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

**Case Reference** : LON/00AG/OC9/2013/0038

**Property** : Flats 1 & 2 40, Elsworthy Road  
London Nw3 3DL

**Applicant** : Beitov Properties Limited

**Representative** : Mr G Abrahams, Director

**Respondents** : Mr Steven Mortimer  
Ms Lynette Kyme

**Representative** : None, In Person

**Type of Application** : Court referral – administration  
charges

**Tribunal Members** : Judge John Hewitt Chairman  
Mr W Richard Shaw FRICS

**Date and venue of  
Hearing** : 4 September 2013  
10 Alfred Place, London WC1E 7LR

**Date of Decision** : 6 September 2013

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**DECISION**

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## **Decisions of the Tribunal**

1. The Tribunal reports to the Central London County Court that the sums claimed and as claimed by the Applicant against the Respondents in the court proceedings, Claim No. 2YM02326 are not payable by the Respondents.
2. The reasons for our decisions are set out below.

**NB** Later reference in this Decision to a number in square brackets ([ ]) is a reference to the page number of the hearing file provided to us for use at the hearing.

## **Procedural background**

3. On 11 September 2012 the Applicant commenced court proceedings, Claim No. 2YM02326 against the Respondents. The Applicant claimed the sum of £5,471.74 being:

*“Non-payment of administration costs incurred by the Claimant/Freeholder in connection with LVT proceedings brought by the Defendants/Leaseholders.”*

It was said that the sum claimed represented legal and professional costs incurred in connection with a claim to collective enfranchisement of 40 Elsworthy Road and in connection with subsequent proceedings before the Leasehold Valuation Tribunal (LVT).

Paragraph 4 of the Particulars of claim asserted that the sum was payable pursuant to an indemnity given by the Defendants in clause 10 of the respective leases vested in them. The Applicant/Claimant apportioned the costs incurred as to 50% to each Respondent/Defendant.

3. A Defence was filed.
4. By an order made by District Judge Jackson on 10 June and drawn 25 June 2013 it was ordered that:

*“Matter be transferred to Leasehold Valuation Tribunal for LVT to consider the question of whether or not the fees and charges are recoverable by the landlords.”*

4. Directions were duly given.
5. The functions of rent assessment committees in England (and hence LVTs) were transferred to the First-tier Tribunal (Property Chamber) with effect on 1 July 2013. Accordingly these proceedings are now subject to The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (the Rules), save to the extent that the Tribunal may dis-apply all or any of the Rules in favour of the Leasehold

Valuation Tribunals (Procedure) (England) Regulations 2003 (the Regulations).

6. The Applicant's statement of case dated 12 July 2013 is at [9] and a further draft undated statement of case submitted under cover of a letter from the Applicant's solicitors dated 2 August 2013 is at [20].
7. By letter dated 15 August 2013 the Respondents denied liability for the sums claimed in the court proceedings, for a number of reasons therein set out, including the limitation on recoverable costs set out in section 33 of the Leasehold Reform, Housing and Urban development Act 1993 (the Act).
8. By letters dated 20 August 2013 the parties were notified that the referral would be heard at 10:00 on 4 September 2013. Mr Geoffrey Abrahams, a director of the Applicant appeared and presented the case for the Applicant. He made detailed submissions to us. The Respondents did not appear and were not represented.

#### **Background facts and chronology**

9. We set out below the background facts and chronology as found by us from the documentary and oral evidence presented to us.
10. The Applicant is the freeholder of the property known as 40 Elsworthy Road. The property was originally built as a terraced residential house but subsequently it has been converted to comprise four self-contained flats all of which appear to have been sold off on long leases.
11. The Second Respondent, Ms Kyme is the registered proprietor of Flat 1. The First Respondent, Mr Mortimer, is the registered proprietor of Flat 2. The Respondents sought and obtained a licence from the Applicant to carry out works and alterations, to install an internal spiral staircase so as to combine their two flats into one (large) residential unit.
12. The Respondents, as qualifying participating tenants, served on the Applicant, as the reversioner, an initial notice pursuant to section 13 of the Act seeking to exercise the right to collective enfranchisement. The notice is dated 18 June 2009.
13. The Applicant gave a counter-notice pursuant to section 20 of the Act admitting that on the relevant date the Respondents were entitled to exercise the right to collective enfranchisement.
14. The parties were unable to agree the terms of acquisition and the Respondents, as the nominee purchaser, made an application to the LVT pursuant to section 24 of the Act for the terms of acquisition in dispute to be determined. That application came on for hearing on 8 April 2010. The present Respondents (who were the Applicants in the LVT proceedings) were represented by two persons from Ringleys (one was a valuer and the other a lawyer) and the present Applicant (Respondent in the LVT proceedings) was represented by counsel

(instructed by Robert Brand & Co, Solicitors) and a valuer, Mr Andrew Cohen MRICS of Talbots Professional Services (Talbots).

15. The members of the LVT undertook an inspection of the subject flats on 14 April 2010. That inspection revealed the works and alterations carried to convert Flats 1 and 2 into one residential unit. The LVT concluded that this had a profound effect on the claim to enfranchisement. The LVT's decision is dated 10 May 2010 [22]. The decision states that the LVT concluded it did not have jurisdiction to make a determination on the application made under section 24 of the Act.
16. Thus the claim to enfranchise failed.
17. Shortly after the conclusion of the LVT hearing the Applicant notified the Respondents that it wished to make a claim for costs against them. That claim appears to have been made up as follows:

Invoice of Talbots dated 14 May 2010	[8]	£2,820.00
Invoice of Robert Brand & Co dated 14 June 2010	[7]	£1,153.62
Invoice of Robert Brand & Co dated 8 July 2010	[6]	<u>£1,498.12</u>
<b>Total</b>		<b>£5,471.74</b>

18. Unsuccessful efforts were made by the Applicant to recover these costs.
19. On 22 June 2012 YVA Solicitors now acting for the Applicant wrote a formal letter of claim to the Respondents [1]. The letter claimed the £5,471.74 and asserted that it was payable by them as service charges pursuant to their leases and asserted that the sum was apportioned between them equally.
20. On 11 September 2012 the Applicant commenced the court proceedings to recover £5,471.74 and asserted the basis of the claim was:
- “Non-payment of administration costs incurred by the Claimant/Freeholder in connection with LVT proceedings brought by the Defendants/Leaseholders.”*
21. The leases of Flats 1 and 2 are in common form. The leases provide for the payment of a service charge. The detailed regime is set out in paragraphs 10 and 11 of the Third Schedule. A sample is at [40 and 41].

***Enfranchisement – the statutory costs regime***

22. The recovery of costs by a reversioner where enfranchisement rights are exercised is set out in section 33 of the Act.

The material provisions are as follows:

***33.— Costs of enfranchisement.***

(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 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 liable for all such costs.*

(3) ...

(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 the appropriate tribunal incurs in connection with the proceedings.*

(6) ...

(7) *Where by virtue of this section, or of this section and section 29(6) taken together, two or more persons are liable for any costs, they shall be jointly and severally liable for them.*

23. Section 91 of the Act provides that jurisdiction to determine issues in dispute between parties, including the liability to pay and the amount of costs payable under the Act is vested in the Tribunal (LVT prior to 1 July 2013).

The material provisions are:

**91.— Jurisdiction of tribunals.**

(1) *Any question arising in relation to any of the matters specified in subsection (2) shall, in default of agreement, be determined by the appropriate tribunal.*

(2) *Those matters are—*

(a) ...

(b) ...

(c) ...

(d) *the amount of any costs payable by any person or persons by virtue of any provision of Chapter I or II and, in the case of costs to which section 33(1) or 60(1) applies, the liability of any person or persons by virtue of any such provision to pay any such costs; and*

(e) *the apportionment between two or more persons of any amount (whether of costs or otherwise) payable by virtue of any such provision.*

(3) to (11) ...

(12) *For the purposes of this section, “appropriate tribunal” means—*

(a) *in relation to property in England, the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal; and*

(b) *in relation to property in Wales, a leasehold valuation tribunal.*

24. There is nothing in the papers before us to show that the Applicant has made any application to the LVT or to the Tribunal for the amount of costs payable by the Respondents pursuant to section 33(1) of the Act to be determined by the Tribunal. At the hearing Mr Abrahams told us that he was not aware of any such application.

**The sums claimed and the character of them**

25. At the hearing we sought to clarify with Mr Abrahams the legal or contractual basis on which the costs were claimed in the court proceedings. Mr Abrahams was clear that they were not service charges payable in accordance the service charge regime set out in the leases.
26. Mr Abrahams suggested that they might be variable administration charges payable under the leases and in connection with the Applicant's management of the property but he was unable to cite to an express provision in the leases obliging the tenant to pay such charges.
27. We went through the invoices with Mr Abrahams. We find that it is clear from them that;
- 27.1 The Talbot's invoice [8] relates exclusively to Mr Cohen attending the LVT hearing to give expert evidence as a valuer. This is plain from the breakdown of the invoice at [13].
- 27.2 The Robert Brand invoice dated 14 June 2010 [7] appears to cover preliminary work carried out investigating the claim and giving the Applicant's counter-notice, some or all of which might well be fall within the costs provided for in section 33(1) of the Act. In the absence of a more detailed breakdown it is not possible to more specific.
- 27.3 The Robert Brand invoice dated 8 July 2010 [6] relates exclusively to the costs of the solicitor and counsel attending the LVT hearing.

**Discussion and reasons**

28. At the hearing Mr Abrahams accepted that the sums claimed were not service charges. Whilst Mr Abrahams did not formally concede that the sums claimed were not variable administration charges payable by lessees pursuant to provisions in the leases, he did accept that he was unable to cite or identify a provision in the leases which imposes an obligation on the lessee to pay such sums.
29. We have no hesitation in coming to the conclusion that in the court proceedings the Applicant sought to recover costs it had incurred in connection with the claim to enfranchisement and the subsequent proceedings before the LVT.
30. Two significant points arise from this.

31. First a court claim for such costs is misconceived because the court does not have jurisdiction to determine whether such costs are payable, and if so, to assess the amount payable. The relevant jurisdiction was vested in the LVT and is now vested in the First-tier Tribunal (Property Chamber).
32. Secondly, Parliament has made it clear by the provisions of section 33 of the Act the circumstances in which a reversioner may recover costs of the nominee purchaser. Section 33(5) makes plain that costs incurred by the reversioner in connection with proceedings before a tribunal are not recoverable. Accordingly this means that the amounts of the invoice of Talbots [8] and the invoice of Robert Brand dated 8 July 2010 [6] are not recoverable in any circumstances because they both relate to costs incurred at the hearing of the proceedings before the LVT.
33. Some or all of the amount claimed in the Robert Brand invoice of 14 June 2010 [7] might fall within section 33(1) of the Act, but the liability of the Respondents to pay costs and the amount of such costs as may be payable can only be determined by the Tribunal upon an appropriate application being made by the Applicant to the Tribunal.

**Next steps**

34. In accordance with the obligation upon us the court file will now be returned to the court together with this report.

Judge John Hewitt  
6 September 2013