



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

**Case Reference** : **LON/OOBH/OC9/2014/0076**

**Property** : **19 Falmer Road, Walthamstow,  
London E7 3BH**

**Applicant** : **Imtiaz Hussain Ali**

**Representative** : **Whitmore Law LLP**

**Respondent** : **Neezam Peermamode and Thomas  
Houghton Melling**

**Representative** : **Bennett Welch solicitors for the  
Respondent**

**Type of Application** : **S33 and 91 Leasehold Reform,  
Housing and Urban Development  
Act 1993 (the Act)**

**Tribunal Members** : **Tribunal Judge Dutton**

**Date and Venue of  
determination** : **17<sup>th</sup> September 2014 at 10 Alfred  
Place, London WC1E 7LR**

**Date of Decision** : **17<sup>th</sup> September 2014**

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**DECISION**

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## DECISION

**The Tribunal determines that the sum payable by the Respondent shall be £3,315.72 as representing the costs payable under the provisions of section 30 of the Act as set out below.**

### REASONS

1. This application was made by the freeholder Applicant for a determination of the costs payable by the Respondents pursuant to section 33 of the Act. The matter has been dealt with as a paper determination.
2. I had before me a bundle of papers prepared by the Applicant's solicitors which included a summary of the application, correspondence passing between the solicitors for both parties, an emailed advice from counsel, notices served in the course of the proceedings, copy invoices and a schedule of time spent. The Respondents' solicitors had written on 27<sup>th</sup> August 2014 setting out their objections to the costs and this had been replied to by Whitmore Law LLP on 2<sup>nd</sup> September 2014. I have borne the contents of both letters in mind when making my decision.
3. The issues between the parties centre around an allegation by the Respondents' solicitors that the Counter-notice was defective in that it did not contain any provisions as provided for at s21(3)(e) of the Act. This was raised in a letter dated 19<sup>th</sup> September 2013 and replied to by S Satha & Co, the then solicitors for the Applicant 5 days later, denying any invalidity. The bundle before me contains no further correspondence on this point. However, on 27<sup>th</sup> February 2014 the Respondents' solicitors wrote sending a notice under s92 of the Act citing the Applicant's failure to complete in compliance with the Act. No mention is made as to the validity of the Counter-notice. The response from Whitmore Law LLP is that their client's position remained as set out in the letter from Satha & Co.
4. At this point the Applicant's solicitors sought the opinion of Philip Rainey QC, whose emailed advice is included in the bundle. To paraphrase the advice it says that the Counter-notice does not comply with the regulation but this is not fatal to its validity and that Counsel considers the "*tenants' case to be very weak*". This advice is dated 3<sup>rd</sup> March 2014.
5. At the end of March 2014 a draft transfer was prepared and the terms agreed by 8<sup>th</sup> April.
6. I should record what is agreed. The hourly rate of the Applicant's solicitor of £220 is not challenged and nor are the travel and land registry fees, which total £23.10. An offer of £1,584.00 is made in respect of the legal fees, being 6 hours at £220 per hour plus VAT, and £1080 for the valuation fee, which gives a total of £2,679 when travel and land registry fees are added.

7. The Applicant's solicitors sought legal fees of £2,332, surveyors fees of £1,487.50 and Counsels fees of £750, which together with VAT gave rise to a total claim for costs of £5,511.12.

**THE LAW** see attached appendix

### **FINDINGS**

8. I shall deal firstly with the position with regard to the allegations that the Counter-notice was in some way defective and the impact this had on costs. I find that the costs incurred in the using the service of Mr Rainey are not recoverable. I say that for the following reasons. The issue with regard to the Counter-notice was raised in September 2013 and responded to 5 days later. Nothing more seems to have been said. Instead on 27<sup>th</sup> February 2014 the Respondent's solicitors serve a notice in effect seeking completion. A response is sent saying the Applicant stands by what was said in September, although the letter erroneously refers to September 2014. For reasons which are not clear to me this prompted the Applicant's solicitor to seek an opinion from Mr Rainey, an eminent barrister in this field of law. That opinion indicates that there may be deficiencies in the Counter-notice but that they are not fatal. The position as stated in September 2013 and which appears to be accepted by the Respondents as they press for completion. It is my finding that this advice was otiose. Further, with respect to Mr Rainey, if I were minded to allow the cost it seems to me that junior counsel could have been used and that in any event the costs fall foul of the provisions of s33(2). It follows that any costs associated with the request for an opinion and considering same must also fail. The letter from Whitmore Law helpfully states that the costs associated with this element are £792 (3 hours plus VAT) and Counsels fees of £900 inclusive of Vat giving a total of £1692 and not the figure of £1560 stated in their letter.
9. I then consider the valuation fee. The letter from Whitmore Law dated 2<sup>nd</sup> September 2014 justifies the use of Chesterton Humberts, a firm from London W1 as follows "*The freeholder has had previous dealings with these surveyors. In circumstances forced upon him it is only proper that he be entitled to appoint them with the expectation that the tenant will discharge their reasonable costs..*". The local valuer used by the Respondents apparently charged £625 plus VAT. I appreciate that the freeholder is entitled to use a valuer of his choice but I bear in mind the provisions of s33(2) which seem to me to be ignored in the comments made in the September letter from Whitmore Law recited above. Whitmore Law give a range of between £1,200 and £2,000. The case is, I would venture to suggest, relatively straight forward as seems to be agreed and the valuers fees should be at the lower end of the scale. For the purposes of this matter I find that a fee of £1,200 plus VAT is sufficient for the valuers costs. The travel and disbursements are agreed. This gives a total sum of £1,467.72 for the valuation element of the costs.

10. In the letter from Bennett Welch they indicate that the time spent on this matter should be 6 hours in total. The time spent, as recorded on the schedule by the Applicant's solicitor is 10.6 hours. In taking out the time spent on the Counter-notice issue (3 hours) which I have found is not payable by the Respondents the difference between the parties is really quite small. Taking all matters into account I allow the sum of £1,540 plus VAT being 7 hours in total for the work which is to be paid for by the Respondents under the provisions of s33 of the Act in respect of the Solicitors costs.
11. In summary therefore I allow the following costs as being payable by the Respondents under the provisions of s33 of the Act, in all cases inclusive of VAT:
  - Solicitors costs of £1,848
  - Valuation fee £1,467.72

*Andrew Dutton*      17<sup>th</sup> September 2014

Andrew Dutton - Tribunal Judge

### **The Relevant Law**

33 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) 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) In this section references to the nominee purchaser include references to any person whose appointment has terminated in accordance with section 15(3) or 16(1); but this section shall have effect in relation to such a person subject to section 15(7).

(7) Where by virtue of this section, or of this section and section 29(6) taken together, two or more persons are liable for any costs, they shall be jointly and severally liable for them.