

**THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
SOUTHERN RENT ASSESSMENT PANEL  
LEASEHOLD VALUATION TRIBUNAL**



**Sections 33 & 91 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act")**

<b>Case Number:</b>	<b>CHI/00ML/OC9/2009/0012</b>
<b>Property:</b>	<b>62 Goldstone Villas Hove East Sussex BN3 3RS</b>
<b>Applicant/Freeholder:</b>	<b>Eastcourt Estates (Sussex) Limited</b>
<b>Respondents/Leaseholders:</b>	<b>Luke Joseph Shields Timothy Daniel Oxley Charles Richard Crouch</b>
<b>Appearances for the Applicant:</b>	<b>Geoffrey Wolfarth Solicitor</b>
<b>Date of Hearing</b>	<b>11<sup>th</sup> May 2010</b>
<b>Tribunal:</b>	<b>Mr R T A Wilson LLB (Lawyer Chairman) Mr N Cleverton FRICS (Valuer Member)</b>
<b>Date of the Tribunal's Decision:</b>	<b>4th June 2010</b>

**Summary of The Decision**

1. The total amount payable by the respondents to the applicant in respect of the freeholder's costs payable pursuant to S.33 of the 1993 Act is £2,698 to which VAT is to be added at the appropriate rate.

## **The Application**

2. This application is for a determination of the costs payable by the respondents to the applicant following an uncompleted claim for collective enfranchisement of the subject property.

## **The Facts**

In summary the facts are as follows:

3. On the 16 February 2009 the respondents served notice on the applicant pursuant to S.13 of the 1993 Act claiming their right to collective enfranchisement of the property.
4. On 17 April 2009 the applicant served a positive counter notice pursuant to S.21 of the 1993 Act.
5. On 8 June 2009 the respondents served notice of withdrawal pursuant to S.28 of the 1993 Act.
6. Between March 2009 and June 2009 the parties and their advisors corresponded in relation to elements of the claim. There was an issue with regard to the content of the notice of claim, which centered on the title relating to the forecourt area of the front of the property which was not vested in the applicant.
7. Following the withdrawal of the claim, the applicant claimed costs totalling £5,135 and the respondents made a counter offer of £1,633. The parties have not been able to agree on the amount of costs which are payable and this has led to the application for a determination of those costs, which the tribunal has jurisdiction to make under S.91 of the 1993 Act.

## **The Law.**

8. S. 33(1) of the Act the nominee purchaser is liable for the reasonable costs incurred by the reversioner in the enfranchisement and the wording of this S. is as follows:-

*(1) Where a notice is given under section 13, then (subject to the provisions of this section and section 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 subS. 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 S. 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 S. 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 S. 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.

In so far as is relevant, S. 28 of the 1993 Act reads as follows:-

where a notice of withdrawal is given by the participating tenants under subsection (1 )

(a) those persons and

(b) every other person who is not a participating tenant for the time being  
Shall be liable-

(i) to the reversioner, and

(ii) to every other relevant landlord

for all relevant costs incurred by him in pursuance of the initial notice a down to the time when the notice of withdrawal or a copy of it is given it to him.

## **The Evidence**

### **The Applicant's Case**

9. Pursuant to the tribunal's directions, the applicant has made detailed submissions. They have filed a statement of case and a reply to the respondents' statement of case and lodged with the tribunal a hearing bundle running to over 200 pages. The bundle includes a computerised time record from the applicant's then solicitors Messrs Adams and Remers which shows a record of all the time entries which give rise to the applicant's legal costs. The bundle also includes invoices for the

disbursements claimed including Counsels fees, three accounts from the Valuer and an account from the managing agents.

10. The respondents have also filed a statement of case in which they set out their grounds for disputing the legal fees claimed. Their statement of case includes a Scott schedule which identifies their reasons for the disputed items.
11. At the hearing the applicant was represented by its solicitor Mr Wolfarth. None of the respondents attended the hearing and they were not represented. Accordingly the tribunal considered the matter on the basis of the written evidence submitted by both parties and as developed by the applicant's solicitor at the hearing.
12. The applicant's solicitor commenced his client's case by referring the tribunal to a number of general principles. Thereafter he dealt at considerable length with each disputed item of his firm's legal costs as identified by the respondents in their statement of case.
13. Firstly the applicant's solicitor responded to the claim made by the respondents' solicitors that because of an error in the application notice the respondents were not liable to pay any costs. Mr Wolfarth contended that it was established law that a nominee purchaser is liable for the costs of any abortive application made under the 1993 Act and a mere misquoting of the S. number would not have the effect of barring the applicant from its proper entitlement to costs.
14. Secondly Mr Wolfarth contended that the respondents were liable for all relevant costs incurred up to 10 June 2009, which was the date when the notice of withdrawal had come to his client's attention. He further contended that the relevant costs were all reasonable costs incurred prior to this date and not just costs which were invoiced prior to this date.
15. Thirdly Mr Wolfarth contended that this was a complicated claim because of the problems relating to the title of the forecourt. He claimed that the respondents had not understood the nature of the difficulties and therefore did not fully appreciate the amount of additional work that had to be carried out.
16. Fourthly the applicant was justified in claiming costs incurred by the managing agents even though there was a common board of directors for the freeholder and managing agents' companies. The managing agents were instructed by the applicant to act for them and under the general law of principal and agent it was right and proper that the reasonable costs of the managing agents should also be recoverable pursuant to S.33 of the 1993 Act.
17. Fifthly it was reasonable that the applicant should instruct specialist Counsel to advise on the contents of the counter notice. This was the case because of the complications in relation to the forecourt.
18. Mr Wolfarth also made detailed submissions in relation to individual elements of his firm's bill. The tribunal does not propose to summarise the individual points made but records that in arriving at its decision it has had due regard to all submissions made by the applicant and the respondents whether or not referred to in this decision.

#### The Respondents' Case

19. The respondents' case is summarised in their statement of case. Their primary position appears to be that the application to assess the applicant's costs is substantially defective as it refers to S.33 of the 1993 Act whereas it should have

referred to S.28 of the 1993 Act. Accordingly the application should either be dismissed or in the alternative assessed at nil.

20. The respondents' statement of case also contains a Scott Schedule in which comments are made about the legal costs claimed by the applicant. These comments can be summarised as follows:
- a) Where an invoice postdates the date of withdrawal it is irrecoverable.
  - b) It was not reasonable as a matter of principle to instruct Counsel and all Counsel fees should be disallowed.
  - c) The instructing of Counsel gave rise to duplication.
  - d) Some of the work claimed is not within the scope of S.33 and should be disallowed.
  - e) Some of the work claimed by the applicant's solicitors is of an administrative nature and could have been carried out more cost effectively.
  - f) Some of the work claimed relates to negotiations, which is not covered by S.33 of the 1993 Act.
  - g) In general the amount claimed in respect of legal costs is excessive and disproportionate to the subject matter of the case.

### **The Tribunal's Consideration**

21. This Tribunal is very surprised at the size of the claim for costs which is set at £5,135.90. These costs seem to us to be wholly disproportionate when one considers that the charges relate to an uncontested enfranchisement claim which did not in the event proceed to completion.
22. The tribunal considered that the costs recoverable from the respondents were limited to those matters set out in S.33 (1) of the 1993 Act, which is a restrictive provision. S.33 (2) states that 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.
23. Looking at the quantum of costs and having regard to S.33 mentioned above, the tribunal considered it was not unreasonable for the applicants to retain their usual solicitors and in view of the importance of the matter to the client and the compulsory nature of the transaction, for a senior solicitor to have overall conduct of the case at the firm's hourly rate applicable for this type of work and complexity. The tribunal was satisfied that the applicant was aware of and accepted the charge out rates applied to their account of £200 per hour. The tribunal considered this charge out rate to be reasonable having regard to the seniority of the solicitor with conduct of this case and his obvious familiarity with this area of the law.
24. The tribunal concluded that there was no merit in the respondents' case that the application should be dismissed because of an incorrect reference to a section in the 1993 Act. It is quite clear that S. 33 is the governing section of the 1993 Act and the tribunal is satisfied that any reasonable recipient of the notice applying for a determination of the costs payable would have been aware of its purpose so that the

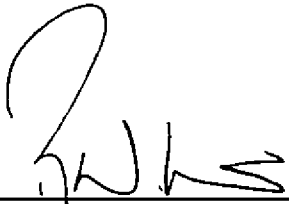
reasonable recipient test would be satisfied and the application valid. In addition there was no prejudice to the respondent. This argument is therefore rejected.

25. The tribunal determines that the date of withdrawal was 10 June 2009 and that the recoverable costs are those incurred prior to this date and not just those costs invoiced prior to this date.
26. The tribunal accepts that the title issues of the forecourt were not entirely straightforward and that this would have necessitated some legal research. It is for this reason that the tribunal concluded that it was reasonable for Counsel to be instructed at a cost of £425 but on the basis that there should have been a corresponding reduction in the time taken by the solicitor to conclude the necessary work up to the date of withdrawal. The forecourt aside, there were no novel features or complications which should have the effect of increasing the fees beyond what one would normally expect for a claim of this kind.
27. Reviewing the case in the round, the tribunal concluded that it is was reasonable for the applicant's solicitor to spend seven hours in connection with the case but not the fourteen hours claimed which we consider excessive and therefore unreasonable. In arriving at this time estimate we have allowed three hours for the routine elements of the case and added to this figure a further four hours to allow for the complications of the forecourt area. We do not consider that any more time than seven hours in total should have been necessary.
28. We also consider that it was reasonable for a Valuer to be instructed and for his first fee account of £600 and a further fee account of £250 to be recoverable but not the third fee account claiming £300 for negotiations to agree the price.
29. We further conclude that the managing agents' fees are not recoverable as they do not in the opinion of the tribunal fall within the scope of S. 33 of the 1993 Act.
30. The tribunal arrived at these conclusions based on its collective knowledge and experience of the time commonly taken by specialist solicitors to undertake cases of this kind and complexity.
31. Accordingly the tribunal finds that the fees payable by the respondents jointly and severally to the applicant pursuant to S. 33 of the 1993 Act are £2698 made up as follows:-

Solicitor's costs	1,400.00
Barrister's fees	425.00
Valuers fees	850.00
Land Registry fees	23.00

To which VAT is to be added at the appropriate rate.

Chairman

  
RTA Wilson

Date 4th June 2010