissions have been made.
10. In its letter of application ODT claimed its costs were payable both under Section 28 and Section 33. The tribunal found that the costs recoverable from the respondents were limited to those matters set out in S.33(1), which is a restrictive provision. It did not accept that the Notice had been withdrawn within the meaning of S.28(4), which presupposes that a valid Initial Notice and Counter-Notice have been served and that the nominee purchaser decides not to proceed with the transaction. Even if S.28(4) did apply, it would still not entitle the applicant to claim any costs beyond the scope of S.33(1).
11. In this case, ODT noticed at an early stage that the Initial Notice was defective and this was accepted by James & Co on 7 May 2008 without further argument. No Counter Notice was served and no valuation prepared. Therefore the only costs payable by the respondent were those reasonably incurred by the landlord in investigating any question arising out of the Notice under Section 33(1)(a)(ii).
12. Looking at the quantum of costs, the tribunal considered it was not unreasonable for the applicant to retain its usual solicitors, and in view of the importance of the matter to the client and the compulsory nature of the transaction, for a partner to have overall conduct of the case at the same hourly rate it would normally pay for other work. However, there was no standard client care letter from ODT to Headline setting out that hourly rate. At the very least, the tribunal would have expected to see a fee estimate or other evidence of Headline’s agreement to pay ODT’s fees, even in a straightforward case such as this, having regard to Section 33(2).
13. The Schedule of Costs indicates that Mr Donegan is a partner and Grade A fee earner whose hourly charging rate is £200 plus VAT. In the tribunal’s view that rate was excessive for this type of work in this geographical area. In the absence of any evidence that this was the usual agreed rate paid by this client, the tribunal allowed £175 per hour as a more reasonable hourly rate for this straightforward matter.

14. ODT's brief Schedule was broken down into attendances (letters and telephone calls) and work done on documents. No details of content or dates were supplied. At the tribunal's request, a computer printout and copy file documents were also supplied, without which the tribunal would have had no way of assessing whether the costs claimed in the Schedule were within scope of Section 33. Even then no attempt had been made by ODT to cross-refer the printout to the Schedule. The printout was of little value as the narrative was insufficient and no dates were recorded. The tribunal therefore scrutinised the documents and attendance notes in order to make its assessment.
15. The tribunal allowed ODT's costs of perusing the Notice and the registered title. It also accepted that a limited amount of solicitor's time could be claimed within S.33 for advising the landlord on the Notice, as these were inevitable and incidental to the investigation. This extended to the letter in from James & Co of 20 May and the letter out to the landlord on 21 May 2008. However, costs incurred after this in relation to the possible voluntary disposal of the freehold and costs were not within scope of S.33 and were disallowed.
16. The tribunal disallowed PSB's fees of £146 plus VAT. It would appear these were incurred purely for passing on the Initial Notice and discussing the matter generally. They were not costs of investigating the Notice or of valuation within S.33(1)(d).
17. The tribunal therefore allowed the following costs, broken down in detail, showing time in units of 6 minutes:

Date	Work done	Time	Amount
03/04/2008	perusal of Notice	2	£35.00
04/04/2008	letter out client	1	£17.50
18/04/2008	telephone in client	1	£17.50
18/04/2008	perusal of title	3	£52.50
21/04/2008	letter out client	1	£17.50
08/05/2008	telephone James & Co	1	£17.50
20/05/2008	letter in James & Co	1	£17.50
21/05/2008	letter out client	1	<u>£17.50</u>
			£192.50
	Disbursements: Land Registry (All shown exclusive of VAT)		£36

Determination

18. The tribunal determines that the applicant's reasonable costs payable by the respondent pursuant to Section 33 of the 1993 Act are £192.50 plus disbursements of £36, to which VAT is to be added as appropriate.

Dated 24 February 2009

Signed

**Ms J A Talbot
Chairman**