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

**Case reference** : **AGR/LON/00BJ/OC9/2015/0316**

**Property** : **H 44 Du Cane Court, Balham High Road, London SW17 1JT**

**Applicants** : **Mr Harry Chittleborough (1)  
Ms Kay Lorraine Stephens (2)**

**Representative** : **Rice-Jones Smith Solicitors**

**Respondent** : **Dorrington Belgravia Limited**

**Representative** : **Pemberton Greenish LLP Solicitors**

**Type of application** : **Application for determination of reasonable costs**

**Tribunal member(s)** : **Mr Jeremy Donegan (Tribunal Judge)**

**Date and venue of paper hearing** : **17 September 2015  
10 Alfred Place, London WC1E 7LR**

**Date of decision** : **17 September 2015**

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**DECISION**

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## **Decisions of the tribunal**

**The tribunal determines that the costs payable by the Applicants to the Respondent, pursuant to section 60(1) of the Leasehold Reform, Housing and Urban Development Act 1993 ('the 1993 Act'), are £3,184.80 (including VAT).**

## **The application**

1. The Applicants seek a determination of the amount of costs payable to the Respondent pursuant to section 60(1) and (3) of the 1993 Act. The application concerns a flat numbered H 44 Du Cane Court, Balham High Road, London SW17 1JT ('the Flat').
2. The application was received by the tribunal on 21 July 2015 and directions were issued on 22 July 2015. The directions included provision that the case be allocated to the paper track, to be determined upon the basis of written representations. None of the parties has objected to this allocation or requested an oral hearing. The paper determination took place on 17 September 2015.
3. The Respondent produced a schedule of costs with supporting documents in accordance with paragraphs 2 of the directions. The Applicants did not produce any statement of case, as required by paragraph 3 of the directions. Rather it relied upon very brief handwritten notes made on the Respondent's schedule of costs and a letter sent by their solicitors to the Respondent's solicitors, dated 18 August 2015.
4. The Applicants filed two bundles of copy documents with the tribunal on 02 September 2015, in accordance with paragraph 5 of the directions. These included the documents referred to at paragraph 3 above plus financial statements for the Respondent's solicitors for the year ended 31 March 2015 and an official copy of the register entries for the freehold title of Du Cane Court.
5. The relevant legal provisions are set out in the Appendix to this decision.

## **The background**

6. The bundle did not include copies of the notice of claim or counter-notice. Based on the limited documents in the bundle, it appears that the background to the application was:

- 6.1 The Applicants served a notice of claim on the Respondent in late September 2014, pursuant to section 42 of the 1993 Act.
- 6.2 The Respondent served a counter-notice on the Applicant in late November 2014, pursuant to section 45 of the 1993 Act. This proposed a premium of £7,678.
- 6.3 The parties subsequently agreed the premium at a figure of £6,400.
- 6.4 The parties have been unable to agree the costs payable to the Respondent under section 60(1) of the 1993 Act.

### **Evidence and submissions**

7. The Respondent is claiming costs totalling £4,140 including VAT.
8. The sum claimed for legal fees is £3,090.54 including VAT, which is broken down as follows.

Legal fees - £2, 560 plus VAT (£3,042)

Courier's fees - £5.45 plus VAT (£6.54)

Land Registry fees - £12

The Respondent's solicitors have rounded this figure down to £3,000.

9. The sum claimed for the valuation fee is £950 plus VAT (£1,140), which was a fixed fee based on 0.15% of the extended lease value of the Flat (£309,000). In an email to the Respondent dated 28 July 2015, the Respondent's surveyors (Carter Jonas LLP) explained that the surveyor's normal charging rate was £350 per hour.
10. The Applicants challenged these costs on numerous grounds, as set out in the letter from their solicitors dated 18 August 2015. The challenges can be summarised as follows:
  - 9.1 The costs must be limited to those allowed under section 60 and should be viewed overall and not in isolation;
  - 9.2 The charging rate for the Respondent's solicitor of £320 per hour is too high;
  - 9.3 Having regard to the financial statements of the Respondent's solicitors, the charging rate should not exceed £120 per hour;

- 9.4 The charging rate for the Respondent's surveyor of £350 per hour is too high and the work could have been undertaken a less expensive and lower grade surveyor;
  - 9.5 If the Respondent was paying the costs itself then it would not have engaged professionals at these charging rates;
  - 9.6 The solicitor and surveyor were presumably familiar with the building, as there have been a number of lease extensions and other transactions, which should have resulted in a saving in costs;
  - 9.7 The time claimed by the Respondent's solicitor is too high, given her level of expertise;
  - 9.8 Transactions under the 1993 Act should be subject to costs to gain analysis and costs on low value transactions, such as this, should not be charged on a time basis;
  - 9.9 The costs represent approximately 65% of agreed premium of £6,400 and are disproportionate; and
  - 9.10 The costs should be no more than 10-15% of the premium proposed in the counter-notice;
11. In the handwritten notes on the Respondent's schedule of costs, the Applicants challenged various items and suggested that the time be limited 1 hour 36 minutes. It also disputed the disbursements (courier and Land Registry fees), as being unnecessary.

### **The tribunal's decision**

12. The tribunal determines that the following costs are payable under section 60(1)

Legal fees - £1,694 plus VAT (£2,032.80)

Courier's fees - £0

Land Registry fees - £12

Valuation fee - £950 plus VAT (£1,140)

**Grand total - £3,184.80**

## **Reasons for the tribunal's decision**

13. The tribunal disagrees with the Applicants' submission that the costs should be capped to 10-15% of the premium proposed in the counter-notice. This would restrict the legal and valuation fees to no more than £1,151.70 (plus VAT), which is wholly unrealistic. Most solicitors and surveyors charge for their work on a time basis and it was reasonable for the Respondent's professionals to charge in this way.
14. The tribunal considered the issue of proportionality but is conscious that the work involved on a low value lease extension is very often the same as that for a high value extension. To rigidly restrict the costs to a percentage of the proposed premium would result in unfairness.

## **Legal fees**

15. The charging rate of £120 per hour proposed by the Applicants' solicitors is unrealistically low, being substantially below that charged by most solicitors in central London. It was reasonable for the Respondent to instruct Pemberton Greenish LLP, which is based in London SW3, given that firm's expertise in lease extension claims. However the case could have been dealt with by a Grade B fee earner, given the low value of the claim. The analysis of the Respondent's solicitors' financial statements is flawed in that it assumes that each solicitor bills 7 chargeable hours per day, which is also unrealistic. The tribunal allows a charging rate of £242 per hour for the legal costs, being the guideline rate for a Grade B fee earner in London band 2.
16. The total time claimed by the Respondent's solicitors is 8 hours, which is on the high side. However the Applicant's figure of 1 hour 36 minutes is unrealistically low and the handwritten notes on the Respondent's schedule did not assist, as they did not set out the grounds of opposition. Doing the best it can on the limited information available and using its own knowledge and expertise, the tribunal allows 7 hours for the legal costs at £242 per hour.
17. The tribunal disallows the courier's fees, as no information was given as to the need to use a courier. The Land Registry fees are allowed in full it was reasonable for the Respondent's solicitors to undertake their own Land Registry searches when investigating the lease extension claim.

## **Valuation fee**

18. The tribunal accepts that the low value of lease extension claim meant that a relatively junior surveyor should have undertaken the valuation. It restricts the charging rate to that allowed for the solicitor's costs (£242 per hour). Based on its own knowledge and experience, the tribunal concluded the valuation (including the inspection, research

and preparing a formal report) would have taken at least 4 hours. This equates to £968 plus VAT, which is more than the sum actually charged by the Respondent's surveyors. Accordingly it allows the sum charged of £950 plus VAT.

19. The tribunal has allowed the VAT charged on the Respondent's costs upon the assumption that the Respondent is not VAT registered. If this assumption is incorrect and the Respondent is able to recover the VAT charged then sum due should be adjusted accordingly.

**Name:** Tribunal Judge  
Donegan

**Date:** 17 September 2015

## **Appendix of relevant legislation**

### **Leasehold Reform, Housing and Urban Development Act**

#### **Section 60**

(1) Where a notice is given under section 42, then (subject to the provisions of this section) the tenant by whom it is given shall be liable, to the extent that they have been incurred by any relevant person in pursuance of the notice, for the reasonable costs of and incidental to any of the following matters, namely—

(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;

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 a relevant person 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 tenant's notice ceases to have effect, or is deemed to have been withdrawn, at any time, then (subject to subsection (4)) the tenant'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) A tenant shall not be liable for any costs under this section if the tenant's notice ceases to have effect by virtue of section 47(1) or 55(2).

(5) A tenant shall not be liable under this section for any costs which a party to any proceedings under this Chapter before the appropriate tribunal incurs in connection with the proceedings.

(6) In this section "relevant person", in relation to a claim by a tenant under this Chapter, means the landlord for the purposes of this Chapter, any other landlord (as defined by section 40(4)) or any third party to the tenant's lease