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**RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
SOUTHERN RENT ASSESSMENT PANEL &  
LEASEHOLD VALUATION TRIBUNAL**



**Residential  
Property**  
TRIBUNAL SERVICE

**S.33 Leasehold Reform, Housing and Urban Development Act 1993**

**DECISION & ORDER**

Case Numbers:	CHI/00ML/OCE/2009/0014
Property:	36-39 Brigden Street Brighton BN1 5DP
Applicants:	Rodney Clive Hayler, Victoria Rachel Bullock, Emily Nancy May Brown, Jean Baptiste Noree and Francesca Becchetti  Solicitors: Osler Donegan Taylor
Respondent:	Lyndale Development Company  Solicitors: Pemberton Greenish
Application:	29 <sup>th</sup> April 2009
Directions:	10 <sup>th</sup> June 2009
Consideration:	30 <sup>th</sup> September 2009
Decision:	6 <sup>th</sup> November 2009
Tribunal:	Mr R Wilson LLB Mr B Simms FRICS

**SUMMARY OF DECISION**

The tribunal determines that the total amount payable by the applicants to the respondent in respect of legal costs shall be the sum of £1,960 plus disbursements of £32.00. VAT is to be added to the legal costs as appropriate. The amount payable for surveyor's fees shall be the sum of £995.37. VAT is to be added to this figure as appropriate.

The transfer of the Property shall not include the provisions of clause 3.2 or paragraph one of the schedule contained within Box 12 in the draft transfer submitted to the tribunal.

### APPLICATION

1. On 29<sup>th</sup> April 2009 the applicants applied to the tribunal pursuant to Section 24 of the Leasehold Reform Housing and Urban Development Act 1993 (“The 1993 Act”) for a determination of the costs payable by them pursuant to Section 33 of the 1993 Act in connection with the leasehold enfranchisement of the Property. The form of the transfer of the property was also in dispute.
2. Directions were issued and the parties agreed that the tribunal would determine the costs and the terms of the transfer on the basis of written representations alone.
3. Pemberton Greenish (PG), solicitors for the respondent provided a schedule of costs and both parties filed written submissions either supporting or opposing the costs claimed. Both parties had also made representations on the form of the disputed transfer. The tribunal considered the application on the papers on 30<sup>th</sup> September 2009.

### LAW

4. The law in respect of recoverable costs is to be found at Section 33 of the 1993 Act, which deals with costs incurred in connection with new leases to be paid by the tenant, and provides, insofar as is relevant:

*(1) Where a notice is given under section 13, then (subject to the provisions of this section...) 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 –*

*(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 the 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 ...*

*(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 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 cost.*

- (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 a leasehold valuation tribunal incurs in connection with the proceedings.*

## **CONSIDERATION**

5. The tribunal carefully considered the schedule of costs and all submissions made by the parties. PG claimed costs of £3,901.00 exclusive of vat, disbursements of £32 and an invoice from Carter Jonas for £1,169.56 inclusive of VAT. The figure of £3,901 is taken from their breakdown of the reversioners legal costs documents forming part of the respondent's submissions.
6. The background facts were as follows; Osler Donegan Taylor (ODT) served an Initial Notice for collective enfranchisement under Section 13 of the 1993 Act dated 5<sup>th</sup> September 2008. It was sent both to the respondent and their solicitors.
7. PG served a counter notice on the applicants on the 7<sup>th</sup> November 2008 admitting the claim but disputing the purchase price. The counter notice included the form of the proposed transfer of the property.
8. The parties continued to negotiate to the point where the only items left in dispute were the amount of costs payable by the applicants and the terms of the transfer.
9. The tribunal considered that the costs recoverable from the applicants were limited to those matters set out in S.33 (1) of the 1993 Act, which is a restrictive provision. S 33(2) states that for the purposes of sub-section (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 tribunal considers that the effect of this clause is to give the reversioner a choice of solicitors. The reversioner is not obliged to shop around and find the cheapest solicitor available to do the work. The reversioner can make their own choice as to who should act on their behalf and as long as the costs are reasonable and that the work is within the scope of the 1993 Act, then they should be recoverable.

10. The tribunal considered that this was a straightforward case of leasehold enfranchisement with no complicating features or areas of dispute. What the tribunal saw was a claim notice which had been accepted with the only dispute being the amount of the premium and the terms of the transfer, which was in standard Land Registry TRI form. There had been minimal correspondence between the parties on the terms of the transfer as it had been left to the tribunal to determine its form.
11. Looking at the quantum of costs and having regard to S 33 mentioned above, the tribunal considered it was not unreasonable for the respondents to retain their usual solicitors and in view of the importance of the matter to the client and the compulsory nature of the transaction, for a partner to have overall conduct of the case at the firm's hourly rate applicable for this type of work and complexity. There was no standard client care letter confirming the hourly rate but the bundle papers contained a schedule of hourly rates charged by PG showing the partners charging rate to be £350 per hour plus vat and a solicitors charging rate of £255 per hour. It is clear that there is a strong and long established relationship between the respondent and PG and accordingly a client care letter is not required in these circumstances. The tribunal is satisfied that the respondent was aware of and accepted the charge out rates applied to their account. ODT contended that a maximum charge out rate of £250 per hour should be allowed on the basis that a local firm to the Property would have charged no more than £200 per hour.
12. Eleven hours of partner's time had been claimed and 12 minutes of solicitor's time. It was PG's primary submission that this was a reasonable amount of time to take to complete the matter and that taking into account supervision of work and consequent duplication of time there would have been no cost savings if the matter had been delegated to more junior fee earners.
13. In the tribunal's view the rates claimed were at the very top of the scale of fees that it would expect to find for this type of work and complexity charged by a West End London law firm. That said, the tribunal concluded that these charging rates did pass the statutory tests mentioned in paragraph 9 above, but on the basis that the fee earner would be completely familiar with the steps to be taken at each relevant stage and as a consequence the steps would be completed more quickly than would be the case with a more junior fee earner. The tribunal did not accept the contention of PG that there would be no cost savings if the matter had been delegated to more junior fee earners. In the tribunal's view, a reasonable amount of time to spend on this straightforward case should not have been in excess of 11 hours of partners time and that some of the work, in particular the conveyancing work, could have been carried out just as quickly by a less experienced and more cost effective fee earner. PG in its submissions stated that the respondent had already paid the costs claimed irrespective of recovery and therefore it was incorrect of ODT to assert that they would not have incurred costs of this magnitude had they been personally liable for them. In the tribunal's judgement, it does not follow that costs should automatically be regarded as reasonably incurred simply because a landlord has paid them, since payment may have been based on personal if not irrational circumstances and considerations.
14. PG's Schedule of costs was broken down into attendances (letters and telephone calls) and a description of the work done with dates. A computer time printout

was also supplied. PG had filed submissions and further submissions in which they sought to justify the time taken and establish that all the work was reasonably undertaken and within the scope of section 33 of the 1993 Act. ODT had filed a schedule of objections and a supporting skeleton argument. In summary these were based on the contention that in some cases excessive time had been taken and that there had been duplication. In other cases the work undertaken did not fall within the scope of section 33 of the 1993 Act and in another case that the work related to tribunals proceedings which should be disallowed under Section 34 (5) of the 1993 Act. Although this decision does not paraphrase or summarise the comments made by each party in respect of each contested figure, in arriving at its decision the tribunal has considered the totality of submissions made by each party.

15. Bearing in mind the straightforward nature of the case and the lack of contested issues, the tribunal considered that the overall time claimed by PG of over eleven hours to be excessive and therefore unreasonable. The tribunal arrived at this conclusion based on its collective knowledge and experience of the time commonly taken by specialist solicitors to complete cases of this kind and complexity.
16. The tribunal concluded that the reasonable total conveyancing costs for this simple case should be restricted to £700 and that applying the principles set out above the reasonable time to take in dealing with the balance of legal work covered by section 33 of the 1993 Act, should be limited to the time and amounts set out in the table below.

Date of Work	Amount allowed
26.09.08	30 minutes
1.10.08	48 minutes
8.10.08	12 minutes
9.10.08	6 minutes
10.10.08	12 minutes
20.10.08	Nil
21.10.08	60 minutes
24.10.08	6 minutes
28.10.08	18 minutes
3.11.08	6 minutes
6.11.08	18 minutes
7.11.08	All further recoverable time to be limited to 120 minutes at a total charge of £700

**Summary :-**

17. 216 minutes @ £350 per hour	=	£1260
plus 2 hours for the conveyancing costs @ £350 per hour	=	<u>£700</u>
Total legal costs of £1260 + £700	=	£1960.

### Valuation fees

- 18 The respondent's valuation costs of £995.37 were disputed on the basis that the sum claimed was excessive for such a straightforward valuation. The applicants considered that the fees should be limited to £750.
- 19 The fee charged by the valuers is based on a percentage of the aggregate lease value. The tribunal accepted that the valuation in this case was straightforward and in its judgement a reasonable time to spend on the exercise would be in the order of three to four hours. The respondent's valuers are based in Berkeley Square, Mayfair, London and their hourly charge out rates could approach £300 per hour. Assuming that they spent approximately three to four hours completing the exercise, this would have resulted in fees in the order of £900 to £1,200. Therefore in the tribunal's judgement it is not possible to find that the valuers' fees in the present case fall outside of the range of what it would be reasonable to pay for the valuation work undertaken in consequence of the Initial Notice. The valuers' fee of £995.37 is therefore upheld.

### Form of transfer.

- 20 There were two contested clauses in Box 12 of the draft transfer for determination, clause 3.2 and paragraph 1 of the schedule.
- 21 Clause 3.2 of the draft transfer reads as follows: "to observe and perform the covenants obligations conditions restrictions and other matters contained or referred to in the charges register to title number ESX11521."
- 22 Paragraph 1 of the schedule reads as follows: "the transferor shall forthwith be released and discharged from all covenants and obligations contained in the leases."
- 23 PG conceded that the 1993 Act was not the purpose for requiring these provisions but the fact that they constituted current, proper conveyancing practice.
- 24 ODT objected to the inclusion of these provisions on the grounds that under the relevant statutory framework, the respondent was not entitled to these clauses unless agreed, which they were not.
- 25 The tribunal reminded itself of the relevant provisions of the 1993 Act and in particular Section 34 (9) which states that:

*'Except to the extent that any departure is agreed to by the nominee purchaser and the person whose interest is to be conveyed, any conveyance executed for the purpose of this Chapter shall as respects the conveyance of any freehold interest, conform with the provisions of schedule 7'*

26 The tribunal considers that this is exclusive and mandatory wording and there is no statutory provision providing for the provisions sought by the respondent where the applicants have not agreed it. Whilst the tribunal has jurisdiction to determine any disputed terms of the acquisition, including the provisions to be contained in any conveyance, this does not confer an unrestricted jurisdiction to determine what would be fair and reasonable, but merely a jurisdiction to consider whether or not what is proposed accords or complies with the statutory provisions to be found in section 34 or schedule 7 of the 1993 Act. The tribunal could find nothing in either section 34 or schedule 7 of the 1993 Act entitling the respondent to insist upon the inclusion of either clause 3.2 or paragraph 1. In the circumstances the tribunal determines that the respondent is not entitled to have included in the draft transfer either clause 3.2 or paragraph 1 of the schedule.

### **DETERMINATION**

- 27 The tribunal determines that the respondent's reasonable costs payable by the applicants pursuant to Section 33 of the 1993 Act are legal costs of £1,960 plus disbursements of £32 and surveyors fees of £995.37 to which VAT is to be added as appropriate.
- 28 The transfer of the Property shall not include the provisions of 3.2 or paragraph 1 in the Schedule set out in the draft transfer submitted to the tribunal.

**Dated 6<sup>th</sup> November 2009**

**Signed**

**Mr. Robert TA Wilson  
Chairman**