



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

Case Reference : LON/OOAB/OC9/2016/0283

Property : 409 Whalebone Lane North,
Chadwick Heath, Romford RM6
6RH

Applicant : 409 Whalebone Lane North
Management Company Ltd
(Nominee Purchaser)

Representative : Orme Associates

Respondent : DSD Estates Ltd (Freeholder)

Type of Application : Application under section 91(2)(d)
of the Leasehold Reform, Housing
and Urban Development Act 1993
(‘the Act’) to determine the costs
payable under section 33 of the Act

Tribunal Members : Patrick M J Casey MRICS

**Date and venue of
Hearing** : The tribunal considered the
application on the basis of the
papers filed and without an oral
hearing on 5 October 2016

Date of Decision : 17 October 2016

DECISIONS

Summary of the decisions

1. It is determined that the reversioner is entitled to recover the following costs which are payable by the nominee purchaser under section 33 of the Act. These are solicitors' fees in the sum of £350 and valuer's fees of £1,200.00 plus VAT.

Introduction

2. This is an application for a determination of costs. It is made under section 91(2)(d) of the Act. Under section 33 a claimant nominee purchaser is required to pay the reasonable costs incurred by the landlord in connection with a claim to acquire a freehold interest. Copies of these two statutory provisions are contained in the appendix to this decision.
3. In this matter the applicant is the nominee purchaser of the subject premises who has exercised the right to seek to acquire the freehold interest under the provisions in Chapter 1, Part I of the Act. The respondent is the freeholder of the premises. The applicant is represented by Orme Associates a firm of property advisers.
4. The claim was made in a notice dated 17 July 2015. The price proposed to be paid for the freehold was £25,000 and the date by which the reversioner was to respond by serving a counter-notice under S21 was given as 22 September 2015. In the event the initial notice ceased to have effect before this date and no counter-notice was served. The circumstances that gave rise to this situation are not explained by the parties.
5. No agreement in respect of statutory costs payable to the reversioner was reached and on 5 July 2016 this application for their determination was made. The tribunal issued Directions for the progression of the application on 18 July 2016, subsequently varied on 3 August 2016. These directions required the nominee purchaser to respond to the reversioner's claim for costs and to prepare a bundle of documents. The directions also stated that the matter should be dealt with without an oral hearing. However, each party was given the option of seeking a hearing. Neither party having sought a hearing, the tribunal considered the application on the basis of the papers filed on 5 October 2016.

The Evidence

6. The directed bundle of documents was duly filed with the tribunal and I considered all of the documents in the bundle as part of my consideration of the costs claims. The bundle is brief and confines itself only to matters remaining in dispute between the parties. The applicant takes no issue with the respondent's need for legal advice in connection with the initial notice, the use of an in house solicitor nor with the need to obtain a valuation despite the deemed withdrawal of the notice prior to service of a counter notice.
7. The landlord claims the sum of £400.00 in relation to the costs of their in house solicitors and a valuation fee of £1,200.00 plus VAT thereon of £240.00.

8. The landlord's claim for legal costs under S33(1) (a) – (c) is in respect of the work undertaken by their in house solicitor, Mrs Alison Sandler, who has been qualified for over 20 years which would equate to a grade A fees earner. She does not complete time sheets in view of her status and the sum claimed is based on an estimate of time spent in relating to the claim, 1 ½ hours, at a rate of £265.00 per hour which the respondent says is the rate attributable to a Grade A fee earner in the outer London area. In view of the deemed withdrawal of the initial notice her work was limited to a) reading the leases, b) checking the particulars in the notice, c) checking for forfeiture and previous notices, d) checking the validity of the notice, e) instructing the valuer, f) reviewing the valuation report to check correct facts were relied on, and g) reporting to landlord etc.
9. The applicant's challenge is that some of the relatively simple tasks such as c) could have been undertaken by a trainee and items e), f) and g) are not recoverable under S33.

Decision

10. The respondent is perfectly entitled to use its own in house solicitor to conduct this work and as the sole such employee it is no use suggesting a trainee could undertake some of the work. The rate charged is in keeping with her qualifications and London location and the estimate of time reasonable. The only issue I would take is charging to review the valuation. For the valuation fee charged one would expect the valuer to get it right and it is difficult to see how a solicitor's time is part of the costs of or incidental to a valuation. This however would not have taken more than 10 minutes or so, say £50.00, and this amount is disallowed.

Valuation Costs

11. The respondent claims £1,200 plus VAT for cost of the valuations undertaken by Nesbitt & Co. A copy of their invoice for this amount is included in the bundle. The fee earner was Lawrence Nesbitt FRICS MCI Arb who has 32 years professional experience. His charge out rate is said to be £240.00 per hour and he breaks down the five hours that his fee is based on as follows:

Time spent studying documents, confirming instructions and arranging inspections	30 minutes
Inspecting etc the property	2 ½ hours
Researching etc comparables	1 hour
Calculating price and writing report/advice to client	1 hours

12. Mr Nesbitt is the valuer instructed by the respondent and the group organization of which it is part to deal with the vast majority of

enfranchisement and lease extension claims received by the group. The respondent also confirmed that it would pay such level of costs in circumstances where it was liable for them.

13. The applicant's challenge to the valuation fee disputes the time claimed for undertaking basically all the activities from arranging the appointment, the time taken to inspect and measure each flat (the sister of the director of the nominee purchase who arranged access claims 10 minutes per flat against Mr Nesbitt's 15 minutes) time to research comparables, undertake the valuation and prepare the report. Particular issue is taken with paying, or at least a the full rate, for the best part of the 2 hours travel time to and from the property and the suggestion is made that because of the unexpired terms of 72 years on the leases the valuation is not overly sensitive to a precise valuation of each flat. Orme Associates say that their own fees vary with the unexpired lease term but with more than 80 years left they offer a fee of circa £200.00 per flat. They also say that the price calculation/report should not take more than 15-30 minutes and suggest a fee rate of £100.00 per hour would be more in line with expectations generally.

Decision

14. The respondent landlord is quite entitled to use the valuer of its choice and clearly have built a relationship with Nesbitt & Co over the years. Mr Nesbitt is a well-known practitioner in the field of enfranchisement/lease extension valuations in the London area and has often appeared as an expert witness before this tribunal. The time claimed does not appear excessive given the distance from his office to the property and quite clearly he is entitled to be paid for his travelling time; he cannot be carrying out other fee earning work whilst driving. His charge out rate is not the cheapest but nor is it by any means the most expensive among London based specialists in this field. The suggestion that the valuation does not have to be over precise because of the unexpired lease term is rejected. Clients, professional indemnity insurers and the RICS all expect to see accurate valuations well supported by appropriate comparable evidence. In the tribunal's opinion the valuation fee claimed is reasonable and properly payable under the provisions of S33(1)(d) by the nominee purchase to the respondent.

Patrick M J Casey

17 October 2016

Appendix

Relevant Legislation

Section 91

Jurisdiction of leasehold valuation tribunals.

(1)

Any jurisdiction expressed to be conferred on a leasehold valuation tribunal by the provisions of this Part (except section 75 or 88) shall be exercised by a rent assessment committee constituted for the purposes of this section; and any question arising in relation to any of the matters specified in subsection (2) shall, in default of agreement, be determined by such a rent assessment committee.

(2)

Those matters are—

(a)

the terms of acquisition relating to—

(i)

any interest which is to be acquired by a nominee purchaser in pursuance of Chapter I, or

(ii)

any new lease which is to be granted to a tenant in pursuance of Chapter II, including in particular any matter which needs to be determined for the purposes of any provision of Schedule 6 or 13;

(b)

the terms of any lease which is to be granted in accordance with section 36 and Schedule 9;

(c)

the amount of any payment falling to be made by virtue of section 18(2);

[F1(ca)

the amount of any compensation payable under section 37A;]

[F2(cb)

the amount of any compensation payable under section 61A;]

(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)

A rent assessment committee shall, when constituted for the purposes of this section, be known as a leasehold valuation tribunal; and in the following provisions of this section references to a leasehold valuation tribunal are (unless the context otherwise requires) references to such a committee.

(4)

Where in any proceedings before a court there falls for determination any question falling within the jurisdiction of a leasehold valuation tribunal by virtue of Chapter I or II or this section, the court—

(a) shall by order transfer to such a tribunal so much of the proceedings as relate to the determination of that question; and

(b) may then dispose of all or any remaining proceedings, or adjourn the disposal of all or any such proceedings pending the determination of that question by the tribunal, as it thinks fit; and accordingly once that question has been so determined the court shall, if it is a question relating to any matter falling to be determined by the court, give effect to the determination in an order of the court.

(5) Without prejudice to the generality of any other statutory provision—

(a) the power to make regulations under section 74(1)(b) of the Rent Act 1977 (procedure of rent assessment committees) shall extend to prescribing the procedure to be followed consequent on a transfer under subsection (4) above; and

(b) rules of court may prescribe the procedure to be followed in connection with such a transfer.

(6) Any application made to a leasehold valuation tribunal under or by virtue of this Part must comply with such requirements (if any) as to the form of, or the particulars to be contained in, any such application as the Secretary of State may by regulations prescribe.

(7) In any proceedings before a leasehold valuation tribunal which relate to any claim made under Chapter I, the interests of the participating tenants shall be represented by the nominee purchaser, and accordingly the parties to any such proceedings shall not include those tenants.

(8) No costs which a party to any proceedings under or by virtue of this Part before a leasehold valuation tribunal incurs in connection with the proceedings shall be recoverable by order of any court (whether in consequence of a transfer under subsection (4) or otherwise).

(9) A leasehold valuation tribunal may, when determining the property in which any interest is to be acquired in pursuance of a notice under section 13 or 42, specify in its determination property which is less extensive than that specified in that notice.

(10) Paragraphs 1 to 3 and 7 of Schedule 22 to the Housing Act 1980 (provisions relating to leasehold valuation tribunals constituted for the purposes of Part I of the Leasehold Reform Act 1967) shall apply to a leasehold valuation tribunal constituted for the purposes of this section; but—

(a) in relation to any proceedings which relate to a claim made under Chapter I of this Part of this Act, paragraph 7 of that Schedule shall apply as if the nominee purchaser were included among the persons on whom a notice is authorised to be served under that paragraph; and

(b) in relation to any proceedings on an application for a scheme to be approved by a tribunal under section 70, paragraph 2(a) of that Schedule shall apply as if any

person appearing before the tribunal in accordance with subsection (6) of that section were a party to the proceedings.

(11)

In this section—

“the nominee purchaser” and “the participating tenants” have the same meaning as in Chapter I;

“the terms of acquisition” shall be construed in accordance with section 24(8) or section 48(7), as appropriate; and the reference in subsection (10) to a leasehold valuation tribunal constituted for the purposes of Part I of the Leasehold Reform Act 1967 shall be construed in accordance with section 88(7) above.

Leasehold Reform, Housing and Urban Development Act 1993

Section 33

Costs incurred in connection with new lease to be paid by tenant.

(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 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 purchase 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 purchase 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)

Where by virtue of any provision of this Chapter the initial notice ceases to have effect at any time, then (subject to subsection (4)) the nominee purchaser's liability under this section for costs incurred by any person shall be a liability for costs incurred by him down to that time.

(4)

The nominee purchaser shall not be liable for any costs under this section if the initial notice ceases to have effect by virtue of section 23(4) or 30(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 a leasehold valuation tribunal incurs in connection with the proceedings.

(6) ...

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).