



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

Case reference : LON/00AZ/OCR/2016/0470

Property : Upper Flat, 27 Bargery Road,
London, SE6 2LJ

Applicant : CCMJ Investment Limited

Representative : Premier Solicitors

Respondents : T J & A E Miller

Representatives : Kerman & Co LLP

Type of application : Section 60 of the Leasehold
Reform, Housing and Urban
Development Act 1993

Tribunal member : Mrs Helen Bowers MRICS

**Date of determination
and venue** : 31 May 2017 at
10 Alfred Place, London WC1E 7LR

Date of decision : 31 May 2017

DECISION

The Tribunal determines that the Respondent's costs under section 60 are as follows:

- Legal Fees - £1,726.00 plus VAT of £344.00 (total £2,070.00).
- Valuation Fees - £400.00

REASONS

Background:

1. This matter arises from an application made by the Applicant, CCMJ Investment Limited as the leaseholder of the Upper Flat, 27 Bargery Road, Catford, London, SE6 2LJ (the subject property). The application is dated 11 November 2016.
2. The Tribunal issued Directions in respect of the application on 3 April 2017. These Directions allocated the matter to be dealt with on papers unless either party requested a hearing. There was no request for a hearing and accordingly, this issue has been considered on the basis of the papers provided by the parties.
3. The section 60 costs being claimed for the Respondents are the legal costs of £1,726.00 plus VAT of £344.00, totalling £2,070.00 and valuation costs of £400.00.
4. The current application arises from an Initial Notice dated 30 March 2016 which suggested a premium of £27,000.00 and a Counter Notice of 15 June 2016 which suggested a premium of £36,600.00 for a lease extension for the subject property. It is unclear whether the lease extension has been completed.

The Law:

5. Sections 60 and 91 of the Leasehold Reform, Housing and Urban Development Act 1993 are reproduced in the Appendix to this decision.

Costs Claimed:

6. A costs schedule was prepared by the Respondents. This schedule explained that the work was undertaken by two solicitors, a Grade A solicitor charging £350.00 per hour and a Grade C solicitor charging £275.00 per hour. The schedule seems to indicate that the Grade A solicitor spent a total of 2.2 hours in respect of drafting and serving the counter notice and liaising with the property department presumably in respect of the preparation and completion of the new lease. There appeared to be a typographical error in the schedule indicated that a total of 7.6 hours was spent on this work but the amount claimed only related to 2.2 hours. The Grade C solicitor spent 3.5 hours in respect of

drafting work for the new lease and associated transactional work. There is a further sum of £6.00 for the office copy entries.

7. The valuation fee of £400.00 was supported by an invoice from Morgans Chartered Surveyors. This invoice is dated 6 December 2016 and described the work as the provision of professional services in respect of a lease extension.

Applicant's Case:

8. The Applicant states that the valuation fees of £400.00 and the office copy entry fees of £6.00 are agreed.
9. It is suggested that Kerman and Co, the solicitors acting for the Respondents, are indicated in the Solicitors' Guideline as London Grade 2 and as such a Grade A fee earner should be charging £317.00 per hour instead of £350.00 and that a Grade C fee earner should be charging £196.00 instead of £275.00 per hour.
10. The Applicant states that the time spent in drafting and serving the Counter Notice of 6 units was excessive. The reasoning is that the 1993 does not allow costs of the solicitors obtaining the clients instructions in respect of the premium and that essentially the Respondents accepted the Applicant's proposal in the Initial Notice other than the premium and the modernisation of the lease terms. It is also suggested that this work could be done by a Grade C fee earner. The Applicant proposes that a suitable time for the work would be 4 units at £196.00 per hour amounting to £78.40 plus VAT.
11. The Applicant suggests that there is a mathematical error in respect of the 3.5 units claimed for the drafting of the new lease and associated work. In respect of the sum claimed of £950.00 plus VAT there is no details of what work was undertaken. A review of the existing lease which was 10 pages and the insertion of this into a standard lease extension document, which is 9 pages would take a Grade C fee earner between 1.5 to 2.5 hours and therefore a figure of £490.00 plus VAT would be reasonable. It is further suggested that the 1993 Act does not allow for any associated costs.
12. Again it is suggested that there is a mathematical error in the schedule relating to the Grade A fee earner's liaison with the property department regarding the associated transactional work. The Respondents have indicated that this work involved assistance to the property department concerning various impasses relating to the inclusion of specific lease clauses. It is suggested that the 1993 Act does not allow any costs in relation to associated works. Additionally, it is claimed that following the case of Dashwood Properties v Christostom-Gooch [2012] UKUT 215 it would be unreasonable to instruct two

solicitors to conduct the conveyancing, even if both solicitors are in the same firm as the works would suggest that they would be dealing with the substance of the issues as two separate entities. It is proposed that no costs should be allowed for this aspect of the costs schedule.

13. In summary the Applicant suggests that the total costs including the valuation fees should be £974.40 plus VAT of £113.68.

Respondents' Case:

14. The second solicitor dealing with this case is a Grade B solicitor and has a guideline hourly rate of £242.00. The approach taken by the Applicant that the hourly rate should not exceed the guideline rates is incorrect. The guideline rates are indicative rates in relation to proceedings, but the correct approach to take is the rate that is reasonable in relation to section 60(2) of the 1993 Act, namely it is reasonable if the 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. As the work involved is complex, then the sums claimed are reasonable.
15. In relation to the drafting and serving of the Counter Notice, it is explained that following Sinclair Gardens Investments (Kensington) Ltd v Wisbey [2016] UKUT 203 the service of a counter notice is a '*crucial step in the procedure*' and that it is reasonable to instruct a solicitor '*experienced in this specialised area of law*'. There is nothing to preclude a Grade A solicitor from undertaking the work. The time claimed was for the drafting and serving of the Counter Notice, but the Respondents would also be able to claim for the investigation of title and as the Initial Notice had been assigned the investigation was more extensive than usual. As such the time claimed is entirely reasonable.
16. The fixed fee of £950.00 for the drafting of the new lease and associated transactional work is recoverable under the 1993 Act and as the Respondents would have been personally liable for the costs, the the sums are reasonable. Also in relation to the Grade A fee earner's liaison with the property department this was as a consequence of actions taken by the Applicant and as such the costs are entirely reasonable. The Applicant had opposed the insertion of a standard and statutory clause in the new lease concerning redevelopment and later conceded that the clause was to be included. The initial position taken by the Applicant had resulted in additional costs.
17. The reference to Dashwood Properties v Christostom-Gooch [2012] UKUT 215 is misguided. The case can be distinguished from the current case as there was no separate firm instructed. The costs were reasonable incurred; were incidental to matters listed in section 60(1)(a) – (c); they are costs that the Respondents would have paid if

they had been personally liable and were necessitated by the actions of the Applicant.

Decision and Reasons for the Tribunal's Determination

Legal Costs:

18. It would appear that there are a couple of errors in the Respondents' schedule of costs. The first is what appears to be a typographical error in time claimed for the Grade A fee earner and the schedule indicates that a total of 7.6 hours was spent on this work but the amount claimed only related to 2.2 hours. The second error appears to be the descriptor at the top of the third column in the schedule and this would appear to relate to the number of hours expended rather than units.
19. Enfranchisement and lease extension work is a complex and specialist area of work and as such it is the opinion of the Tribunal that the Respondents are not limited to guidance rates which may be applicable to more general civil work. The respective charging rates proposed for the Grade A and Grade C fee earners are reasonable for this type of work. Therefore, the Tribunal accepts the charging rates proposed by Respondents are not unreasonable. Certainly when dealing with the specialist tasks of considering an Initial Notice and the preparation of a Counter Notice it would be reasonable for the Respondents to utilise the services of a suitably qualified Grade A fee earner,
20. The total time taken by the Grade A fee earner of 0.6 hours, in respect of the drafting and the serving of the Counter Notice is a modest amount of time given the importance of ensuring that the process is correctly followed and the consequences of a failure to follow the correct process. There must be some liaison with the client or the valuer to ascertain what figure should be inserted into the Counter Notice and such communications would be incidental to the preparation and service of the Counter Notice and allowable under section 60(1) of the 1993 Act. The Tribunal allows the time of 0.6 hours for this work.
21. The 3.5 hours for drafting of the new lease and the associated transactional work appears to be a reasonable amount of time for the work involved. The reference to associated transactional work would seem to be covered by the reference in section 60(1) to incidental costs.
22. Finally, in respect of the 1.6 hours by the Grade A fee earner in liaising with the property department this appears reasonable. It appears that the dispute by the Applicant in relation of the contents of the draft lease incurred additional work. These are costs that would have been payable by the Respondents if they had been personally liable and as such are reasonable under the provisions of section 60(2). There needs to be some co-ordination between the various solicitors dealing with this type of case and such co-ordination is not a duplication of work. The

circumstances of this case are clearly distinguished from the facts in Dashwood Properties v Christostom-Gooch [2012] UKUT 215.

23. The total costs determined by the Tribunal for the legal costs of the Respondents are £1,726.00 plus VAT of £344.00 (total £2,070).

Valuation Fees

24. It is noted that the valuation fees of £400.00 are agreed.

Name: Chairman - Helen Bowers **Date:** 31 May 2017

ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

Appendix

Leasehold Reform, Housing and Urban Development Act 1993

S60.— Costs incurred in connection with new lease to be paid by tenant.

(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] ¹ 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.

S91. — 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) the terms of acquisition relating to—

(i) any interest which is to be acquired by a nominee purchaser in pursuance of Chapter I, or

(ii) any new lease which is to be granted to a tenant in pursuance of Chapter II,

including in particular any matter which needs to be determined for the purposes of any provision of Schedule 6 or 13;

(b) the terms of any lease which is to be granted in accordance with section 36 and Schedule 9;

(c) the amount of any payment falling to be made by virtue of section 18(2);

(ca) the amount of any compensation payable under section 37A;

(cb) the amount of any compensation payable under section 61A;

(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) the apportionment between two or more persons of any amount (whether of costs or otherwise) payable by virtue of any such provision.

(9) [The appropriate tribunal] may, when determining the property in which any interest is to be acquired in pursuance of a notice under section 13 or 42, specify in its determination property which is less extensive than that specified in that notice.

(11) In this section—

“the nominee purchaser” and *“the participating tenants”* have the same meaning as in Chapter I;

“the terms of acquisition” shall be construed in accordance with section 24(8) or section 48(7), as appropriate

(12) For the purposes of this section, *“appropriate tribunal”* means—

(a) in relation to property in England, the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal; and

(b) in relation to property in Wales, a leasehold valuation tribunal.