

2765



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

Case Reference : **LON/00BF/OC9/2013/0047**

Property : **Stratheden Court 33 Grove road
Sutton Surrey SM1 2AQ**

Applicant : **Raymere Ltd**

Representative : **Mr H Iqbal Solicitor**

Respondent : **Stratheden Court (Sutton) Ltd**

Representative : **Mr E Middlehurst , Solicitor**

Type of Application : **Costs under s33 Leasehold Reform
Housing and Urban Development
Act 1993**

Tribunal Members : **Mrs F J Silverman Dip Fr LLM
Mr N Martindale FRICS**

**Date and venue of
Hearing** : **16 October 2013, 10 Alfred Place,
London WC1E 7LR**

Date of Decision : **17 October 2013**

DECISION

The Tribunal disallows all of the Applicant's costs .

The Applicant is ordered to pay to the Respondent the sum of £2,337.50 plus VAT as a contribution towards their costs under Regulation 13 of the Tribunal Procedure (First Tier Tribunals) (Property Chamber) Rules 2013 .

REASONS

- 1 This decision relates to an application for costs assessable under s 33 Leasehold Reform Housing and Urban Development Act 1993 (the Act) made by the landlord reversioners of the property situated and known as Stratheden Court 33 Grove Road Sutton Surrey SM1 2AQ (the property) and a cross-application for costs made by the Respondent under Regulation 13 of the Tribunal Procedure (First Tier Tribunals) (Property Chamber) Rules 2013 .
- 2 The hearing took place before a Tribunal sitting in London on 16 October 2013 at which the Applicants were represented by Mr H Iqbal , Solicitor and the Respondent by Mr E Middlehurst , Solicitor .
- 3 The factual background to the application is that there has been protracted litigation between the parties relating (inter alia) to the Respondent's application to purchase the freehold of the property under the provisions of the 1993 Act. Ultimately the Respondent's claim under the Act was not pursued. The Tribunal's attention was drawn to a decision of the Leasehold Valuation Tribunal (LON/00BF/OCE/2012/0062) dated 9 July 2012 dealing with this case in which the Tribunal described the Applicant's position in relation to their preparation of the case as 'lamentable' (a position acknowledged by their own Counsel , page 9) and concluded that their conduct precluded them from recovering costs under s33 of the Act (bundle page 10 at para 17).
- 4 The Tribunal heard submissions from both parties' representatives relating to the schedule of costs submitted by the Applicant. A bundle of documents prepared by the Applicant was placed before the Tribunal for its consideration. The Tribunal noted that this had only been served on the Respondent on the day before the hearing and was not delivered to the Tribunal until the day of the hearing itself. The Respondent presented the Tribunal with a schedule of its own costs for consideration.
- 5 In relation to the Applicant's costs, the hearing bundle contained various versions of and duplicates of versions of schedules of costs. It is noted that the Respondent was obliged to seek an order of the Tribunal in order to obtain from the Applicant a detailed schedule of costs as is required for the assessment under s 33. The Applicant's submissions (page 43) appeared to be based primarily on the basis of an inter partes application with references to s33 of the Act added in a different typeface.
- 6 The basis of the Applicant's application before the Tribunal was stated to be s 33 of the Act despite the fact that the letter accompanying the application clearly stated that the purpose of the application was ' to assess Mr Spaul's costs for the 2nd (sic) hearing dated 3rd September 2012' (page

17) and to 'determine the [Applicant's] costs of the final hearing' (page 18) . It should be noted that the hearing on 3rd September 2012 was in fact not a new hearing but was a resumption of the earlier hearing which had taken place in July 2012 when the Tribunal had been unable to conclude the proceedings because of the inadequacy of the Applicant's prepared case.

- 7 The bill of costs (Pages 19-20) which accompanied the Applicant's request for the costs of the second hearing (dated 6 November 2102, page 17) is very similar both as regards items and amounts to the current application, said to be under s33 of the Act. No attempt appears to have been made by the Applicant to consider the wording of s33 and they appear not to have had regard to the Tribunal's letter to them (page 21) dated 22 November 2012 which clearly states that inter partes costs are not recoverable in Tribunal proceedings.
- 8 The amounts claimed by the Applicant varied between £19,570 (page 41) and £34,168 (page 60).
- 9 A detailed examination of the Applicant's costs schedules shows that the earliest item of cost or expenditure claimed is dated 13 July 2012 ie after the date of the adjourned first hearing of the substantive application and several months after the service by the Applicant of their counter-notice under the Act. The narrative accompanying the items indicates that the work carried out or expense incurred was in each and every case related to the adjourned hearing which was to take place in September 2012 and had nothing to do with the specific items claimable under s33 of the Act. Further, s 33(5) expressly excludes from its ambit 'any costs which any party to any proceedings under this Chapter before a leasehold valuation Tribunal incurs in connection with the proceedings'.
- 10 When questioned by the Tribunal the Applicant's representative maintained that his costs were both claimable under s33 and were reasonably incurred. He said that he had 40 years experience, charged between £300 and £750 per hour for his services and was an expert in this field. The impact of this latter statement is somewhat reduced by the fact that the Applicant' representative had failed to obtain any valuation evidence before the first substantive hearing of this matter resulting in the need for an adjournment .
- 11 The Applicant's case was poorly prepared and badly presented. They had also failed to comply with Directions issued by the Tribunal (page 89). The Tribunal was unable to find any item of costs or expenditure which could legitimately be claimed under s33 of the Act and therefore declines to award any costs to the Applicant. Their application fails and is dismissed.

The Law

16 S33 Leasehold Reform Housing and Urban Development Act 1993 provides:

- (1) Where a notice is given under s13 , 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 abstract 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 sub-section 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 sub-section (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 , the (subject to sub-section (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.

17 The Tribunal Procedure (First Tier Tribunals) (Property Chamber) Rules 2013

Orders for costs, reimbursement of fees and interest on costs

13.—(1) The Tribunal may make an order in respect of costs only—

- (a) under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;
- (b) if a person has acted unreasonably in bringing, defending or conducting proceedings in—
 - (i) an agricultural land and drainage case,

- (ii) a residential property case, or
- (iii) a leasehold case; or
- (c) in a land registration case.
- (2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.
- (3) The Tribunal may make an order under this rule on an application or on its own initiative.
- (4) A person making an application for an order for costs—
 - (a) must, unless the application is made orally at a hearing, send or deliver an application to the Tribunal and to the person against whom the order is sought to be made; and
 - (b) may send or deliver together with the application a schedule of the costs claimed in sufficient detail to allow summary assessment of such costs by the Tribunal.
- (5) An application for an order for costs may be made at any time during the proceedings but must be made within 28 days after the date on which the Tribunal sends—
 - (a) a decision notice recording the decision which finally disposes of all issues in the proceedings; or
 - (b) notice of consent to a withdrawal under rule 22 (withdrawal) which ends the proceedings.
- (6) The Tribunal may not make an order for costs against a person (the “paying person”) without first giving that person an opportunity to make representations.
- (7) The amount of costs to be paid under an order under this rule may be determined by—
 - (a) summary assessment by the Tribunal;
 - (b) agreement of a specified sum by the paying person and the person entitled to receive the costs (the “receiving person”);
 - (c) detailed assessment of the whole or a specified part of the costs (including the costs of the assessment) incurred by the receiving person by the Tribunal or, if it so directs, on an application to a county court; and such assessment is to be on the standard basis or, if specified in the costs order, on the indemnity basis.
- (8) The Civil Procedure Rules 1998(a), section 74 (interest on judgment debts, etc) of the County Courts Act 1984(b) and the County Court (Interest on Judgment Debts) Order 1991(c) shall apply, with necessary modifications, to a detailed assessment carried out under paragraph (7)(c) as if the proceedings in the Tribunal had been proceedings in a court to which the Civil Procedure Rules 1998 apply.
- (9) The Tribunal may order an amount to be paid on account before the costs or expenses are assessed.

Judge F J Silverman as Chairman
Date 17 October 2013