

2993



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

**Case Reference** : **PJ/LON/00AW/OC9/2014/0193**

**Property** : **15 Tite Street, London SW3 4JR**

**Applicants** : **Jonathan Money  
Charles Carey-Morgan  
Jonathan Richard Davies**

**Representative** : **Wilson Barca LLP, solicitors**

**Respondent** : **Cadogan Estates Limited**

**Representative** : **Pemberton Greenish LLP,  
solicitors**

**Type of application** : **For the determination of the  
landlord's recoverable costs in  
respect of a collective  
enfranchisement**

**Tribunal members** : **Margaret Wilson  
Duncan Jagger FRICS**

**Date of determination** : **21 January 2015**

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## DECISION

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### Introduction and background

1. This is an application by the nominee purchaser, Jonathan Money, Charles Carey-Morgan and Jonathan Richard Davies, under section 91(2)(d) of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") for the determination of the recoverable costs incurred by the landlord, Cadogan Estates Limited, in pursuance of a notice of claim to acquire the freehold of 15 Tite Street, London SW3. An initial notice under section 13 of the Act (a copy of which is not in our papers) was given in late 2010 and the landlord's counter-notice was served on 20 January 2011. The price to be paid for the freehold was the subject of hearings before a leasehold valuation tribunal and the Upper Tribunal, and permission was granted for an appeal to the Court of Appeal, but the disputes were then settled.

2. The landlord has sought legal costs of £6858.25 plus VAT and disbursements and valuation costs of £12,031 plus VAT. The nominee purchaser disputes liability to pay those costs and has made the present application which, by agreement, is determined on the papers and without an oral hearing in accordance with rule 31 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. When the matter first came before the Tribunal the judge, also the judge concerned in the making of the present determination, called for a copy of the valuations for which the fees are claimed in view of the large disparity between the sum claimed and the sum which the nominee purchaser's solicitors submitted to be reasonable, and those valuations have now been supplied.

3. The application appears to relate only to the costs referable to the collective enfranchisement and not to the costs incurred in connection with a claim to an extended lease of the first floor flat in the building which are not addressed in the parties' solicitors submissions. If that is not correct we will determine the recoverable costs in a supplementary decision without the need for a further application.

### The law

4. By section 33(1) of the Act, where a notice under section 13 is given, the nominee purchaser is liable, to the extent that they have been incurred in pursuance of the initial notice, for the reasonable costs of and incidental to the following:

- (a) *any investigation reasonably undertaken -*
  - (i) *of the question whether any interest in the specified premises or any other property is liable to acquisition in pursuance of the 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 such interest.*

5. By section 33(2), costs incurred by a landlord in respect of professional services shall be regarded as reasonable only to the extent that such costs might reasonably have been expected to have been incurred if the landlord was personally liable for the costs, and, by section 33(5), the nominee purchaser is not liable for any costs which a party to proceedings before a tribunal incurs in connection with the proceedings.

### **Legal costs**

6. These costs are broken down in a schedule at pages 2 - 7 of the bundle. The schedule shows that the matter was dealt with throughout by Katherine Simpson, a partner in Pemberton Greenish LLP, at an hourly rate of £350 plus VAT. She spent a total of 24 hours and 24 minutes, which equates to £8540 plus VAT, plus Land Registry fees of £50, which produces a total of £10,298 including VAT. Of this, the landlord has limited its claim to £6858.25 plus VAT and Land Registry fees of £32, a total, including VAT, of £8261.90.

7. The nominee purchaser's solicitors, Wilson Barca LLP, submit that not all the work was required to be carried out by a partner and that the hourly rate was excessive. They submit that a reasonable charging rate would be £295 for a partner and £150 for an assistant solicitor. They submit that the 9 hours 42 minutes' work carried out between 8 November 2010 and 21 January 2011 was excessive and the work should have been carried out in three hours of a partner's time and 4 hours of an assistant solicitor's time. They submit that the landlord is not entitled to recover the costs of the head landlord's service of a notice of separate representation and that work relating to the agreement of a form of draft transfer had nothing to do with completion of the purchase but was a negotiation over the extent to which onerous obligations could be included in the transfer under the provisions of the Act. They submit that fees for the work carried out from 11 March 2014 to 30 October 2014 were excessive because the work was concerned only with the production of final versions of the transfer, the contents of which had been previously determined by the Tribunal, and that three hours of a partner's time at an hourly rate of £295, a total of £885 plus VAT, would be an adequate allowance for that work. They say that the fees charged in respect of the period 1 July 2014 to 17 July 2014 relate to litigation between the parties as to whether the notice had been deemed withdrawn, and were thus not recoverable. They thus conclude that

the legal costs should be, in all, no more than £2370 plus VAT, based on six hours of a partner's time at an hourly rate of £295, and four hours of an assistant solicitor's time at an hourly rate of £150.

8. In reply, the landlord's solicitors say that the total costs shown in the breakdown amount to £10,298 which significantly exceeds the costs claimed and makes ample allowance for any costs which might be considered excessive or irrecoverable. They say that the hourly rate claimed has been allowed by the Tribunal in other cases and reflects the importance of the matter to the client, the value involved and the overheads of central London offices, and compares well with rates charged by other central London firms specialising in enfranchisement work. They submit that all the work carried out between 8 November 2010 to 21 January falls within section 33 of the Act, as did the work carried out between 10 February 2011 and 4 November 2011, and that they had been obliged to respond to the nominee purchaser's amendments and re-amendments to the draft transfer. Of the work carried out between 11 March 2014 and 30 October 2014, they say that the time taken for a complex collective enfranchisement claim such as this were reasonable. Of the work carried out between 1 July 2014 and 17 July 2014 they say that the work was prior to the service of proceeding and that they were unaware that proceedings had been issued until they were served with them on 17 July.

#### *Decision*

9. We are satisfied that the hourly rate charged is reasonable and well within the range of rates charged by central London firms for this specialist work. This was a complex case and we are satisfied, in the particular circumstances of this case, that it was reasonable for all the work to have been carried out by a partner and in our view, again in the circumstances of this case, for all the work to have been carried out by the same person. To have used a partner and an assistant solicitor would have wasted time on liaison between them. It is always possible to say that work could have been done more quickly than it was, but in our view any unnecessary time is allowed for in the discount which the landlord has made from the billed time. We are satisfied that all the work carried out falls within the Act for the reasons given by the landlord's solicitors. We accordingly allow the legal fees claimed of £8261.90, including VAT and disbursement, in full.

#### **Valuation costs**

10. The landlord claims valuation costs of £12,031 plus VAT and disbursements, or £14,437.20 inclusive. The invoices disclosed show £6791 plus VAT, £8149.20 inclusive, in respect of fees paid to Gerald Eve, chartered surveyors, and £5235 plus VAT, £6282 inclusive, paid to W A Ellis, which is an inclusive total of £14,431.20.

11. The nominee purchaser's solicitors say that the valuation was "fairly straightforward", and that the only slightly more complicated issue was how to value the possible release of the basement flat user restriction. They submit

that a reasonable fee would have been around £2000, based on six to eight hours at £330/£250 per hour.

12. Julian Clark of Gerald Eve who was the partner in charge of the case says in an email to the landlord's solicitors that the valuation was very complex given the tenure structure and the assumptions as to permitted user. A breakdown of the fees claimed by Gerald Eve is at pages 11 - 12 of the bundle. They show 31 hours' work by Ania Symonowicz, a surveyor whose time is charged at £140 per hour, one hour charged by Chris Carter, a partner, charged at £265, and 8.25 hours charged by Mr Clark, also charged at an hourly rate of £265.

13. The fees charged by W A Ellis are broken down at page 13 of the bundle. They show 17.45 hours work carried out by, we assume, Seema Samios MRICS, the writer of the report, at a rate of £300 per hour.

### *Decision*

14. Having read the reports of Gerald Eve and W A Ellis we are quite satisfied that this was a complex case and that the landlord was justified in obtaining reports both from Gerald Eve and W A Ellis.

15. In relation to the fees of Gerald Eve, we regard the hourly rates as reasonable, but we are satisfied that there was some duplication of work carried out by Ms Symonowicz and Mr Clark in drafting the report and valuations on which Ms Symonowicz spent 24 hours and Mr Clark 8.25 hours. Doing the best we can, we have concluded that it would have been reasonable for Ms Symonowicz to have spent ten hours on drafting the report and valuations and for Mr Clark also to have spent six hours, producing a total for that aspect of the work of £2990 plus VAT. We regard two hours spent on the inspection carried out by Ms Symonowicz as reasonable but the five hours for calculating floor areas and reading the papers we reduce to four hours at £140, producing £560. We regard the hour spent by Mr Carter in checking as reasonable. This produces a total of £4095 plus VAT, or £4914 inclusive.

16. Of the fees charged by W A Ellis, we are satisfied that the number of hours worked is not unreasonable but we regard the hourly rate as excessive. We see no reason why the hourly rate charged, mainly, we assume, for arriving at vacant possession values, should exceed those charged by Mr Clark for what we consider to be more complex work. In our view the hourly rate should not exceed £250, and we therefore allow £4362.50 plus VAT for the work carried out by W A Ellis.

17. The total allowable valuation fees are thus £8457.50 plus VAT, or £10,149.

**Judge: Margaret Wilson**