



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

Case Reference : **LON/00BK/OC9/2018/0353**

Property : **21 Hornead Road, London W9 3NQ**

Applicant : **Margaret M Casey**

Representative : **Streathers Solicitors**

Respondents : **Prudence Jane Oliver (nominee purchaser)**

Representative : **Cavendish Legal Group**

Types of Application : **Costs**

Tribunal Members : **Judge Tagliavini**

Date and venue of Hearing : **28 January 2019
10 Alfred Place, London WC1E 7LR**

Date of Decision : **28 January 2019**

DECISION

The tribunal determines:

- I. The following sums are payable by the Respondent to the Applicant under section 33(1) of the Leasehold Reform, Housing and Urban Development Act 1993:**

Legal costs of £3,150 (plus VAT)
Valuation costs of £1,000 (plus VAT)
Courier fee £18.15 (plus VAT of £3.63)
Land registry fee of £30

The application

1. This is an application made under section 33(1) of the Leasehold Reform, Housing and Urban Development Act 1993 (“the 1993 Act”) seeking the determination of the costs payable by the respondent tenants to the applicant freehold in respect of costs incurred during the process of collective enfranchisement initiated by the tenants.

The background

2. The subject property comprise three flats in a converted house held on 189 year leases (Flats 21A and 21B) from 24 June 1984 and a 999 years lease from the same date by the Applicant, being the long lessee of Flat 21C and the freeholder.
3. In January 2018 the tenants made an application to the tribunal for a determination of the terms on which it was entitled to acquire the freehold of the subject property, having served an Initial Notice dated 25/05/2007 (sic) and received a Counter Notice served dated 24th July 2017. This application was subsequently withdrawn from the tribunal’s consideration as on 1st and 3rd May 2018 the parties notified the tribunal that all matters had been agreed including a premium payable of £2,250* except as to section 33(1) costs.

**Initially, the tenants had sought to value the freehold at the nominal sum of £500 due to the 189 year leases on Flats 21A and 21B and the 999 year lease on 21C. However, the Counter Notice proposed a premium of £12,700 and £500 for the appurtenant property and included a proposal for a leaseback.*

4. The Applicant now seeks costs payable under section 33(1) of the Act in the sum of £3,975 plus VAT in addition to a John D Wood & Co valuation fee of £1,200 (including VAT) and associated costs of the acquisition. The Respondent opposes the amount claimed and submits that costs in the sum of £1,500 plus VAT together with valuation costs of £300 plus VAT, are reasonable and payable under the 1993 Act.

The hearing and evidence

6. As neither party requested an oral hearing, this application was determined on the documents provided. These comprised a lever arch file with statements from both parties and accompanying documents on which they relied.

The Respondent's case

7. In opposition to the application, the Respondent relied upon the Tenant's Statement in Response dated 18th December 2018. from Mr. Eric Charnley, consultant solicitor with Cavendish Legal Group. Mr. Charnley set out the history of the relationship between the parties including the 2017 lease extensions for Flats 21B in which the Applicant's solicitor had been instructed. Mr. Charnley submitted that as the 2016 lease extensions were so recent, and in which the Applicant's current solicitor had been involved, full details of the freehold and leasehold titles were already known to the Applicant's solicitors and therefore there should have been no further need to investigate further. Similarly, Mr. Charnley submitted that there should not have been any need to have carried out a valuation as this too had been dealt with in the recent lease extensions.
8. Mr. Charnley also submitted that costs incurred in respect of the Applicant's proposal for a 'leaseback' could not be considered allowable under the terms of the 1993 Act. Mr. Charney submitted that the costs claimed was out of proportion to the premium agreed of £2,500; *Dashwood Properties Ltd v Chrisostom-Gooch* [2012] UKUT 215 (LC). Mr. Charnley also queried the amounts of time spent by the fee earner on various tasks although did not dispute the hourly rates charged by the senior and junior fee earners. Similarly, Mr. Charnley accepted that the valuation fee of £1,000 plus VAT was in the range of reasonable fees for this type of work but queried the need for any reinspection and revaluation in light of the recent lease extension transaction in 2016.

The Applicant's case

9. In response, the Applicant relied upon a Schedule of Costs and supporting evidence dated 5 December 2018 and an undated Statement in Response by Iris-Ann Stapleton, partner at Streathers Solicitors LLP, who had conduct of the matter throughout. Ms Stapleton stated that her hourly rate was charged ay £300 and her junior at £225 per hour. Ms Stapleton disagreed with Mr. Charnley's view that because there had been a recent lease extension transaction there was no need to carry further investigation of the leasehold and freehold titles and that professional due diligence approach was required. Ms Stapleton disagreed with Mr. Charnley's view that the matter had been straight forward and referred to the negotiated premium and an agreed leaseback of the top floor flat, necessitated by the loft space to which the Applicant had access.

10. Ms Stapleton referred to the Respondent's lack of contact and willingness to negotiate or complete the transaction with the result that a claim had had to be made in the County Court seeking a vesting order. Ms Stapleton submitted that the valuation costs were reasonable as Mr. Charnley had expressly stated this and in any event, the valuer had not been able to re-visit the premises because of the Respondent's reluctance to grant access and had in fact produced a 'desk top' valuation.
11. Ms Stapleton submitted that the costs were recoverable under section 33 of the Act and should be allowed in full.

The tribunal's decision and reasons

12. In making its determination the tribunal had regard to the provision of section 33 of the Act which sets out the limits of the permissible costs:

(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.

13. The tribunal finds that the Respondent's submissions as to why the costs claimed by the Applicant are excessive, are not well founded. Although not provided with the full agreed terms of the acquisition of the freehold, the tribunal accepts that a premium of £2,500 was agreed together with a provision for the creation of a deed with respect to the Applicant's loft space.
14. The tribunal does not accept Mr. Charnley's assertion that this matter was "quite straightforward." Had that been the case, the tribunal would have expected matters to have been agreed at an early stage including costs and to have culminated in a completion of the transaction. This has not occurred and there continues to be litigation outstanding in the county court in respect of this matter.
15. In the absence of any objection to the hourly rate charged by the Applicant's solicitors and a concession by Mr. Charnley that the valuation fee is within the reasonable range of such fees, the tribunal accepts the Applicant's Schedule of Costs in respect of the hourly rate charged. However, the tribunal does consider that the Applicant has overstated the time reasonably required to be spent on this matter in light of the expertise of the fee earner and the familiarity with the subject property of the fee earner and has included costs in respect of a leaseback which, the tribunal considers are not properly recoverable under section 33 of the 1993 Act. Therefore, the tribunal considers a reduction of £825 plus VAT, representing two hours of the senior fee earner's charges and one hour of the junior fee earner's charges is appropriate.
16. Therefore, the tribunal finds that the following costs are payable by the Respondent to the Applicant:

Legal costs of £3,150 (plus VAT)
Valuation costs of £1,000 (plus VAT)
Courier fee £18.15 (plus VAT of £3.63)
Land registry fee of £30

Signed: Judge Tagliavini

Dated: 28 January 2019