

4369



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

Case Reference : **CHI/00HN/OC9/2016/0001**

Property : **Kelvin House, 163 Richmond Park
Road, Bournemouth, Dorset BH8
8UB**

Applicant : **Kelvin House Freehold Limited**

Representative : **Coles Miller LLP**

Respondent : **Southern Land Securities Limited**

Representative : **-**

Type of Application : **Determination of costs under
sections 33 and 91 Leasehold Reform,
Housing and Urban Development Act
1993 ("the Act")**

Tribunal Member : **Judge E Morrison**

Date of decision : **25 April 2016**

DECISION

The Application

1. By an application dated 2 February 2016, the Applicant Nominee Purchaser sought, pursuant to section 91 of the Act, a determination of the costs payable by it to the Respondent (former freeholder) under section 33 of the Act.

Summary of Decision

2. The costs payable by the Applicant to the Respondent, pursuant to section 33(1) of the Act, are **£2577.10** comprising £1427.10 for legal fees, £1000.00 for valuation fees and £225.00 for managing agent fees.

The Law and Jurisdiction

3. The relevant parts of the provisions in the Act are as follows:

30. Costs of enfranchisement

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—

(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 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 subsection 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 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) ...

(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 [the appropriate tribunal] 1 incurs in connection with the proceedings.

(6) ...

(7) ...

91. Jurisdiction of tribunals

(1) Any question arising in relation to any of the matters specified in subsection (2) shall, in default of agreement, be determined by the appropriate tribunal.

(2) Those matters are—

(a) – (c) ...

(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) ...

4. To be reasonable, costs must be reasonably incurred and reasonable in amount.
5. Pursuant to the indemnity principle (which is reflected in the introductory wording to section 33(1)), a paying party is obliged to indemnify a receiving party only for expenditure actually incurred. Accordingly a party may not recover more than it is actually obliged to pay its advisers.

Background

6. A section 13 Notice of claim to exercise the right to collective enfranchisement was served by the participating qualifying tenants on the Respondent dated 9 December 2014. The Respondent served a Counter Notice under section 21 dated 10 February 2015, admitting the claim, but proposing a higher premium. Negotiations took place but an application to the Tribunal under section 24 of the Act was made by the Nominee Purchaser on 6 August 2015. Agreement was subsequently

reached and the application was withdrawn. The transaction then proceeded to completion.

7. The Respondent sought payment of its costs as follows: Legal fees of £2850.00, valuation fees of £3150.00 and managing agent fees of £585.00. The amount of the costs not being agreed, this application was made to the Tribunal on 4 February 2016.
8. By Directions dated 4 February 2016, the parties were given notice that the Tribunal intended to deal with the matter on the papers and without a hearing unless either side objected. Neither party having objected, the Tribunal has determined this matter on the basis of written representations without an oral hearing.
9. The Respondent was directed to send the Applicant a statement setting out full details of its costs by 29 February 2016. The Respondent failed to comply and the Applicant had to prepare its own statement of case and the determination Bundle on that basis, submitting that the costs payable should be Nil. The Respondent then belatedly submitted a basic breakdown of costs, but without any supporting submissions. The Tribunal accepted this into evidence but gave the Applicant the opportunity to respond, and also invited submissions from the Applicant as to costs thrown away as a result of the Respondent's conduct. The Applicant filed Points of Dispute with submissions dated 14 April 2016.

The Respondent's claim for costs

10. Legal fees: The breakdown of costs states the work was carried out by a Grade A fee-earner charging £250.00 per hour. A total of 13.5 hours work is claimed which equates to £3375.00. There is no claim for VAT. The time spent is broken down into 5 hours on letters/emails both in and out, 4.5 hours on documents, and 4 hours on attendances. There is no documentary corroboration, such as time records. The Respondent did not provide any direct evidence that it was liable to pay the costs claimed to its own legal department but the breakdown of costs included a statement from the solicitor confirming that liability.
11. Valuation fees: An invoice for £3250.00 (no VAT) from Plockton Surveying Services was provided. This does not state the name or qualification of the person undertaking the valuation or give any indication of the time spent.
12. Managing Agent fees: The breakdown of costs includes a claim for 3 hours time spent by Hamilton King at a cost of £585.00 (no VAT), equating to £195.00 per hour. There is no supporting invoice, or evidence of the charging rates agreed between the Respondent and its managing agents. The breakdown mentions attendance with solicitors (1 hour) liaising with solicitors in respect of completion statement (0.5

hour) collating figures for completion statement (1 hour) and arranging signatures (0.5 hour). It is unclear who provided this information.

13. The Respondent's legal department has provided no additional submissions in support of its claim.

The Applicant's Submissions

14. Legal fees: The Applicant accepts that the some legal costs are payable under section 33 but contends these should be limited to £1407.00, calculated as follows:
 - The hourly rate allowed should be £201.00 based on the solicitor's location and the published Guideline Rates;
 - Letters in should be not be allowed, and assuming half of the emails claimed were outgoing, total outgoing communications number 21 @ 6 minutes each, which equates to £422.10;
 - The Counter Notice should not reasonably have taken more than 0.7 hours, rather than the 2 hours claimed, and the draft Transfer would only have taken 0.2 hours to approve rather than the 0.5 hours claimed. The total time allowed should be limited to 1.9 hours which equates to £381.90;
 - Attendances on others should be reduced from 4 hours to 3 hours as the time claimed is said to include 2 hours with the client, which is excessive. 3 hours would equate to £603.00.
15. Valuation fees: The Applicant states that its own specialised chartered surveyor charged a fee of £720.00 (+ VAT). There is no explanation why the Respondent's valuer charged more than 4.5 times as much. Not more than £1000.00 should be allowed.
16. Managing Agent fees: It is submitted that an hourly rate of £195.00 is excessive and no more than £95.00 should be allowed. 1.5 hours would be a reasonable time for them to have spent.

Discussion and Determination

17. The Tribunal takes into consideration the copy correspondence and other documents included in the Bundle. It reminds itself of the cross-check on reasonableness in section 33(2) of the Act, which prevents the recovery of costs beyond those which the freeholder would have reasonably expected to incur if it was responsible for those costs. In this case the freeholder is a substantial company with considerable commercial experience and bargaining power.
18. Legal fees: The amount claimed by the Respondent's legal department for this uncomplicated transaction is found to be unreasonable and excessive, and the absence of any supporting time records does not assist it. It is accepted that use of a Grade A fee-earner can be justified,

but as no reasons have been provided as to why the Guideline Rate is inappropriate, it will be adopted: £201.00 per hour appears a reasonable rate given the location of the legal department and the straightforward nature of this particular transaction.

19. The fee-earner, being Grade A, should be well aware that in line with the approach to assessment of costs under the CPR, charges for letters in will not be allowed, as the time taken to read the incoming letter is covered by the time to write any reply. Accordingly only £422.10 is allowed, to cover 21 standard written communications. Further, time spent preparing a counter notice is not within section 33, and no charge for this is allowed. However a total of 2 hours, which equates to £402.00, for documents will be allowed to cover the reasonable time of investigating the Applicant's right to acquire the freehold, and dealing with all other conveyancing-related documents, this being work within section 33.
20. With regard to attendances, the Applicant's submission is accepted in the absence of any explanation from the Respondent as to why it would be reasonable to spend 2 hours with its client, who is well acquainted with this type of transaction. There were no unusual points arising on which advice needed to be given or instructions obtained. The total time allowed is reduced to 3 hours, equating to £603.00.
21. Accordingly the total amount allowed for legal fees is £1427.10.
22. Valuation fees: Again there is no submission from the Respondent in support of the fee claimed. The Tribunal has not been told how much time was spent, or informed about the experience/qualifications of the valuer. It is not known why a firm in Cheshire was used to value a property in Bournemouth. The Applicant's local experienced valuer charged only £720.00 + VAT. Having regard to this, the Tribunal cannot accept that the sum claimed by the Respondent is reasonable but will allow £1000.00 as proposed by the Applicant, this sum allowing for a range of reasonable rates that might go somewhat higher than the sum charged to the Applicant.
23. Managing Agent fees: It is unclear where the information in the breakdown of costs came from. There is no evidence whatsoever to support an hourly rate of £195.00, which on its face is wholly excessive for the time of a person whose qualifications (if any) and experience are unknown. However on the assumption that the managing agents would have needed to be involved to some extent, at least in providing figures for the completion statement, and using its own general knowledge and experience, the Tribunal allows 1.5 hours @ £100.00 per hour, namely £150.00, as a reasonable charge.
24. The Respondent has only itself to blame if it considers the sums allowed to be too low. It provided only the barest information in support of its claim. The Tribunal has to do its best on the evidence available.

Rule 13 costs

25. Rule 13 of the Tribunal Procedure Rules 2013 provides that the Tribunal may make an order in respect of costs if a person has acted unreasonably in bringing, defending or conducting proceedings. However the Tribunal may not make an order for costs against a person without first giving that person an opportunity to make representations. The Tribunal previously stated in correspondence that acceptance of the Respondent's late submission might be made subject to the Respondent paying any costs thrown away. The Applicant has submitted that 1 hour of fee-earner time, at £217.00 per hour, has been thrown away, namely the time spent preparing its original statement of case and bundle.
26. It appears to the Tribunal that this claim for costs is justifiable in light of the Respondent's blatant disregard of the Directions, and that the amount sought by the Applicant is reasonable, but the Tribunal notes that the Respondent has not yet been given the opportunity to make representations. The Respondent is therefore given until **4 pm on 8 May 2016** to make written submissions. In the absence of such submissions an order will be made that the Respondent pay the Applicant the sum of £217.00 + VAT, namely £260.40.
27. Any payment (or refund if appropriate) to be made by one party to the other, is to be made by **4pm on 23 May 2016**.
28. Save as mentioned in paragraph 26 above, this is a final determination

Judge E Morrison

25 April 2016

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.