



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

**Case reference** : **AHLON/00/OOAG/OCE/2013/0251**

**Property** : **180 Camden Road, London NW1  
9HG**

**Applicant** : **Christopher Anthony Briere-Edney  
& Others**

**Representative** : **Tucker Turner Kingsley Wood LLP**

**Respondent** : **Stella Wong-Lun-Sang**

**Representative** : **Thrings Solicitors**

**Type of application** : **Costs under Rule 13 Tribunal  
Procedure (First-tier tribunal)  
(Property Chamber) Rules 2013**

**Tribunal members** : **Judge S O'Sullivan  
Mr Tobin FRICS MCI Arb**

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

**Date of decision** : **25 June 2014**

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**DECISION**

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## **Decisions of the tribunal**

The tribunal orders that the Respondent pay to the Applicants the sum of £7,500 plus Vat in respect of their legal costs pursuant to Rule 13(1) of the Tribunal Procedure First tier Tribunal (Property Chamber) Rules 2013.

## **The application**

1. On 17 April 2014 the tribunal received an application for a determination of costs under Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. Directions were made dated 22 April 2014 further to which the parties lodged submissions. The application was considered by way of a paper determination on 25 June 2014. None of the parties requested an oral hearing.
2. The costs in issue are those said to be incurred in bringing an earlier application to the tribunal under case reference LON/OOAG/OCE/2013/0251 (the "Substantive Application"). The costs being claimed by the Applicants total £23,237.80.
3. The Applicants are referred to as the tenants throughout this application and the Respondent as the landlord.

## **The background**

4. The Substantive Application related to an application by the Applicants to acquire the freehold interest of 180 Camden Road, London NW1 9HG pursuant to the Leasehold Reform, Housing and Urban Development Act 1993. In a decision dated 18 March 2014 the tribunal accepted the valuation evidence put forward by the Applicants and found the premium payable as £52,100 and for the land £400. This represented the higher of the two valuations before it with the landlord's surveyor having contended for a figure of £51,800.

## **The Applicants' case**

5. The Applicants relied on a witness statement made by Adrian Philip Pook of Tucker Turner Kingsley Wood LLP dated 19 May 2014.
6. In the Substantive Application the Respondent relied upon a report of Miss Knape of Knight Frank. This report predated the valuation date by approximately seven months and valued the premium at £51,800. On the face of the difference between the parties in the respective valuations was £700. The evidence relied upon by the Respondent suggested a premium of less than that proposed by the Applicants. On

the face of it there was therefore no dispute between the parties. At the hearing the Respondent sought to rely on a further witness statement made by her which was said to report further comments made by her valuer which sought to argue for a higher price than the report she relied upon. The tribunal did not give permission for this to be relied upon given it was produced on the day of the hearing and appeared to comprise hearsay evidence which would bear little weight. The tribunal accepted the higher of the two valuations put forward by the Applicants.

7. The Applicants, therefore, say that the Respondent's conduct in defending the proceedings has been completely unreasonable and has caused the Applicants to incur a significant amount of unnecessary costs. The Respondent claimed the premium payable as £210,000 in her counter notice yet none of the figures discussed were near that. On 13 March 2014 the Respondent's valuer put forward an offer to settle at £67,000 which was rejected but an offer was made at £55,125, £2,625 more than the figure in their initial notice. Although the Respondent rejected the improved offer and demanded £65,000 she then filed evidence valuing the reversion at £51,800, lower than that offered by the Applicants. The Applicants say for the Respondent to negotiate for a premium far in excess than the amount she finally asserted in evidence is unreasonable and an abuse of process. In addition the Applicants say that by the Respondent filing her evidence so late in the day the Applicants were forced to attend the final hearing and therefore incur associated costs when they were offering more than the Respondent's evidence claimed it was worth. It is said that, had the Respondent accepted the without prejudice offer of £55,125 she would have obtained a higher premium and the parties would have avoided incurring further costs.
8. The Applicants also say that the Respondent should have accepted reasonable offers and failed to negotiate. They rely on a chronology which they say sets out a history of the Applicants chasing the Respondent's solicitors so that negotiations between the surveyors could begin. It is said that from 8 July 2013 the Applicants made numerous attempts to commence negotiations but there was no substantive engagement until 6 January 2014.
9. The Applicants say that the initial figure of £24,000 in the initial notice was based on advice and that the landlord's figure contained in the counter notice of £210,000 was far higher than any other figure discussed and based upon a belief the figure did not need to be reasonable.
10. It is submitted that it should have been apparent to the Respondent and her solicitors that the belief that the matter may settle is not an acceptable reason for the failure to prepare. The Respondent could also have instructed a different valuer.

11. The Respondent is said to have totally failed to engage during the months of July to September 2013. The Applicants were not informed that the Respondent was unwell until 14 January 2014. The Respondent decided to represent herself on 2 October 2013, 21 October 2013 and 18 March 2014 despite having solicitors instructed throughout.
12. The Applicants also relied on a schedule of their costs providing a breakdown of the fee earners and time spent.

### **The Respondent's case**

13. The Respondent relied on a signed but undated witness statement.
14. The Respondent says that she has not acted unreasonably. She considered the Applicants' evidence was misleading for 3 reasons;
  - (i) The Applicants provided an unreasonably low premium in the initial notice of £24,000 and negotiated for this figure until 7 January 2014, the offer made on 6 March 2014 was almost double this figure.

It is said that it was not until late January 2014 that a more realistic premium was provided in negotiations. It is said that had a more realistic figure been proposed earlier there would have been more scope for negotiation, especially between December 2013 and March 2014 when the Respondent underwent a traumatic delivery which left her and her daughter in intensive care. Up until the service of the tenant's valuation she says that she remained hopeful that a settlement would be reached. It was to save costs that she elected not to instruct Miss Knappe to prepare evidence and attend the hearing; her costs of doing so had been estimated at £10,000. It is denied that the premium of £210,000 in the counter notice was excessive, it was based on information of what a friend had paid to extend a comparable lease in Camden and she had doubled the amount to reflect that there were two flats.

- (ii) It was reasonable to decline the offers to settle as she believed that her evidence showing the correct premium would be allowed

The Respondent denies this assertion. It is submitted that the tenants have served three invalid section 13 notices and have had to take legal advice and incur costs on each occasion. Offers to settle the proceedings have been made. She also says that she has lost £10,000 defending her position as the tribunal did not allow all of her costs on an assessment of her costs under section 33(1). The Respondent also sets out the difficult pregnancy that she has experienced. After the delivery during the period December 2013 to February 2014 she had had to undergo painful injections into her ears which have left her incapacitated, she is

now permanently deaf in one ear. The period from September 2013 to March 2014 was a difficult period for her.

- (iii) There was a difference of opinion between the parties as to the correct premium otherwise there would have been no need for a hearing.

### **The tribunal's decision**

15. The tribunal orders that the Respondent pay to the Applicants the sum of £7,500 plus Vat in respect of their legal costs pursuant to Rule 13(1) of the Tribunal Procedure (First tier Tribunal) (Property Chamber) Rules 2013 (the "Procedure Rules").

### **Reasons for the tribunal's decision**

16. The tribunal's power to award costs is contained in Rule 13 (1)(b)(ii) of the Procedure Rules which states that;

*"The Tribunal may make an order in respect of costs only-*

*(b) If a person has acted unreasonably in bringing, defending or conducting proceedings in-*

*(1) a residential property case ..."*

17. The power to award costs pursuant to Rule 13 is discretionary and the wording of the provision makes it clear that the tribunal may only make such an order if a person's conduct of the proceedings is unreasonable rather than his behaviour generally.
18. The power to award costs pursuant to Rule 13 should only be made where a party has clearly acted unreasonably in bringing, defending or conducting the proceedings. This is because the tribunal is essentially a costs free jurisdiction where parties should not be deterred from bringing or defending proceedings for fear of having to pay substantial costs if unsuccessful. In addition there should be no expectation that a party will recover its costs if successful. The award of costs should therefore in our view be made where on an objective assessment a party has behaved so unreasonably that it is fair that the other party is compensated to some extent by having some or all of their legal costs paid.
19. Having considered the facts of this case overall we consider that it is appropriate that an order is made under Rule 13 in respect of some of the Applicants' costs as we consider that the Respondent has acted unreasonably to some extent in conducting the proceedings.

20. We accept that the Respondent failed to include a reasonable premium in the counter notice having included an amount reached by reference to a conversation with a friend and some calculations without taking professional advice. We also find that the Respondent failed to engage with the proceedings and did not instruct her valuer to progress negotiations. Had the valuer been given proper instructions at an early stage settlement may well have been reached. We consider that the Respondent acted unreasonably in failing to prepare for the hearing properly, not instructing her valuer to provide an updated report and seeking to rely on late evidence. In this regard we also took account of the fact that the Respondent was legally represented throughout these proceedings. This failure meant that the Respondent appeared before the tribunal in the Substantive Proceedings relying on valuation evidence which assessed the premium at lower than that sought by the Applicants when she had ample time to instruct her valuer to prepare a supplemental report. Even if the tribunal had accepted the further evidence this was unlikely to have had any material effect on the tribunal's decision given that it did not consist of any expert valuation advice but was rather a witness statement made by the Respondent who is not an expert in the field of enfranchisement. The decision to proceed to a hearing in the light of the valuation evidence was wholly misconceived and caused wholly unnecessary costs to be incurred.
21. However we did have some sympathy for the view that the premium stated in the initial notice was considerably too low and did not assist in the negotiations.
22. We went on to consider the level of award we should make. The Applicants had filed a schedule of costs. This did not break down the cost into any time periods so we were unable to assess the extent of costs incurred shortly before and at the hearing for example. This was unfortunate. In making our decision we also had regard to the personal difficulties the Respondent experienced during this period and the impact this may have had on her ability to give instructions to those advising her. Lastly, we also took into account proportionality. The premium confirmed by the tribunal was £52,100 yet the Applicants costs stand at in excess of £23,000.
23. Accordingly taking necessarily a broad-brush approach given the lack of detail with which we have been provided we consider an award in the sum of £7,500 plus Vat to be appropriate.

**Name:** S O'Sullivan

**Date:** 25 June 2014