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**First-tier Tribunal
Property Chamber
(Residential Property)**

Case reference : CAM/22UH/OLR/2013/0065

Property : 81 Swanshope,
Loughton,
Essex IG10 2NB

Applicants : Ryan Wright & Stephen John Wright

Respondent : Alco Reality Ltd.

Date of Application : 7th May 2013

Type of Application : To determine the costs payable on
a lease extension (Section 60 of the
Leasehold Reform and Urban
Development Act 1993 (“the 1993
Act”))

The Tribunal : Bruce Edgington (lawyer chair)
Stephen Moll FRICS

DECISION

1. The reasonable legal costs of the Respondent payable by the Applicants pursuant to Section 60 of the 1993 Act are £2,824.95
2. The reasonable costs of valuation of the Respondent payable by the Applicants pursuant to Section 60 of the 1993 Act are £250.00.
3. If the Respondent company is registered for VAT purposes then it can reclaim the VAT as an input and it is not then recoverable from the Applicants. Otherwise, VAT is recoverable at the appropriate rate on both legal fees and the valuation fee.

Reasons

Introduction

4. This dispute arises from the service of one or more Initial Notices seeking a lease extension of the property by qualifying tenants. In these circumstances there is a liability on the Applicants to pay the Respondent’s reasonable legal and valuation costs. The original application was for a Leasehold Valuation Tribunal to determine the terms of the lease extension and costs.

5. On the 1st July 2013, the Leasehold Valuation Tribunal was subsumed into the First-tier Tribunal, Property Chamber which now has all the jurisdiction and powers of the former Leasehold Valuation Tribunal subject to new procedural rules.
6. A hearing date was fixed in this case for the 28th August 2013 but on the 13th August 2013 a letter was received from the Applicants' representatives saying that the premium had been agreed and the hearing should be vacated. The Tribunal was somewhat confused thereafter as to the respective positions of the parties. However, it is now clear that the only issue between them is the level of the Respondent's legal costs and the valuation fee.
7. There was also a proposed application by the solicitors acting for the Respondent within the correspondence for what is sometimes called a 'wasted costs' order but there has been no schedule of those costs produced and the Tribunal is unable make any determination as far as that is concerned.
8. By letters dated 19th August (Verbatim) and 27th August (Wolfe Myers & Co.) the parties have asked the Tribunal to deal with the determination of costs on paper i.e. without an oral hearing. The Tribunal agreed to this proposal. Wolfe Myers and Co. said that they agreed to this on the basis that the Tribunal did not take into account certain further submissions made to it by Verbatim. It is completely unrealistic for a Tribunal to be presented with written argument and to go through the entirely artificial process of pretending that it does not exist.
9. The Tribunal was provided with a bundle, of sorts, but there was much information and copy documents which were not included.

The Law

10. It is accepted by the parties that one or more Initial Notices were served and therefore Section 60 of the 1993 Act is engaged. For the reasons set out below, the Applicants therefore have to pay the Respondent's reasonable costs of and incidental to:-
 - (a) *any investigation reasonably undertaken of the tenant's right to a new Lease;*
 - (b) *any valuation of the tenant's flat obtained for the purpose of fixing the premium or any other amount payable by virtue of Schedule 13 in connection with the grant of a new lease under section 56;*
 - (c) *the grant of a new lease under that section;*
(Section 60(1) of the 1993 Act)
8. What is sometimes known as the 'indemnity principle' applies i.e. the Respondent is not able to recover any more than it would have to pay its own solicitors or valuer in circumstances where there was no

liability on anyone else to pay (Section 60(2)). Another way of putting this is to say that any doubt is resolved in the receiving party's favour rather than the paying party.

History

9. This is not the first case involving a lease extension to this property. A Leasehold Valuation Tribunal with the same chair as this Tribunal dealt with a case in 2012 with the same parties and the same representatives. It was clear in that case that the Applicants' behaviour left a lot to be desired and the case was withdrawn. The detail of that case need not be gone into in detail here but it does seem clear that the Applicants or one of them gave incorrect information about when an assignment had taken place which cast doubt on the validity of the initial notice. Of relevance to this case, the Tribunal felt it necessary to make the following comment:-

“Although Verbatim may have been innocent parties in all this, this is no excuse for what this Tribunal considers to have been unnecessarily aggressive correspondence from them which has caused the Applicant additional expense. As the Applicant could clearly not take matters for granted, it was necessary to incur the resultant legal and valuation expense. Whether Verbatim understand the position or not, enfranchisement is a very technical matter where a slip up on dates or other technicalities can be fatal to a claim or the response to a claim which can cost the defaulting party a great deal more than the amount of costs at issue in this case.”

10. It is unfortunate that Verbatim do not seem to have modified their approach. In this case, for example, they do not seem to have liaised with the Respondent's solicitors on the preparation of the bundle and in the bundle which was submitted, they have disobeyed directions by attempting to add badly written and hardly legible embellishments to their objections without telling Wolfe Myers & Co.
11. The bundle was late. It was faxed to the Tribunal office on the 22nd August but the letter accompanying it was dated 19th August. It was left to the Tribunal to ensure that Wolfe Myers had a copy of it.
12. From the correspondence submitted, it appears that there were other examples of inappropriate behaviour such as just crossing out the whole draft lease in red and failing to send objections in the recommended Civil Procedure Rules format, as ordered. The Tribunal is grateful to Wolfe Myers & Co. for remedying this defect.

Legal fees

13. The original objections to such costs were short and are worth setting out in full:-

OBJECTIONS TO STATEMENT OF COSTS

Respondent

Applicant

<i>Investigating Title 1¼ hours</i>	<i>This part of the transaction would Take no more than 20 minutes</i>
<i>Letters sent 10</i>	<i>Only received 4 standard letters</i>
<i>4 telephone calls</i>	<i>Received none from Respondent</i>
<i>11 copies</i>	<i>No photocopies received</i>
<i>Official copies x 2</i>	<i>Only one official title would be necessary</i>
<i>Postage</i>	<i>It is unlikely postage costs would be so high</i>
<i>Draft deed</i>	<i>This is the Respondent's standard document</i>
<i>Engrossment etc.</i>	<i>This is standard administration and there was no requisitions raised by the Applicant</i>
<i>All work regarding previous application</i>	<i>This is not relevant to this claim</i>
<i>Valuation</i>	<i>Applicant does not believe a valuation was undertaken</i>
<i>Total costs £2,891.70</i>	<i>Applicant believes total costs should be in the region of £750 plus vat</i>

14. These are adversarial proceedings. The hourly rates are not challenged. The rates for outer London have been (correctly) quoted as the starting point for rates awarded in the county court for Grade A and C fee earners respectively. The Tribunal, having seen the objections and the explanations given for the various items of work claimed by the Applicant, allows the times and disbursements claimed in full save for the initial investigation of title. The reasons are those given by the Respondent's solicitors in reply.
15. As far as the initial investigation is concerned, it should be possible for a Grade A fee earner i.e. the most experienced qualified solicitor, to investigate and consider all that needs to be considered within an hour. The full title documents had been considered last year when the same parties were involved. Having said that, they do need to be considered again but not, perhaps, in such detail. Both the freehold and leasehold titles are registered and any unusual features of the lease would have been picked up and noted last year. The Initial Notice seen by the Tribunal and the counter-notice are in standard form for a fee earner with this experience.
16. There will therefore be a deduction of 15 minutes time i.e. £66.75 leaving a balance of £2,824.95.

17. The disbursements also seem to be reasonable. The Tribunal would not normally allow so many special delivery letters but in view of what happened in the 2012 case, it can easily be seen why the Respondent's advisors would want to be especially cautious.

Valuer's fee

18. The valuer's fee claimed is £250. The Applicants' position is that no valuer's fee should be payable because they believe that no valuation was undertaken. The Tribunal has seen the invoice from Keningtons, chartered surveyors, in the sum of £250 plus VAT for valuation advice. The Applicants' position therefore appears to be that both Keningtons and the Respondent are guilty of fraud. They put forward no evidence as to why a firm of chartered surveyors should act in such a fraudulent way or why a commercial landlord should negotiate and settle a premium negotiation without any valuation advice at all. The Tribunal cannot understand this wild and groundless allegation and agrees to the £250 claimed.

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Bruce Edgington
Regional Judge
29th August 2013