



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

<b>Case Reference</b>	:	CHI/29UQ/OC9/2018/0016
<b>Property</b>	:	7 Montacute Gardens, Tunbridge Wells, Kent, TN4 8HG
<b>Applicant</b>	:	(1) Caprisol Investments Ltd (2) Virtus Trust Ltd
<b>Representative</b>	:	Wedlake Bell LLP
<b>Respondent</b>	:	7 Montacute Limited
<b>Representative</b>	:	Collins Benson Goldhill LLP
<b>Type of Application</b>	:	Determination of Costs
<b>Tribunal Members</b>	:	Judge S Lal LLM
<b>Date and venue of Hearing</b>	:	29 March 2019, Judge's home
<b>Date of Decision</b>	:	29 March 2019

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**DECISION**

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**Application**

1. The Applicant seeks a determination by the Tribunal of the reasonable cost of enfranchisement payable by the Respondent nominee purchaser pursuant to Section 33(1) of the Leasehold Reform, Housing and Urban Development Act 1993 ("the 1993 Act"). Directions were made in this matter on 17 October 2018. The matter is determined on the basis of the papers only.

2. The Applicant states that the notice of claim gave rise to complex issues which in summary are as follows:
  - The impact of an earlier collective enfranchisement in 2015.
  - Correct identification of the Applicants as the reversioner rather than relevant landlords.
  - Whether the head lessees were qualifying tenants and therefore entitled to participate in the claim.
  - The garden grounds.
  - The issue of the rear garden.
  - The additional freeholds.
  - The extent of the restrictive covenants required in the transfer.
  - Registration issues in the Land Registry.
3. The Applicant states that having regard to the number of issues arising from the claim and their complexity, the involvement of a property partner was required together with a conveyancing associate and trainee as well as advice from Counsel. They enclose the relevant invoices dated 30 August 2017 which results in a claimed amount of £19 863.40. This consists of the Wedlake Bell invoice, Counsel's fees and the valuation surveyor. In respect of the summary of disputed costs they set out a Schedule which amounts to £11 000 limited costs. This sets out the hourly rates and costings of the various activities.

### **The Respondents Case**

4. The Respondent in summary submits a Section 13 Notice was served dated 5 June 2017 including 3 titles and the Applicant owned 2 of these. The Respondent had already enfranchised the Specified Premises and Garden A in 2015 and the same parties were represented by the same solicitors. It is accepted that the Respondents failed to protect their Section 13 Notice via a UN1 at the Land Registry and these are the subject of separate Tribunal proceedings. It is stated that the Applicants transferred their interests to another associated company in August 2017 and did not notify the Respondents.
5. It is submitted Wedlake Bell were aware of what was being enfranchised because of the 2015 matter and the notion of a qualifying tenant was not difficult in this case. There were only 4 restrictive covenants in this matter and the use of 4 fee earners was excessive. The Respondent alleges that there is no reason why the Respondents should pay for the training of newly qualified fee earners. Personal service of the counter notice was not necessary.
6. In respect of Counsel's fees, it is submitted that they are not broken down and it is alleged that such general advice must be whether land could be transferred to put it out of reach of the Respondents rather than connected to the counter notice. It was strictly not necessary to serve a counter notice.

7. The valuation fees are not broken down at all and that 55 hours is excessive and not permitted under Section 33. It is alleged that the fees are over 3 times more than the average enfranchisement claim. They suggest a total cost of £3497.

### **The Decision**

8. Section 33 of the 1993 Act states, so far as is relevant:

“(1) Where a notice is given under section 13, then .... 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 –

1. (i) of the question whether any interest in the specified premises or other property is liable to acquisition in pursuant of the initial notice, or
2. (ii) of any other question arising out of that notice;

(b) deciding, 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 for the 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 ... 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 have been expected to have been incurred by him if the circumstances had been such that he was personally liable for all such costs.”

9. The Tribunal has reviewed the documentation provided together with the statements from the Applicant and the Respondent in relation to this issue. The Tribunal has considered the recent discussion of the legal principles in this area in the case of **John Lyon v Terrace Freehold [2018] UKUT 0247** where the matter was discussed with reference to the Upper Tribunal decision in **Sinclair Gardens Investments (Kensington) Ltd v Wisbey [2016]**.

10. The starting point in respect of the 1993 Act is **Drax v Lawn Court Freehold Ltd [2010] UKUT 81 (LC)** which sets out the proper basis of assessment of costs in enfranchisement cases under the 1993 Act. The FTT noted that section 33 of the 1993 Act provided that the costs “*must be reasonable and incurred in pursuance of the notice and in connection with the purposes listed.*”
11. The UT noted in **John Lyon v Terrace Freehold [2018] UKUT** that “*While section 33 vests the FTT with a generous discretion in determining what is reasonable, and what should therefore be recoverable by the reversioner from the nominee purchaser by way of legal costs, it is important that there is a degree of certainty of principle upon which those acting for the reversioner can depend. I agree with HH Judge Huskinson in Drax that in view of the specialised nature of leasehold enfranchisement work it is reasonable for the reversioner to use an experienced practitioner rather than a lower grade fee earner, even where the firm instructed is itself a firm specialising in this kind of work. I consider that the FTT, in determining that so much of the work could have been conducted by a junior solicitor, and that it was unreasonable to seek reimbursement at the rates chargeable by a senior solicitor where that solicitor had done the work, was acting under an error of law and the decision to that extent cannot stand.*”
12. Adopting the above approach, the Tribunal makes the following findings in respect of the Summary of Disputed Costs. Below are the items it has agreed are unreasonable with in line with what is submitted by the Respondent. The other matters stand as per the Applicant’s Summary of Disputed Costs as being reasonable in all the circumstances.
- 06/07 2017 reduced to zero in respect of meeting with John Mouncey and ACHJ as internal between two solicitors.
  - 06/2017 prep for meeting with John Munccey reduced to zero as duplication.
  - 06/07/2017 ACHJ and JRM speaking to Solomon and Heskell as no reason for two fee earners to be involved.
  - Prep for meeting with JM as already duplicated.
  - 19/07 2017 reviewing titles reduced to zero as already undertaken.
  - 21/07 2017 email to Solomon Balas reduced to zero as already a duplication.
  - 21/07/2017 email to Solomon Balas reduced to zero as no further details given.
  - 21/07/2017 Discussing with ACHJ reduced to zero as internal discussion
  - 24/07/2017 email to Becket & Kay reduced to zero as not permitted
  - 24/07/2017 collating enclosures reduced to £80 as no need to undertake at a partner level.
  - 25/07 2017 email to Henrietta Hammonds not permitted
  - 28/07 2017 email to Counsel reduced to zero.

- 02/08/2017 preparing for conference with counsel reduced to zero as the Tribunal accepted that this could have been in writing and this would apply for conference with Counsel as well.
  - 03/082017 email to Solomon Balas as accepted a duplication.
  - 03/08/2017 Discussion with JRM reduced to zero as not specified other than legal research into Curzon v Wolstenholme and matters arising.
13. The Tribunal has therefore reduced the limited amount in the Summary of Disputed Costs of £11000 by £3811 to result in a figure of £7189 as being reasonable in the circumstances of an enfranchisement that had a number of complicating features and would merit the use of an experienced Solicitor in this area.
  14. The Tribunal further determines the valuation fees for this enfranchisement, which is limited in size and scope, to be £1200 plus VAT. The Tribunal can see no justification for some 55 hours work in respect of a valuation which was limited.
  15. Counsel's fees are reasonably incurred of £1800 plus VAT but the Tribunal has reduced some of the advice arising incurred by Wedlake Bell in the bullet points above to reflect that there is some duplication of work.
  16. 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.
  17. 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 time or not to allow the application for permission to appeal to proceed.
  18. 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.

Judge S. Lal

Date 29 March 2019