

**IN THE LEASEHOLD VALUATION TRIBUNAL
LEASEHOLD REFORM HOUSING AND URBAN DEVELOPMENT ACT 1993 S33**

Case Number	CHI/45UH/OC9/2007/0010
Property	Anchor Court, Marine Crescent, Worthing
Applicant	Anchor Court (Goring) Ltd
Respondent/s	Sean M McCarthy, Patrick F McCarthy Mark J McCarthy
Tribunal members	Ms H Clarke (Barrister) (Chair) Mr R Wilkey FRICS
Date of consideration	28 November 2007
Date of decision	10 December 2007

1. THE APPLICATION

The Applicant sought a determination of the costs which it could recover from the Respondents under s33 Leasehold Reform Housing & Urban Development Act 1993 ('The Act')

2. DECISION

The Tribunal determined that the amount of costs which the Respondent must pay to the Applicant is £2941.99 inclusive of VAT.

3. BACKGROUND

The Respondents were participating tenants who served a Notice to enfranchise under s13 of the Act. The Applicants served a Counter-Notice denying the right to enfranchise and sought their costs. The Notice was later conceded to be invalid due to the title of one of the tenants not having been registered at the Land Registry. The Tribunal was not informed whether matters had progressed from that point.

4. CONSIDERATION

Directions were issued on 16 August 2007 and as provided in the Directions the Application was dealt with as a paper hearing without an inspection. The Tribunal took into consideration the submissions filed by both parties and the documents supporting the letter of application.

5. THE LAW

The relevant part of the Act provides that the nominee purchaser shall be liable for the reversioner's reasonable costs of and incidental to matters incurred in pursuance of the notice (s33 Leasehold Reform Housing & Urban Development Act 1993). Costs for professional services shall only be regarded as reasonable to the extent that they might reasonably be expected to have been incurred by the reversioner if personally liable for them (s33(2)).

6. The Applicants also put a number of earlier decisions of the LVT before the Tribunal. Whilst such decisions are not binding on the Tribunal it is desirable that there should be a consistency of approach and the Tribunal accordingly considered the decisions when making its determination.

7. THE SUBMISSIONS

The Applicants filed a schedule of costs incurred by their solicitors totalling £1324.20 plus VAT. The majority of the work had been done by a partner who charged £185 p/hour rising to £195 p/hour. In addition to work on the papers, Counsel had been instructed to prepare an Advice. This was necessary because there was no authority on the legal point relating to the non-registration of the tenant's interest. Counsel of 11 years call was instructed and she had previous knowledge of the case having successfully represented the Applicant at tribunal on another aspect of the matter. She charged £400 plus VAT for her Advice. Furthermore a valuer had been instructed to prepare a report and valuation for which he had charged £1,000 plus VAT. The Applicant had had to protect its position in case the initial Notice was held to be valid so could not sensibly have failed to obtain a valuation. There were small disbursements for Land Registry fees and for the delivery of the Counter Notice totalling £20.10.

8. The Respondents conceded that the Applicant was entitled to recover some costs pursuant to s33 but challenged the amount claimed. They submitted that the charging rate of the solicitors was too high as it was outside the guideline rates applicable to assessment of costs under the Civil Procedure Rules. Counsel need not have been instructed, and in any event her fees were excessive considering that she had prior knowledge of the case. The valuer should not have been instructed if the Applicant proposed to rely on the initial Notice being invalid. The valuer's fees were too high and represented an excessive number of hours for the task.

9. DETERMINATION

The Tribunal considered whether the costs sought fell within the scope of s33. On the face of the statute there was no provision under s33 for the Applicants to recoup the costs of preparing and serving their Counter Notice. The Tribunal accordingly determined that the costs of delivery of the Counter Notice (£4.10) and the amount of solicitor's costs attributed to preparation of the Counter Notice (3 units) should be disallowed.

10. The Tribunal determined that all the rest of the costs claimed fell within the

scope of s33 and that the relevant test to be applied was whether the costs were reasonable. The Tribunal had regard to the provisions of s 33(2) which may be paraphrased to the effect that costs for professional services would only be reasonable if the claiming party would have been reasonably expected to incur them if they could not be recouped from the other side.

11. The Tribunal took the view that the intention behind the statute was to indemnify a party for costs incurred, insofar as they were reasonable. It concurred with the view expressed in the Daejan v Parkside case that “leasehold enfranchisement under the 1993 Act may understandably be regarded as a form of compulsory purchase by tenants from an unwilling seller and at a price below market value. Accordingly, it would be surprising if freeholders were expected to be further out of pocket in respect of their inevitable incidental expenditure incurred in obtaining the professional services of valuers and lawyers for a transaction and proceedings forced upon them”.
12. The Tribunal considered that it was to be reasonably expected that the Applicant would instruct the same firm of Brighton solicitors who had acted in the earlier tribunal proceedings, and that it was not incumbent upon the Applicant to seek out other solicitors who might be prepared to do the work more cheaply. The guideline rates applicable to assessment of costs under the Civil Procedure Rules did not assist the Tribunal, because the principles applying to assessment of inter-partes costs in contested litigation did not apply to the determination of costs under s33. In any event the charging rates were not so far different from the guideline rates as to undermine the view that it was reasonable for the Applicant to incur them. The Tribunal therefore did not reject the charging rate of the Applicant’s solicitor.
13. On a close examination of the Schedule of Costs submitted by the Applicant the Tribunal observed that there appeared to be a certain amount of duplication in respect of attendances and advice given to the client, namely in respect of letters written to the client, one attendance (although it did not specify to whom nor why), and charges under ‘preparation’ for advising and discussing Counsel’s advice. The Tribunal also observed that charges had been made for telephone calls in and noted that the general convention is that such costs ought to be borne within the hourly rate. The Tribunal therefore disallowed 5 units in respect of telephone calls and 4 units for the duplication of work. Whilst it may have been that more of the work could have been delegated to a more junior fee-earner, the supervision of a partner would still have been appropriate and the Tribunal accepted that there were questions of law and strategy to be discussed and decided. Applying the test under s33(2) the Tribunal considered that the Applicant landlord could reasonably have been expected to incur these costs if it were to be liable for them, and they were therefore to be allowed.
14. The total deductions from the Applicant’s bill for solicitor’s costs were therefore 12 units at £19.50 each plus VAT, making a total deduction of £274.95. The figure allowed for solicitor costs was therefore £1280.99.

15. The Tribunal accepted the submission of the Applicant that there was no authority on the point regarding non-registration of title, and noted that the Respondents did not argue otherwise. It was reasonable in the circumstances for the Applicant to instruct Counsel, and the Tribunal considered it reasonable to be expected that the Applicant would have incurred professional fees in obtaining this Advice if it were to bear the liability for those costs itself, because the outcome was to be determinative of the Applicant's rights under the enfranchisement claim and presumably required some research if it was a point without supporting authority. Using their professional experience the Tribunal members considered that Counsel instructed was appropriate as regards her level of call and her fee fell squarely within the range of reasonable charges for the work at stake.
16. The Tribunal considered the Respondent's submission that the Applicant ought not to have incurred a valuer's fee, but decided that it was reasonable for the Applicant to prepare to deal with the default position in the event that the initial Notice had been found to be valid. Using their professional experience the Tribunal members considered that the valuer's fee lay within the range of reasonable charges for the work at stake, and further considered that the Respondent's objections did not take account of the time and expense of preparing a report. No deductions were made therefore for the professional fees nor for the Land Registry costs which were not challenged by the Respondent.

Signed *HMC*
Dated *10 Dec*
H M Clarke (Chair)