



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

Case Reference : LON/00AK/OC9/2017/0258

Property : 34 Sidney Avenue, Palmers Green,
London N13 4UY

Applicants : (i) Hussein Ramadan
(ii) Shifa Ramadan

Representative : Curwens LLP Solicitors

Respondents : (i) Steven James Treais
(ii) David Fearon
(iii) Adrian Beisty and Nilesh Bell-
Gorsia Pierre
(iv) Andre Winsborrow and
34 Sidney Avenue Freehold Limited

Type of Application : Costs under section 33(1) of the
Leasehold Reform, Housing and
Urban Development Act 1993

Representative : Barnes & Partners Solicitors

Tribunal : Judge Daley

Date of Decision : 16 January 2018

DECISION

The Tribunal has determined that the Applicant may recover from the Respondent their legal fees of £1,722 plus VAT of (£344.40), and a disbursement of £84.00, under section 33(1) of the Leasehold Reform, Housing and Urban Development Act 1993.

Reasons for Decision

1. By Application dated 6 October 2017 the Applicants the Landlord applied for costs to be assessed by the Tribunal pursuant to section 33 (i) of The Leasehold Reform, Housing and Urban Development Act("LRHUDA)" 1993.
2. The background was that in or around February 2017 the Tenants served a Section 13 Notice of Claim pursuant to section 13 of the Leasehold Reform, Housing and Urban Development Act 1993 (which is set out in the Appendix to this decision). On 22 March 2017 the respondent tenants' solicitor wrote to the Applicants' solicitor by email withdrawing their notice. On 23 March 2017 the landlord served their counter-notice.
 - a) The Applicant in their application enclosed a copy of their Bill of Costs comprising fees of their solicitors, Curwen Solicitors, in the sum of total sum of £9,535.20 (inclusive of VAT of £297.00);
3. On 14 August 2017, the Applicants' solicitors purportedly wrote to the Respondent's solicitor enclosing a copy of their bill of costs. This was followed by a letter dated 30 August 2017, a copy of which was sent to each of the tenants which stated-: *"... In view of Barnes & Partners Solicitors failure to respond to our letter of 14 August 2017 we have no option but to contact you direct in relation to the pending proceedings for outstanding costs and your liability to pay our client's costs which is on a joint and several basis with your co-tenants..."*
4. The letter dated 14 August 2017, together with the summary bill was not provided to the Tribunal in compliance with the directions dated 17 October 2017. The Directions provided under paragraph 2 that-: "The landlord shall send the following documents to the tenant by 31 October 2017-: Copies of any other documents/reports upon which reliance is placed. And under paragraph 5, which stated that "...The bundle shall include copies of those documents exchanged in accordance with paragraph 2, 3, and 4 above..."
5. The Applicant provided a very short one paragraph summary of their claim for costs together with the copies of their letters dated 17 October 2017 that had been sent to the Tenants, together with copies of the initial claim notice and the counterclaim notice. The bill of costs together with email correspondence dated 13 March 2017 and 22 March 2017 from the parties' solicitors.
6. The Tribunal has considered the background to the Initial Notice of Claim being withdrawn, which is set out in the email correspondence. In an email dated 13 March 2017, Adrian Boulder, a Dispute Resolution

Executive wrote to the Tenant's solicitor stating-: *"...It has been suggested via the assistance of Counsel that we provide you with a copy of the draft Section 21 Notice in advance. It is attached and with a view to serving the same later this week to include the correct price which is under review. We are instructed to once again invite the withdrawal of the Notice of Claim... before costs escalate substantially. This offer is to be relied upon in costs for the purposed (sic) of the pending land necessary litigation should you fail to reconsider..."*

7. In paragraph 1 (i) of the notice, the Landlord took issue with the validity of the notice on the grounds that the notice provided for a response date before the minimum two month period, specified in accordance with the act. The notice was also stated to be defective in that it was sent to only one of the two reversioners, further it was stated that the notice did not include a plan and failed to *"...provide any or any adequate details of the specified premises"*.
8. On 22 March 2017, in an email headed *"Without Prejudice"* the tenant's solicitor stated *"...As your client is claiming to have not received the plan attached to the Notice we are instructed to withdraw the Notice of Claim and re serve a fresh notice..."*
9. The Tenants' solicitors did not respond to the letter dated 14 August 2017, and have not responded to the directions or otherwise made any representations in relation to this application, which the Tribunal considers to be unfortunate.
10. The Tribunal accordingly has reached its decision on considering the bill of cost and made a globe assessment of the costs. The reason for taking this approach is that the Applicant has not provided supporting invoices as required by the directions. Further the Tribunal on examining the bill of costs; has noted that the Applicant has included items which fall outside the scope of Section 33 (1) of LRHUDA 1993 in that the costs were incurred after the notice had been withdrawn.
11. The Bill of Costs sets out a claim for the sum of £9535.00 inclusive of VAT which provides for three fee earners having carried out work on this case during what was essentially a 5 week period between the notice having been served and withdrawn.
12. No information has been provided of the complexity of this case, or why it was necessary for three fee earners to deal with this matter. The Applicant has also not provided details of the surveyor's report or an invoice for his fees, or details on when and why an inspection was carried out, given their contention that the notice was defective. Accordingly this sum has been disallowed, as no proof has been provided that this costs has been incurred.

13. The Tribunal has accordingly allowed the following heads of costs items 1, and 2 for routine letters and email and telephone attendance from a grade A and C fee earner in the sum of £231.00 for the grade A fee-earner and 1.5 hours for the grade C fee earner in the sum of £292.50. The sum of £39.00 under item 5. The total sum of £292.50 in relation to the routine emails and telephone correspondence claimed for under item 7. Three hours for the grade A fee earner under item 10. In the total sum of £750.00. The Tribunal has also allowed in full the items under item 9 and 10, in relation to the Land Registry.
14. The Tribunal noted that in the email sent on 13 March 2017, the expressed intention of the Applicants' solicitor was that the notice should be withdrawn in order to reduce the costs. However in the bill of costs, the Applicant had claimed costs for the perusal of the valuation after the notice was withdrawn and for drafting a transfer "without prejudice to the counter notice". This cost is not payable under section 33(1). There is no reason given this expressed intention and the relatively short duration of this case why fees of £9535.00 would have been incurred.
15. Further no information has been provided as to why a further fee-earner a grade D, fee earner was necessary giving the involvement of Grade A and C fee earners, who appear to have spent a considerable period of time on this case.
16. In the absence of information to support the costs that were incurred the Tribunal has decided that the sums claimed for costs in the case should be no more than what is considered reasonable and incidental to the service of the notice as set out in section 33 (1) of the act.
17. Accordingly the sum of cost allowed is £1605.00 solicitor's costs plus VAT and the sum of £117.00 for letters to the Land Registry and the cost of fees paid to the Land Registry in the sum of £84.00.
18. According the total sum allowed is £1722.00 plus VAT of £301.35 and disbursements of £84.00

Name: Judge Daley

Date: 16 January 2018

ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

Appendix of relevant legislation

Leasehold Reform, Housing and Urban Development Act 1993

Section 33(1) and (2)

1. The Law

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.