

2771



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

Case Reference CHI/21UC/OC9/2013/0011

Property 23 Burlington Place
Eastbourne
East Sussex, BN21 4AR

Applicant M Mohseni

Applicant's Representative Dean Wilson LLP Solicitors

Respondent 23 Burlington Place (Eastbourne)
Limited

Respondent's Representative Stephen Rimmer LLP Solicitors

Type of Application Enfranchisement costs under Section
91(2) Leasehold Reform Act 1993 (the Act)

Tribunal Member Judge R.T.A. Wilson

Date of determination 25th November 2013

DECISION

© CROWN COPYRIGHT 2013

The Application

- 1) This was an application made by the Applicant freeholder of the Property for a determination of the costs payable by the Respondent following an uncompleted enfranchisement claim.

The Decision

- 2) The Tribunal determines that the Respondent is liable to pay the costs of the Applicant in the sum of £1,379.40 inclusive of VAT.

The Law

- 3) Under section 33(1) of the Act, the nominee purchaser is liable for the reasonable costs incurred by the reversioner in relation to the following: -

(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 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 section 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.

The Procedural background

- 4) The papers before the Tribunal consisted of the application form dated the 16th August 2013 and a statement with five exhibits also dated the 16th August 2013 by Emily Fitzpatrick, the Applicants solicitor. One of the exhibits consisted of a detailed breakdown and time narrative of the costs claimed.
- 5) Although the directions of the Tribunal had been served on the Respondent's solicitors directing them to file and serve points of dispute as regards the Applicant's costs, they had failed to respond and, despite a number of reminders from the Tribunal office, no evidence or objections had been filed by or on behalf of the Respondent.
- 6) The Application has been determined on the paper track on the basis only of written representations and documents without a hearing in accordance with Rule 31 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

The Background Facts

- 7) This matter relates to the determination of the legal costs payable by the Respondent following the service of a second notice of claim pursuant to Section 13 of the Act. The facts, as derived from the Applicant's statement of case, are these: In July 2012 the Respondent served a notice pursuant to Section 13 of the Act claiming the right to enfranchise. That notice was subsequently withdrawn and on the 27th February 2013 the Leasehold Valuation Tribunal determined costs in favour of the Applicant in the sum of £2,525 as a consequence of that notice.
- 8) On or around the 27th September 2012, the Respondent purported to serve a second notice of claim and once again the Applicant challenged the validity of that notice. Correspondence passed between the parties' representatives in relation to the effectiveness of the second notice, but no agreement was reached. Accordingly, on or about the 14th December 2012 the Applicant's solicitor served a counter notice without prejudice to their contention that the second notice was defective. There was further correspondence between the parties from September

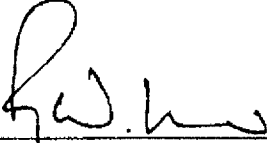
2012 to July 2013, after which time the solicitor acting for the Respondent ceased communication with the Applicant's solicitor. No application was subsequently made to the Tribunal to determine matters in dispute so that, even if the second notice was valid, it is now deemed withdrawn by virtue of Section 24 of the Act.

- 9) In July 2013 the Applicant's solicitor sent to the Respondent's solicitor a schedule of costs arising out of the second notice in the sum of £1,272 and invited payment of this sum. Payment has not been made. The Tribunal has no further record of any communications between the parties' solicitors and on the 16th August 2013 the Applicant again applied to the Tribunal to determine his costs of the second notice, pursuant to Section 91 of the Act .

The discussion

- 10) The Tribunal considered that the costs recoverable from the Respondent are limited to those matters set out in Section 33 (1) of the 1993 Act. Section 33 (2) provides 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.
- 11) Looking at the quantum of costs and having regard to Section 33, the Tribunal considered it was not unreasonable for the Applicant to retain solicitors and, in view of the importance of the matter to him and the compulsory nature of the transaction, for senior solicitors to have overall conduct of the case at the firm's hourly rates applicable for this type of work and complexity. In the judgment of the Tribunal, whilst the charge out rates applied by Dean Wilson are at the very top end of the scale of what one might reasonably expect of a provincial law firm, they are not excessive and neither can it be said that an excessive amount of time has been recorded for the necessary work which was carried out.
- 12) The Tribunal agrees with the submissions made for the Applicant focussing on the legitimate interests of a Freeholder in ensuring that all is in order with the enfranchisement claim. Whilst the costs claimed are higher than one would expect for a case that did not complete, the second claim was complicated by the existence of the earlier abortive claim. The existence of the earlier claim notice, together with the timing of the second notice and the Respondent's Solicitors attitude to same, have necessarily led to increased costs. The Applicant's approach to these issues is understood and in the judgement of the Tribunal the action and steps taken by the Applicant's solicitors have been reasonable. In the absence of any response from the Respondent, the Tribunal considers it is not possible to find that the overall fees claimed, in the present case, fall outside the range of what it would be reasonable to pay solicitors of admitted experience and expertise in this area of law and practice for work properly undertaken in consequence of the enfranchisement claim.

- 13) Accordingly, the Tribunal finds that the fees payable by the Respondent to the Applicant pursuant to Section 33 of the 1993 Act are the amount claimed by the Applicant, namely £1,379.40 inclusive of VAT.
- 14) The Tribunal declines to join the individual leaseholders/participating tenants to this application as Section 33 of the Act makes reference to the liability of the nominee purchaser, which in this case is the Respondent. The liability of participating tenants is governed in part by Section 28 of the Act.

Signed  _____
Judge R.T.A Wilson

Dated 25th November 2013

A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office, which has been dealing with the case.

The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend the time limit, or not to allow the application for permission to appeal to proceed.

The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

If the First-tier Tribunal refuses permission to appeal, in accordance with section 11 of the Tribunals, Courts and Enforcement Act 2007, and Rule 21 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010, the Applicant/Respondent may make a further application for permission to appeal to the Upper Tribunal (Lands Chamber). Such application must be made in writing and received by the Upper Tribunal (Lands Chamber) no later than 14 days after the date on which the First-tier Tribunal sent notice of this refusal to the party applying for permission.