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

Case reference : **LON/00BH/0C9/2013/0080**

Property : **175 and 177 Albert Road London
E10 6PA**

Applicant : **Hugh Higgins Bowman and David
Michael Gilbert**

Representative : **Thirsk Winton LLP**

Respondent : **Abdul Khalique**

Representative : **Ross and Craig**

Type of application : **Application under section 91
Leasehold Reform, Housing and
Urban Development Act 1993 (the
“Act”) for a determination of the
costs payable under S33(1) of the
Act**

Tribunal member : **Mrs E Flint DMS FRICS**

: **Determination without an oral
hearing in accordance with
Regulation 31 The Tribunal
Procedure (First-tier Tribunal)
(Property Chamber) rules 2013**

Date of decision : **13 February 2014**

DECISION

Decisions of the Tribunal

- (1) The Tribunal determines that legal costs of £2545 + VAT and disbursements of £24 are payable
- (2) The Tribunal determines that no valuation fees are payable.

The Application

1. The Applicant seeks a determination of the landlord's reasonable costs under section 33(1) Leasehold Reform and Urban Development Act 1993
2. The Applicants are the lessees of the subject premises. The costs are those incurred in respect of a collective enfranchisement, the terms of which, other than costs, have been agreed.
3. On 17 December 2013 the Tribunal issued Directions which provided for this matter to be decided on the papers unless a hearing was requested. No such request has been received and the Tribunal has reached its decision without an oral hearing in accordance with Regulation 31 The Tribunal Procedure (First Tier) (Property Chamber) Rules 2013. Further Directions were issued on 7 January amending the dates for service of the documents.

The Law

4. Section 33 of the Act provides that
 - (1) *Where a notice is given under section 13, then (subject to the provisions of this section and sections 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 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.*

The Evidence

5. Both parties made written submissions. The Applicants provided a bundle of relevant documents which included a breakdown of the costs, the Solicitors Guideline Hourly Rates 2010 and a valuation report dated 14 December 2012.
6. The Respondent provided a schedule of costs totalling £4014 including VAT, made up of legal fees of £3,325 + VAT and disbursements of £24 in respect of Land Registry fees.
7. The Applicants stated that in breach of the Directions no supporting invoices had been supplied in relation to the valuation fee of £950 + VAT. The schedule of legal costs was not sufficiently detailed; items were not broken down in detail within the various categories.
8. The Respondent countered that the schedule of costs provided sufficient information for the Applicant to formulate a detailed response and is in the same format as a Statement of Costs in civil court cases for summary assessment of a party's costs.

Hourly rates.

9. The Applicants stated that the Landlord had claimed an hourly rate of £275 for work carried out by Natasha Wagon, a Grade A fee earner and £225 for work carried out by Elizabeth Dymov. The Solicitors Guideline Hourly Rates 2010 remains the basis upon which the Courts award costs in litigious matters and the Applicants seeks to rely on those guidelines. The solicitors are located in "London 2" with regard to the guidelines. Ms Wagon became a Grade A fee earner on 1 September 2013 therefore nearly all the work on this case was while she was a

Grade B fee earner. The appropriate basis of charging is £242 per hour. The hourly rate for Ms Dymov is also higher than the guideline rate of £196 per hour.

10. The Respondent stated the guidelines are guidelines only. The Applicants had not disclosed the hourly rates of their own solicitors by way of comparison. The Respondent had an existing relationship with the Respondent's solicitors who have handled some of the Respondent's enfranchisement matters. Ms Dymov is an experienced enfranchisement solicitor and property litigator and carried out most of the work in this matter. Her hourly rate of £225 was appropriate.

Attendances on Client: 3.4 hours claimed.

11. The Applicant stated that the freeholder is an experienced property investor with knowledge of leasehold enfranchisement matters. There was no reason for prolonged attendances on the client, 0.5 hours at the Grade C hourly rate was an appropriate amount of time for taking instructions and updating the client.
12. The Respondent stated that it was necessary to obtain instructions from the client irrespective of their client's experience. Instructions were required in relation to the extent of the property to be acquired, obtain copies of the leases which the Applicants had refused to supply and advise the clients on all matters relating to the enfranchisement. 0.5 hours was unrealistic.

Attendances on Applicant's Legal representatives: 0.9 hours claimed.

13. The Applicant stated that the hours are not broken down, the Applicant believes that 8 letters or emails were sent, one was the result of the Respondent sending an incorrect version of the transfer documents. All correspondence was brief, 0.7 units at £196 should be claimed.
14. The Respondent was of the opinion that the time claimed was reasonable over the period of claim (6 March to 22 November 2013).

Attendance on Client's Valuer: 0.8 hours claimed.

15. The Applicants stated that no reason is given as to why such an extensive amount of time is claimed. This represents an abnormal amount of time, 0.3 hours at £196 would be appropriate.
16. The Respondents replied that a valuation was carried out for the Respondent in December 2012. They had to contact the valuer regarding an updated valuation to include a valuation of the

appurtenant land which had not been covered in the initial valuation. Attendances were required for regular updates on the price negotiations.

Perusal of Documents: 4.2 hours claimed.

17. The Applicants accepted that this is one of the more significant areas in which time is expended however 4.2 hours is an extraordinary amount of time. A total of 1 hour broken down equally between the two fee earners should be sufficient.
18. The Respondent stated that it was a reasonable period of time in view of the number of documents which had to be perused. Ms Wagon drafted the provisions to be included in the conveyance which were inserted into the Schedule attached to the Respondent's Counter-Notice. Perusal of documents does not always take place at the same time as preparation which may result in taking more time. 1 hour is unrealistic.

Preparation of Documents: 1 hour claimed.

19. It was the opinion of the Applicants that following an extensive perusal of the documents it should be within the remit of an experienced practitioner to prepare the Counter-Notice in 0.5 hours. It is accepted that this work should be carried out by the more experienced fee earner. The Transfer was a simple, short document of a standard type; there were no unusual provisions or excessive amendments. The preparation of such a document, when carried out by a Grade A/B fee earner should be achievable within 0.2 hours with a further 0.2 hours for compiling the completion statement, a total of 0.9 hours for work under this heading.
20. The Respondent confirmed that Ms Dymov drafted the Counter-Notice and Ms Wagon drafted the conveyance. It was not possible to draft amend and agree a conveyance, regardless of how simple in 0.2 hours.

Internal communications/instructions between Ms Wagon and Ms Dymov: 2.5 hours claimed.

21. The Applicant should not be penalised because the firm decided to split the responsibilities for handling different aspects of this matter. The whole of this heading should be struck out. In the alternative if the considers such a claim is reasonable the Applicant queries why one fee earner claims 0.3 hours and the other 2.2 hours. In the alternative the correct time to be claimed should be 0.3 hours for each fee earner.
22. The Respondent stated that the tribunal has previously accepted the use of two fee earners. There is bound to be some internal

communication between the two fee earners. Most of the work was carried out by the lower fee earner thus keeping the costs down.

Dealing with execution and completion of the conveyance: 1 hour claimed.

23. The Applicant stated that this is excessive for a routine conveyancing matter. There should be no need to involve a senior fee earner, 0.5 hours of a Grade C's time should be sufficient.
24. The estimate of 1 hour is reasonable and based on the Respondent's solicitors experience when dealing with other leasehold enfranchisement matters where the Applicants' solicitors had acted for tenants. It was appropriate for Ms Wagon to undertake the work as she worked in the conveyancing department.
25. In view of the above the Applicant stated that they were willing to pay legal fees of £828.80 + VAT plus Land Registry search fees of £24 giving a total of £1,018.56.

Valuation Costs: £950 + VAT claimed.

26. The Applicants had paid £1000+ VAT in respect of a valuation report carried out for the Respondent with a valuation date of 10 December 2012. They had done so following receipt of a letter dated 7 November 2012 from Maidenway Ltd, one of the trading styles of the Respondent, stating that *"In the instance that we do not agree on the premium on an informal basis, depending on the time difference between the existing valuation date and the revised valuation date (.....in line with the service of a section 13 notice claim), so long as this time is difference is below 6 months there would be no additional charge".....* The informal negotiations did not result in agreement. A section 13 Initial Notice was served by the Applicants on 29 January 2013, well within the 6 months referred to in the letter of 7 November 2012. The applicant submits that no further valuation fee is now payable. In the alternative if the Tribunal determines that a further fee is payable the tribunal is asked to note that no internal inspection was carried out of either of the two leasehold properties, only minimal work would have been necessary to update the valuation to reflect a valuation date of 29 January 2013. The Applicant proposes a fee of £150 + VAT.
27. The Respondent was willing to accept £500 + VAT was an appropriate fee as stated by the Applicants on the section 91(2)(d) application dated 10 December 2013. In the alternative the Respondent is prepared to accept £150+VAT as proposed in the Applicants' Statement of Case.

The Tribunal's decision

28. Legal costs of £2545 + VAT and disbursements of £24 are payable. No further valuation fees are payable.

Reasons for the Tribunal's decision

29. The Tribunal determines that the Solicitors Charging Guidelines are an appropriate starting point in assessing the charge out rates for the Respondent's solicitors and in the absence of any cogent evidence to support higher levels adopts the level of charges for firms in London 2. The rates adopted by the Tribunal are £242 per hour for Ms Wagon and £196 for Ms Dymov which reduces the legal fees to £2917.20 exclusive of VAT before any further adjustment.
30. In the absence of a full breakdown of letters/emails in a way which would enable the Tribunal to analyse to what the correspondence relates the Tribunal is of the opinion that it must do its best to estimate the time spent on those matters which are covered by section 33 of the Act. There is inevitably communication necessary between the two fee earners however it determines that the time allocation in relation to internal communication between the two fee earners should be the same for both and allocates 0.3 hours each, this reduces the legal fees by a further £372.40. On the basis of the evidence presented by both parties and using its own knowledge as an expert Tribunal, it determines that that a reasonable sum for legal fees, excluding disbursements is £2545 + VAT.
31. The Tribunal determines that no further valuer's fee is payable. The Applicants had paid a fee of £1000 + VAT on the basis of the letter of 7 November which proposed that if informal negotiations failed then no further fee would be payable if the section 13 Notice was served within 6 months of the valuation date of the report. The report had a valuation date of 10 December 2012 and the notice was dated 29 January 2013, less than 2 months later.

Name: Evelyn Flint

Date: 13 February 2014