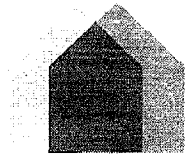


2419



Residential  
Property  
TRIBUNAL SERVICE

**LEASEHOLD VALUATION TRIBUNAL  
LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT 1993  
Pursuant to SECTION 33**

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Ref: LON/00AM/LSC/2011/0469

**Premises:** 7 Castlewood Road, London, N16 6 DU

**Applicant:** 7 Castlewood Road Limited

Represented by: Mr Israel Moskovic of Avon Estates

**Respondent:** Sinclair Gardens Investments (Kensington) Limited  
Represented by: Mr Wiseyaratne Counsel (Instructed by P Chevalier &  
Co Solicitors)

**Date of Hearing** 10 November 2011 and 7 December 2011 (for the  
determination)

**Date of Decision:**

**Tribunal Members:** Ms M W Daley LLB (Hons)  
Mr T Johnson FRICS  
Ms S Wilby

## BACKGROUND

1. This case involves an application under Section 33 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act"). The application concerns 7 Castlewood Road, London N16 6DU "the property". The application is made by 7a Castlewood Road Limited " the Nominee Purchaser" of the above property. The Respondent ("the Reversioner") is Sinclair Gardens Investments (Kensington) Limited.
2. The application to acquire the freehold pursuant to the Act was initiated by a Section 13 Notice served in or about June 2011. The notice proposed a purchase price of £5000.00 and also proposed a further £100 for property within paragraph 2 of the Notice.
3. On 19 May 2011 a completion statement was served indicating that the price agreed by the parties was £12479.00. The Reversioner put forward the following costs-:

Freeholder's Completion Statement		£33261.20
Section 33 Costs		
Notice of Claim	£1607.40	
Conveyancing	£1008.00	
Valuation	£920.00	
		£36796.60

4. The parties were unable to agree the section 33 costs, and as a result, the Purchaser made an application to the Leasehold Valuation Tribunal on 5 October 2011 for the section 33 costs to be determined.
5. Directions were given on 11 October 2011. The Directions provided that the Application should be treated as the statement of case, and that the Respondent should provide a statement setting out the basis of the

reversioner's claim to the cost pursuant to section 33. The Applicant was directed to provide a written response by the 28 October 2011.

6. At the hearing Mr Moskowitz made a short submission regarding the matters that were at issue. He stated that the Respondent's had been obstructive, and had set out figures, which required an explanation, which the Respondent had been unwilling to provide. He stated that as a result of the 'Landlord's obstruction', it had been necessary to make this the application. The Applicant was prepared to agree the surveyor's costs, they however took issue with the legal cost, and the admin cost. In his view the total legal cost should be no more than £1000 plus VAT for any cost incurred under section 33(1) and 33 (2) of the 1993 Act.
7. The Reversioner's position in relation to their entitlement to cost was set out in their written submissions dated 18 October 2011, and this was relied upon by Counsel Mr Wiseyaratne in support of the Reversioner.
8. In their written statement of case, the Reversioner stated that in accordance with section 33 of the 1993 Act, the tenant was liable for the reasonable costs of the Landlord of and *"incidental to the participating tenant's right to collective enfranchisement of the specified premises and any other questions arising out of the Notice and valuation of such interest, deducing title and the conveyance of such interest..."*
9. The Reversioner submitted that the reasonable test in Section 33 of the 1993 Act was that the sole test of the reasonableness of the Reversioner's solicitor and own client cost is whether the Reversioner would reasonably have paid the costs if he was liable to do so. In respect of the cost the position was as follows:-
10. **Solicitor's Cost:-** These were in the total sum of £1607.40 in relation to the Notice of claim and £1368.00 in respect of the conveyancing cost.
11. The Reversioner stated that Paul Chevalier was the solicitor who had conduct of the matter, he was admitted in 1974, and was the sole practitioner of P Chevalier and Co, as such all the legal work was personally undertaken

by him, and this was the basis upon which the Reversioner instructed him. Paul Chevalier was the only solicitor used by the Reversioner, who instructed Paul Chevalier and Co because the firm specialised in enfranchisements and new leases under the Act.

12. In the written statement of case, the Reversioner stated that although the Solicitor did not provide a client care letter, in accordance with "*The Solicitors Code of Conduct 2007*" this was unnecessary as the Reversioner was a long standing client of Paul Chevalier and Co. The solicitor did however keep the Respondent informed of the charges.
13. In support of the hourly rate charged by Mr Paul Chevalier & Co, the Respondent relied upon a Decision in *Belmont Hall Court*, which was provided as part of the Respondent's bundle of authorities. An extract was quoted at paragraph 3.1 of the statement of case:- "*...It must be appreciated that there is no obligation upon a landlord to restrict costs otherwise reasonably incurred to the cheapest rates or to rates acceptable to the RTM Co and its members. Employing a solicitor of [Mr Serota's] established experience and expertise in this area of law and practice, cannot be dismissed as unreasonable on the part of the applicant.*"
14. The Respondent provided a full statement of all of the activities carried out by the solicitor in respect of the initial claim notice, and the conveyancing. In a written reply dated 27.10.11, Mr Moskowitz stated:- "In their submission they { the Respondent} have presented an elaborate description of the alleged legal and technical complexities pertaining to this transaction. I find this difficult to accept. The initial section13 notice attached... is straightforward and presents no complexity. The deed of transfer attached... is also very much in standard format... Messrs Chevalier has failed to explain in what way the provisions in these leases add any complexity to their dealing with the application or to the conveyancing aspect." The Applicant submitted that the hourly rate was excessive and the time taken was unreasonable. In support of this, Mr Moskowitz placed reliance upon a letter from Messrs JJ Goldstein and Co , whom he cited as an experienced property solicitor who had acted for Mr Moskowitz on numerous property transactions. He cited that Messrs JJ

- (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.

### **The Decision of the Tribunal**

17. The Tribunal was referred by both parties to a number of authorities, which both parties wished to rely upon in support of their submissions concerning the section 33 cost. The Tribunal noted that whilst these cases were helpful, the very nature of section 33 cost, are that they turn on the facts of the case. The complexity of the case and importance to the parties involved, and their willingness to pay legal cost will vary greatly, and given this, the Tribunal has not found it appropriate to attach any weight or significance to these decisions, which in the view of the Tribunal turn on their respective facts
18. The Tribunal notes that the Applicant has made no objection to the surveyors' cost in the sum of £920 and accordingly the Tribunal find that the surveyors' fees in the sum of £920 are reasonable and payable in accordance with section 33.
19. The Tribunal noted that there is a long standing relationship between the solicitors and the reversioner, and as such the solicitors Messrs P Chevalier are the Respondent's solicitor of choice. The Tribunal noted that it may well have been possible for the Respondent to shop around and obtain legal services at a cheaper cost, however the terms of section 33 place no obligation on the Respondent to do so. The Respondent has engaged the solicitor who normally acts on their behalf in relation to such matters. Although we have not relied upon the cases referred to as creating any binding precedents, we note that, given the long standing relationship between the parties, and given this, we consider that this matter would not necessarily been approached in the same manner as when a new client instructs a solicitor for the first time, there would have been the possibility of precedent documents, and a degree of prior knowledge which the Tribunal would expect to significantly reduce the total time spent.

20. It is not clear to the Tribunal that this 'saving' is reflected in the bill of cost before the Tribunal.
21. The Tribunal considers that the cost of the initial notice, should be reduced to £1000.00 plus VAT which in the Tribunal's view is within the range of charges that are normal in such matters.
22. The Tribunal find that the full cost of the conveyancing charge is payable, in the Tribunal's view it is within the range of charges that the Tribunal would expect for such work. Accordingly we find that the solicitors charges in the sum of £1000.00 plus VAT for work associated with the initial claim and £840.00 plus VAT for the cost associated with the conveyance are payable by the Applicant.
23. The Tribunal at the hearing indicated that the admin charges were not in their view payable as a section 33 cost. Further reading of section 33 of the 1993 Act confirmed the Tribunal's approach to these cost, and accordingly we find that the cost claimed as admin cost in the sum of £984 is not reasonable or payable under section 33.
24. The total sum payable is £1840 plus VAT.

Signed 

Dated 8 - 2 - 2012 .