

2709



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

Case Reference : **LON/00/00BK/OC9/13/0025**

Property : **Clarewood Court, Seymour Place,
London, W1H 2NL**

Applicant : **Daejan Properties Ltd**

Representative : **Wallace LLP**

Respondent : **Clarewood Court Ltd.**

Representative : **TWM Solicitors LLP**

Type of Application : **S.91(2)(d) Leasehold Reform,
Housing & Urban Development Act
1993**

Tribunal Members : **Judge Dowell
D Banfield FRICS**

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

Date of Decision : **17 July 2013**

DECISION

Decisions of the Tribunal

- (1) The Tribunal determines that the sum of £ 2475 plus VAT is payable by the respondent in respect of legal costs.
- (2) The Tribunal determines that the sum of £375 plus VAT is payable by the respondent in respect of valuation fees (this sum was not disputed by the respondent)
- (3) The Tribunal determines the sum of £836 is payable by the respondent in respect of land registry fees.

The application

1. The applicant seeks a determination pursuant to s.91 of the Leasehold Reform Housing and Urban Development Act 1993 (the Act) as to the amount of costs payable by the respondent in accordance with s.33 of the Act.
2. Both parties expressed their willingness for the matter to be determined without a hearing and the matter was therefore considered on the bundle submitted by the applicant's solicitors containing both parties' cases.

The background

3. Central and Metropolitan Estates Ltd is the freehold owner of premises known as Clarewood Court Seymour Place London W1H 2NL (the property). The freehold title is subject to a headlease of 54 Clarewood Court owned by the applicant for a term of 216 years less 10 days from 23 March 1984. The respondent is the Nominee Purchaser and on or about 16 December 2010 made an application to acquire the freehold title of the property. The proposed price for the freehold was £3,289,200.60 for the freehold and £100 for the intermediate leasehold interest. A counternotice was served by the freeholder on 16th February 2011 denying that the Nominee Purchaser was entitled to exercise the right to collective enfranchisement because the property was not a qualifying building under the Act. The nominee purchaser applied to the court for a declaration but subsequently withdrew the application and the Initial Notice.
4. Costs under s.33 of the Act have been disputed by the respondent and the matter therefore referred to this tribunal for determination. The amounts disputed are;

- Legal costs of £2755 plus VAT

- Land Registry fees of £836
- **The Law**

S 33 of the Act states:

“(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-

- (i) of the question whether any interest in the specified premises or other any investigation reasonably undertaken – property is liable to acquisition in pursuance of the initial notice, or
 - (ii) of any other question arising out of that notice;
- deducing, evidencing and verifying the title to any such interest;
 making out and furnishing such abstracts and copies as the nominee purchase may require;
 any valuation of any interest in the specified premises or other property;
 any conveyance of any such interest;.....

(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 regard 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 Applicant’s costs

6. In accordance with the Directions of the Tribunal dated 23 May 2013 the applicant prepared a schedule of costs . The work by solicitors was carried out between 5 January 2011 and 19 April 2011. The schedule sets out the work carried out , with the date and a description. All the work was carried out by a partner with a charge out rate of £350 per hour apart from one item dated 6 January 2011 when a paralegal carried out 2.5 hours work at the rate of £150 per hour.

The Respondent’s case

7. An undated and unsigned statement of case of the respondent is included in the hearing bundle. The respondent set out 7 general points on the statement of costs.
 The respondent stated that the sum of £10,000 had been paid to the freeholder’s solicitors to cover statutory costs. Very little work had been carried out in relation the intermediate leasehold interest and there was no need to carry out a full investigation of title . Details of

title to Flat 54 could have been supplied by the Tenants solicitors and the statutory costs being claimed were out of all proportion to the value of the intermediate leasehold interest and unreasonable when compared with the freeholders costs. VAT was challenged. It was not necessary for a partner to carry out the legal work which should have been delegated to an assistant solicitor charging £225 per hour.

8. Only 3 specific points were raised in relation to the schedule of costs 2 in relation to work on 5th January 2011 and one on 6th January 2011. Finally the respondent submitted that if the respondent was paying itself for this work it would have paid for 2 hours work by an assistant solicitor and a small amount of work by a paralegal. Legal fees would have been £550 plus VAT and Land Registry fees for 2 leases and 2 sets of copy entries relating the flat in question.

The Applicants reply

9. The applicant's solicitors made written submissions on costs in a document included in the bundle signed and dated 11 July 2013. Where necessary we will refer to these submissions in our decision.

The Tribunal's decision

10. We accept that the applicant, the Intermediate Landlord, is entitled to separate representation in this matter as submitted by the applicant. In the case of *Dashwood Properties Ltd v Beril Prema Chrisotom-Gooch* [2012] UKUT 215 (LC) the Upper Tribunal held that an intermediate landlord was entitled to undertake an independent investigation regarding the right of the tenants to acquire the interest sought on the basis that the intermediate landlord's concerns would not necessarily coincide with those of the Reversioner. This case specifically dealt with a leasehold extension but we accept the applicant's submission that the principles apply to all enfranchisement matters.
11. The applicant submitted that any costs paid to the freeholder's solicitors are irrelevant to the respondent's liability for the applicant's costs. We accept this submission. In any event we have no break down of these costs.
12. The value of the interest of the applicant should be taken into account when determining the costs under the provisions of S33 of the Act. The intermediate interest was valued at £100 in the Initial Notice but the applicant submits that its valuer indicated a value of upwards of £4000. Although we have not seen the applicant's valuation report we accept that the costs claimed are proportionate to the applicant's interest in the property. This was a complicated claim as evidenced by the freeholder's denial of the respondent's entitlement and subsequent court proceedings.

13. As far as VAT is concerned the applicant has set out in its submissions the basis on which VAT is properly recoverable and we see no reason not to accept this explanation. VAT is therefore payable by the respondent on the professional fees.
14. The applicant is entitled to instruct solicitors of its choice subject to the provisions of S33(2) of the Act. The applicant has submitted that Daejan's solicitors have been acting for them for many years on enfranchisement matters and that the rates charged are consistent with charge out rates for solicitors in central London . We accept it is appropriate to instruct an experienced partner for this type of work which is complex and technical. We do not accept that if Daejan were paying the costs themselves that they would only have paid for an assistant solicitor to do 2 hours work and a small amount of work by a paralegal. We accept the submission that an investigation was warranted to protect the applicant's interest in the property and that it was also necessary to consider counsels' advice in respect of the respondent's entitlement to acquire the freehold title. The fact that court proceedings were commenced by the respondent and then abandoned and that the Initial Notice was withdrawn is evidence of the complex nature of this claim.
15. The respondent has challenged the time taken on 5 January 2011 for a partner to review the initial notice. 1 hour 48 minutes is claimed The applicants in its submissions has set out the work undertaken. The respondent submits this work should have been carried out by an assistant solicitor over a period of 30 minutes. In our view this work should have been carried out by a partner experienced in this type of work but it could have been done in 1 hour. We therefore disallow 48 minutes.
16. Objection is raised to the charge for a letter 5 January 2011 confirming the solicitors represent Daejan. This is a routine letter necessary to the progress of the case and is allowed.
17. The respondent objects to the Land Registry charges on the grounds. There was no justification for obtaining all the copy entries and leases claimed for and all that was necessary was to make searches in respect of Flat 54. The applicant explained that copy entries were obtained for the freehold, headlease, commercial premises, locker rooms and qualifying tenants' flats to enable a proper investigation to be undertaken and to be provided to the valuer to undertake the appropriate valuation. This is a legitimate disbursement and the sum off £836 claimed for Land registry fees is allowed.

18. The partner's hourly rate of £350 is not challenged (only the use of a partner was challenged) and the paralegals rate of £150 per hour is not challenged.

Judge Dowell
17 July 2013
