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FIRST-TIER TRIBUNAL

**PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case reference : LON/00AZ/OC9/2014/0149 and 0175

Property : 121 Honor Oak Park, London SE23

Applicant (0149) : Mr R E Herbert and Ms A L Herbert

Respondent (0149) : Ms J S Buse and Mr A J Thring

Applicant (0175) : Ms J S Buse and Mr A J Thring (hereinafter referred to as the "tenants")

Respondent (0175) : Mr R E Herbert and Ms A L Herbert and Ms K Calcagano (hereinafter collectively referred to as "the reversioner")

Representative of Ms J S Buse and Mr A J Thring : Mr G Crews of Bennett Welch, solicitors

Representative of Mr R E Herbert and Ms A L Herbert : Mr P Lally of Farooq Bajwa & Co (Formerly of Evans Dodd) solicitors

Representative of Ms K Calcagano : Mr C Green of LPC Law, solicitors.

Type of Application : Applications to determine costs to be paid under section 33 (1) of the leasehold reform Housing and Urban Development Act 1993

Tribunal members : Judge Pittaway
Mr D Jagger

Date of Decision

Decisions of the Tribunal

The Tribunal **determines** that reasonable costs of and incidental to the matters in section 33 (1) of the Leasehold Reform, Housing and Urban Development Act 1993 (the "Act") in connection with tenants' exercise of their right to acquire the freehold interest in the Property following a notice given under section 13 of the Act are £5,230, including VAT and disbursements.

The reasons for the Tribunal's determination are given below.

Background

1. In brief, because of the poor relationship between Mr and Ms Herbert and Ms Calcagano, collectively the freeholder of the property, Mr and Mrs Herbert and Ms Calcagano had each instructed their own solicitors and valuer to act in connection with the tenants' exercise of their right to acquire the freehold interest in the property.
2. The tenants applied to the tribunal to determine
 - 2.1 Whether the reversioners were entitled to claim fees in respect of the two solicitors and two valuers.
 - 2.2 If it is not reasonable to claim two sets of fees, what fees are properly payable by the tenants and how should these be apportioned between the reversioner; or
 - 2.3 If it is reasonable to claim two sets of fees, what fees are properly payable by the tenants and how should these be apportioned between the reversioner.
3. Directions were issued on 17 October 2014.

Evidence

1. The tribunal had before it the bundles provided in accordance with the Directions.
2. The tribunal heard evidence from the legal representatives of each of the tenants, Mr and Ms Herbert and Ms Calcagano.
3. Mr Green in his submissions referred the tribunal to the decision of the Upper Tribunal (Lands Chamber) *Dashwood Properties Limited v Beril Prema Chrisostom-Gooch* copies of which case were provided to the tribunal and the other parties.
4. Where appropriate the tribunal refers below in its reasons for its determination to the relevant evidence.

Reasons for the Tribunal's determination

1. The tribunal had particular regard to the wording of section 33 in making their decision.
2. The tribunal firstly considered the following relevant part of section 33(1) and in particular the effect of the words which the tribunal have underlined in the extract below;

"where a notice is given under section 13 then (subject to the provisions of this section...) the tenants 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..."

3.
 - 3.1 The tribunal agree with Mr Lally that the section imposes a statutory liability on the tenants as to the payment of certain costs; the tribunal do not have discretion as to whether the tenants are liable.
 - 3.2 The costs do, however, have to be reasonable.
4.
 - 4.1 As to whether reference to the "reversioner" in the singular prohibits the instruction of more than one solicitor and/or valuer, the tribunal heard argument from Mr Crews that the reference to "reversioner" (even if being used as a collective noun for more than one reversioner) meant that only one firm of solicitors and one valuer should be instructed in connection with the matters in respect of which costs may be recovered under section 33(1).
 - 4.2 Mr Lally argued that, in the absence of any restriction in section 33 (1), more than one solicitor and/or valuer could be instructed. Mr Lally also referred the tribunal to section 101(4) of the Act (the section which contains general interpretation provisions for Part 1 of the Act (which Part includes section 33)) the relevant part of which provides that

"where two or more persons jointly constitute the landlord.....in relation to a lease of a flat, any reference in this Part to the landlordis a reference to both or all of the persons who jointly constitute the landlord....."

Mr Lally also made reference to section 6 (c) of the Interpretation Act 1978 which provides that the singular includes the plural and vice versa.

"...any costs incurred by a relevant person in respect of professional services rendered by any person shall only be regarded as reasonable if and to the extent that the 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 such costs."

was there to ensure that the relevant person does not simply incur costs, knowing that those costs will be paid by the lessee, "without there being any necessity to do so" and that therefore it was inappropriate for the lessee to pay the costs of two firms of solicitors for conveyancing costs, but that as it was possible that there may be issues of conflict between the intermediate and the competent landlord, where these are different persons with different degrees of interest or concern as to the tenant's right to take the lease, there should be no reduction in the intermediate landlord's costs by reason of their being duplication with the work of the head landlord.

- 7.3 The tribunal accepts Mr Crews' submission that in these applications the Mr and Mrs Herbert and Ms Calcagano do not have separate interests. Each had the same degree of interest as to the tenant; they were not intermediate and competent landlord; all are the immediate reversioners of the tenant.
8. Accordingly the tribunal do not consider that costs of two firms of solicitors are "*reasonable costs*" for the purposes of section 33 (1), particularly when read in conjunction with the requirement in section 33(2) that to be reasonable a reversioner would have had to be personally liable for all such costs. In this context the tribunal are of the view that because section 33(2) refers to all costs the costs would only be reasonable if each reversioner had been prepared to be personally liable for the costs of both solicitors.
9. The tribunal have therefore had to determine how much of the composite costs are reasonable.
- 9.1 Trings (Ms Calcagano's previous solicitors) whose costs were the subject of Application 0175, are no longer instructed by Ms Calcagano. Their Schedule of Costs before the tribunal was not broken down in a way that enabled the tribunal to understand how they were made up. Ms Calcagano had recently instructed Mr Green who was unable to assist the tribunal in this regard.
- 9.2 Mr Lally, formerly of Evans Dodds, but now of Farooq Bajwa & Co had provided a detailed breakdown of Evans Dodds' costs of £11,605.28; and Mr Crews had made observations on these in his letter to both Evans Dodd and Thrings LLP of 11 November 2014, which was in the bundle before the tribunal.

9.3 In determining what would be reasonable costs in this case the tribunal have accepted the costs set out in Evans Dodds' "Schedule of work done on documents" where these have been accepted by Mr Crews. Having regard to Mr Crews' representations on the other items of work set out in this schedule and from their own knowledge as an expert tribunal the tribunal considers;

- (a) that there are elements of duplication in the Evans Dodds schedule (for example in items 1,2 and 10)
- (b) there are two items where the manner in which the work is described leaves the tribunal unable to determine whether the costs in question fall within section 33(1) and they have therefore discounted these ((items 9 and 16))
- (c) the tribunal accept that items 8 and 11 are ancillary to the valuation although they consider the actual amount of time claimed to be unreasonable.
- (d) The tribunal have reduced certain items where the amount of time claimed to have been spent appears to it unreasonable.
- (e) The tribunal do not accept that item 20 is incidental to the conveyance of any interest and have discounted this item.
- (f) The tribunal have disallowed any item in the schedule which relates to communication with Ms Calcagno's solicitor.
- (g) Insofar as a charge out rate is concerned, the tribunal do not consider that it was necessary that a fee earner of Mr Lally's experience be involved in every aspect of the application. They have therefore adopted a "blended rate" of £230 per hour.

The tribunal consider that reasonable costs for the allowable items on the schedule of works to be in the region of £1300.

10. The tribunal note that no evidence was provide by Ms Calcagano as to the assertion that a valuer's fee of £1250 is reasonable and disagree with this assertion; particularly in view of the lower fee claimed by Mr and Ms Herbert's valuer of £350. The tribunal consider that total valuers' fees of £1000 to be reasonable.
11. It is for the reversioners to agree how to apportion these costs between their respective solicitors and valuers.

The Law

The statutory provisions or relevant extracts from them are set out in the above reasons for the tribunal's decision.

Name: Judge Pittaway **Date:** 22 January 2014