



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

Case Reference : **LON/00AW/OC9/2014/0024**

Property : **Durrels House, Warwick Gardens,
London, W14 8QB**

Applicants : **Hemphurst Ltd and Grovehurst
Properties Ltd**

Representative : **Pemberton Greenish LLP,
Solicitors**

Respondent : **Durrels House Ltd**

Representative : **Cripps Harries Hall LLP, Solicitors**

Type of Application : **Section 91 of the Leasehold
Reform, Housing and Urban
Development Act 1993**

Tribunal Members : **Judge I Mohabir
Mr P Casey MRICS**

**Date and venue of
Decision** : **22 July 2014
10 Alfred Place, London WC1E 7LR**

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 by the Applicants under section 33 of the Act to acquire various freehold and leasehold interests in relation to the property known as Durrels House, Warwick Gardens, London, W14 8QB.
2. The total legal costs claimed by the Applicant excluding VAT is £52,001 plus disbursements of £272 for Land Registry fees, £49.05 for travelling expenses and Counsel's fees of £9,450. In addition, the Respondent also claims valuation costs of £54,000 plus VAT.
3. A breakdown of the Applicant's legal costs have been provided by its solicitors in a schedule of legal costs found behind Tab 2 in the bundle of documents for the period 23 August 2006 to 30 August 2013. The fee earners involved in this matter and the hourly rates claimed in respect of each is to be found at the beginning of the schedule. The schedule contains a narrative explanation of the work carried out for each attendance and the fee earner concerned.
4. The costs claimed relate to a collective enfranchisement by the Respondent of a mansion block of flats comprised of 76 flats, 6 freehold titles and 2 leasehold titles. On any view, this matter involved complex legal and valuation issues.
5. The Respondent's statement of case is dated 27 June 2014 and is found behind Tab 4 of the bundle. Essentially, the Respondent makes a number of submissions as to the general principles to be applied in the determination of costs and goes on to put the Applicant to proof as to the recoverability of specific items of costs.

Relevant Statutory Provision

6. Section 33 of the Act provides:
 - (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 by any relevant person 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 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 a 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) ...
- (4) ...
- (5) A 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.
- (6) ...
- (7) ...

Decision

- 7. The Tribunal's determination took place on 22 July 2014 and was based solely on the written representations filed by the parties. The Tribunal's approach was to conduct what effectively amounts to a detailed assessment in the of the Applicant's costs. It should be noted that one member of this Tribunal had the advantage of sitting on the Tribunal that heard some of the contested proceedings and, therefore, has detailed knowledge of the legal and valuation issues in this matter, which informs this determination.

Fee Earners & Hourly Rate

- 8. It is accepted by the Tribunal that the use of the different grades of fee earner by the Applicant's solicitors was appropriate in this matter given its complexity.
- 9. As to the hourly rate of the fee earners, the Tribunal was satisfied that these were reasonable. The comparative hourly rates charged by the Respondent's solicitors for the same level of fee earner is irrelevant because it is based outside London. Inevitably, the rates charged by a central London firm will be higher.

10. As to the Applicant choosing to instruct a specialist firm of solicitors and using leading Counsel, the Tribunal was satisfied that this was reasonable given the complex legal and valuation issues involved in this matter.

Attendances

11. Having carefully considered the documents in the bundle, the Tribunal was satisfied that the costs claimed fell within the scope of the costs recoverable under section 33(1) of the Act and are reasonable save for the following items of costs.

23 August 2006

12. The Tribunal did not consider that it was reasonable for LM to also attend on the Applicant as well as DJWG. This amounted to no more than an initial meeting with the Applicant to take initial instructions. Therefore, the attendance of LM of 1 hour 30 minutes at £185 is disallowed.

25-29 August 2006

13. The Tribunal considered that the preparation of a provisional schedule of participating and non-participating tenants did not fall within the scope of recoverable costs under section 33(1). Therefore only 5 hours at £185 are allowed.

13-14 September 2006

14. 3 hours at £185 are allowed as being reasonable on the basis that 15 hours have already been incurred in investigating the claim.

17 and 23 October 2006

15. The Tribunal did not consider that the attendance of LM in addition to DJWG was reasonable. Therefore, 3 hours at £185 is disallowed.

26 October to 1 November 2006

16. Given the total number of attendances already claimed, the Tribunal considered a further attendance of 10 hours is unreasonable. Therefore, 8 hours at £185 is allowed.

3-8 November 2006

17. This item of work is not recoverable under section 33(1) of the Act and 2 hours at £185 is disallowed.

6 March 2007

18. 3 hours at £185 is allowed for this item as being reasonable given the significant attendances already allowed in respect of reviewing title deeds.

10 May 2007

19. This attendance is disallowed entirely on the basis that the advice and attendances already allowed are sufficient and there is no particular reason given for this further advice.

9-12 September 2008

20. 3 hours is allowed as being reasonable on the basis that 5 hours has already been allowed for two previous inspections for the same reason.

15-24 September 2008

21. 6 hours is allowed as being reasonable on the basis that leading Counsel was involved on advising and drafting the draft contract and Transfer.

1 October 2008 to 16 April 2012

22. The attendances claimed for the period of time are disallowed completely on the basis that the Tribunal proceedings were ongoing and, therefore, the work done could only have been in relation to the very same legal and valuation issues that were the subject matter of those proceedings. Section 33(5) of the Act disallows these costs.

DisbursementsLand Registry Fees

23. These are agreed at £272.

Counsel's Fees

24. For the same reasons set out at paragraph 22 above, the fees claimed by Counsel on 6 March 2008 in the sum of £2,500, on 18 September 2008 in the sum of £550 and £1,800 on 4 March 2010 are disallowed. Accordingly, the sum allowed in respect of Counsel's fees are £4,600 plus VAT.

Travel Expenses

25. These are allowed at £49.05. The Tribunal considered these to be *de minimis* and are allowed.

Valuation Fees

26. Of the £54,000 claimed, the Tribunal allowed the sum of £25,000 plus VAT as being reasonable. The fee quote provided by the Applicant's valuer on page 18 of the bundle included a success fee clearly relating to anticipated negotiations, which under section 33 the Act, is irrecoverable. The Respondent is only liable to pay for the valuation contained in the counter notice and the fee for this was £25,000

Amount Allowed

27. Accordingly, the total costs allowed by the Tribunal as being reasonable are £34,548 plus VAT plus disbursements of £4,600 plus VAT for Counsel's fees, £49.05 for travel expenses and £25,000 plus VAT for valuation costs.

Judge I Mohabir

23 July 2014