



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

Case Reference : **LON/00A/OC9/2019/0246**
FVHREMOTE

Property : **107 and 109 Eastcote Lane, Northolt**
Middlesex UB5 5RH

Applicant : **Eastcote Lane Limited**

Representative : **Mr Ben Stimmler of Counsel; Wagner &**
Co Solicitors

Respondent : **Englander Company Limited**

Respondent : **Mr Shimmie Pariente, solicitor; Bude**
Nathan Iwanier

Type of Application : **Section 33 of the Leasehold Reform,**
Housing and Urban Development Act
1993

Tribunal : **Judge Professor Robert Abbey**
Mrs E. Flint FRICS

Date of Hearing : **11 August 2020**
Date of Decision : **18 August 2020**

DECISION

Introduction

1. This is an application made by the Applicant under section 91 of the Leasehold Reform, Housing and Urban and Development Act 1993 (as amended) (“the Act”) for a determination of the statutory costs payable to the Respondent under section 33 of the Act to acquire the freehold interest in relation to the property known as **107 and 109 Eastcote Lane, Northolt Middlesex UB5 5RH** (“the property”).
2. Pursuant to an enfranchisement claim the Tribunal was asked to resolve one outstanding issue namely the level of costs payable by the applicant to the respondent for professional fees payable under the statutory requirements in that regard within the Act 1993 at Section 33. — Costs of enfranchisement. Two costs schedules were submitted for the Tribunal to

consider. The first schedule relates to the service of a statutory notice in February 2018 which was not proceeded with. The second schedule relates to a second notice that was proceeded with and which has been the subject of agreement between the parties save as to the level of costs. This has led to this video hearing. The first schedule amounted in total to £2220 plus VAT for legal fees together with Valuers fees of £1000 plus vat and disbursements of £109.90. The second schedule amounted in total to £1920 plus VAT for legal fees together with Valuers fees of £250 plus vat and disbursements of £10.62

3. This has been a remote hearing which has been consented to by the parties. The form of remote hearing was coded as FVHREMOTE - use for a hearing that is held entirely on the Ministry of Justice Full Video Hearing platform with all participants joining from outside the court. A face to face hearing was not held because it was not possible due to the Covid 19 pandemic restrictions and regulations and because all issues could be determined in a remote hearing. The documents that were referred to are in a bundle of many pages, the contents of which we have recorded and which were accessible by all the parties. Therefore, the tribunal had before it an electronic/digital trial bundle of documents prepared by the parties, in accordance with previous directions. The bundle was supplemented by some additional documents submitted in the week prior to the hearing.

The Respondent's case

4. The Tribunal was provided with two itemised schedules of the legal fees. This did identify the date of each activity and it did give a description of the activity, the type of fee earner involved, (by reason of the level of the hourly rate) and the time spent and resultant cost. The schedule listed the fee rate of £300 per hour.
5. The respondent says that the rates charged are reasonable and properly payable by the applicant. The respondent denies that the charges are excessive or unreasonable or not within the ambit of section 33. The respondent says the work involved was complicated and the sale was the first on the estate and therefore took up more time as a consequence. It was therefore proportionate for the respondent to incur the costs and disbursements listed.

The Applicant's case

6. The Applicant says that the legal charges are in part excessive and in the Applicant's application to the tribunal the Applicant also took issue with the fee earner rate that the applicant thought too high.
7. The Applicant disputes the legal costs on the basis that this was routine enfranchisement work with no unexpected negotiations or extreme complications. The Applicant also says that the time charged for preparing the transfer of part and the contract was excessive as was the time charged for checking the engrossment.

Relevant Statutory Provision and Case Law

8. The statutory law applicable to this dispute is set out in Appendix 1 annexed to this decision.
9. Judicial guidance on the application of section 33 was given in the case of *Drax v Lawn Court Freehold Ltd* [2010] UKUT 81 (LC), LRA/58/2009. That case concerned the proper basis of assessment of costs in enfranchisement cases under the 1993 Act, whether concerned with the purchase of a freehold or the extension of a lease. The decision (which related to the purchase of a freehold and, therefore, costs under section 33 of the Act, but which is equally applicable to a lease extension and costs under section 60) established that costs must be reasonable and have been incurred in pursuance of the initial notice and in connection with the purposes listed in sub-sections [33(1)(a) to (e)]. The applicant tenant is also protected by section 33(2) which limits recoverable costs to those that the respondent landlord would be prepared to pay if it were using its own money rather than being paid by the tenant.
10. In effect, this introduces what was described in *Drax* as a “(limited) test of proportionality of a kind associated with the assessment of costs on the standard basis.” It is also the case, as confirmed by *Drax*, that the landlord should only receive its costs where it has explained and substantiated them.
11. It does not follow that this is an assessment of costs on the standard basis (let alone on the indemnity basis). This is not what section 33 says, nor is *Drax* an authority for that proposition. Section 33 is self-contained.
12. There is further guidance in *Dashwood Properties Limited v Beril Prema Chrisostom-Gooch* 2012 UKUT 215: -

20. The value of a dispute and the amount to be gained, or lost, by a party, is always a matter that a party will bear in mind when considering whether to incur costs and the level of those costs.

*21. While the issues involved in enfranchisement claims can undoubtedly be complex and LVT decisions in *Daejan Properties Ltd v Parkside 78 Ltd* LON ENF 1005/03, followed in *Daejan Properties Ltd v Twin* LON/00BK/0C9/2007/0026 and *Daejan Properties Limited v Allen* LON/00AH/OLR/2009/0343 establish that the LVT accepted that a landlord is entitled to instruct the solicitors of its choice and is not obliged to instruct the cheapest or most local solicitors, the LVT were perfectly entitled to take into account the actual sum in dispute in determining whether the costs of professional services in investigating the tenant’s right to a new lease were reasonable and that the investigation was reasonably undertaken.*

22. The LVT were entitled to determine that costs far in excess of the amounts involved were not costs that “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” and the appeal on this ground therefore fails.

The case of *Dashwood* has in setting out the details above helped further clarify how reasonable costs are to be determined in an enfranchisement claim such as this one.

13. Leggatt J in *Kazakhstan Kagazy plc v Zhunus* [2015] EWHC 404 (Comm) at [13] wrote further guidance and clarification saying: -

“... it may be entirely reasonable from the point of view of a party incurring costs to spare no expense that might possibly help to influence the result of the proceedings. It does not follow, however, that such expense should be regarded as reasonable or proportionately incurred or reasonable and proportionate in amount when it comes to determining what costs are recoverable from the other party. What is reasonable and proportionate in that context must be judged objectively. The touchstone (of reasonable and proportionate costs) is not the amount of costs which it was in a party’s best interests to incur but the lowest amount which it could reasonably have been expected to spend in order to have its case conducted and presented proficiently, having regard to all the relevant circumstances.”

Thus, a court would look at what expenses were reasonable and appropriate by looking at the least amount a party in proceedings could be reasonably anticipated to have spent in order to have demonstrated to the court that it had presented its case in an effective and competent manner.

The Decision

14. Having listened carefully to the submissions by both parties on the costs claimed and having read carefully all the written submissions by both parties in that regard, the Tribunal has taken all that into account and has followed the judicial guidance above and in particular the Upper Tribunal in the cases referred to above to come to the following decisions.
15. What is in issue in respect of the Applicant’s application for costs is whether the costs claimed were reasonably incurred and are reasonable in total and whether the costs are payable in accordance with the Act of 1993 and whether the Applicant should be required to pay those costs. This Decision is based upon the information provided to the Tribunal by the parties. The Tribunal finds that Section 33(2) is satisfied as it has noted that the solicitor had submitted an interim invoice for its fees (see *Metropolitan Property Realisations Ltd v Moss* [2013] UKUT 415 (LC)).

16. The Tribunal does take the view that enfranchisement claims can involve complicated issues. The Tribunal cannot criticise the respondent for instructing a solicitor consultant (effectively a grade A fee earner), given such complications when looking at the particular context of this case involving the first sale of part on a fair-sized estate.
17. The Tribunal notes, that the fees claimed by the solicitor are at a charge out rate of £300 per hour. The Tribunal therefore considered the charge out rate in the light of the judicial guidance set out above. The fee earner concerned qualified in 2003 and is experienced in this specialised enfranchisement work. The Tribunal was satisfied that the charge out rate was not excessive given the nature of the fee earner involved and the nature of the enfranchisement claim and the work involved. Indeed, the Tribunal had seen rates at this level in other cases and so did not find it out of proportion. The Tribunal therefore approves the rate of £300 per hour for the solicitor acting for the respondent.
18. Looking at the first schedule in connection with the notice that was not progressed, the Tribunal was satisfied that this was work that was properly chargeable but felt that some elements of the listed fees/activities were not proportionate, reasonable or appropriate. First, it is common practice across jurisdictions that items in are treated as part of items out. In other words, a charge cannot be raised for a letter, email or fax in as the consideration of it should form part of the charge for a letter, fax or email out. This is true in the Land Registration Division of this Property Chamber and is true to in the Residential Property Division. Therefore, the Tribunal found it must disallow all claims for items in. Thus, in the first schedule emails in are disallowed, reducing the claim by £120.
19. In the first schedule, there was an element for preparing reviewing and amending the counter notice amounting to time spent of 120 minutes. The Tribunal considered this to be disproportionately large and considered that a reasonable amount of time spent would be half thereby reducing the costs by £300. Furthermore, there was another element for work preparing an alternative form of counter-notice. The Tribunal were not persuaded by the respondent's argument that this was necessary because the applicant did not accept the initial notice was invalid. The Tribunal disallows this amount in full representing time spent of 42 minutes in the sum of £210. Accordingly, the legal costs are otherwise agreed subject to the deduction of these items amounting together to £630. So, the total costs for the first schedule are approved by the Tribunal at £1590 plus VAT.
20. In the first schedule the valuer's fees were agreed so they are approved by the Tribunal at £1000 plus vat. With regard to the disbursements, the land registry fees are proper and appropriate and are therefore approved at £19. One disbursement described by the respondent is £40 plus vat for a land charge search fee. On enquiry the respondent said this was to search for an estate management scheme (EMS). An EMS is a scheme that regulates the use or appearance of a property that is within a specified area. An EMS allows the landlord to retain some management control over properties,

amenities and common areas, where the freehold has been sold to the leaseholders. These schemes are either made under Section 19 of the Leasehold Reform Act 1967, or under Chapter 4 or Section 93 of the Leasehold Reform, Housing and Urban Development Act 1993. Such schemes may be registered in the local land charges register with the local authority. So, the Tribunal presumes that the fee claimed is misdescribed and is actually for a local land charges register search and is therefore approved. Finally, the special delivery and courier fees are charges that the respondent chose to incur but are not proportionate, reasonable or appropriate and will be disallowed. They must form part of the overheads involved in this case.

21. Turning now to the second schedule, For the reasons set out above the claim for letters and faxes in will be disallowed in full in the sum of £60. Similarly, the claim for e-mails in will be disallowed in full in the sum of £240. All other work was not disputed by the applicant save for work for preparation of the transfer of part (TP1) and the contract where the time spent was 90 minutes and 12 minutes for preparing engrossments at 12 minutes was also challenged. The Tribunal was firmly of the view that these periods of time spent were fair and reasonable. The Tribunal was of the view that the TP1 and contract were crucial and complicated documents that needed time for drafting and correcting and that 90 minutes for doing this for both documents was both fair and reasonable. Similarly, the Tribunal could not fault 12 minutes for preparing engrossments. Whilst it may be a “secretarial task” as it was described at the hearing it was nevertheless a crucial task in getting the paperwork right. This charge is approved without amendment. Accordingly, the legal costs are otherwise agreed subject to the deduction of the two items mentioned above amounting together to £300. So, the total costs for the second schedule are approved by the Tribunal at £1620 plus VAT.
22. The Tribunal thought that the legal fees quoted for work up to and including completion of £450 plus vat to be reasonable given the circumstances of this claim. Finally, the valuer’s fees of £250 plus vat were not challenged and are therefore approved as are the land registry fees of £3.00. However, for the reasons mentioned above the special delivery fee is disallowed in full.

Name: Judge Professor Robert
Abbey

Date: 18 August 2020

Appendix 1

Leasehold Reform, Housing and Urban Development Act 1993

S33.— Costs of enfranchisement.

(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.

(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 [the appropriate tribunal] 1 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.