

RESIDENTIAL PROPERTY TRIBUNAL SERVICE LEASEHOLD VALUATION TRIBUNAL

Property : Flat 42 Blenheim Court,
New Church Road,
Hove BN3 5PD

Applicant : Anthony Gill

Respondent : Elizabeth Barnardo-Byrne

Case number : CAM/00ML/OLR/2007/0070

Type of Application : To determine the costs payable on
enfranchisement (Section 60 of the
Leasehold Reform and Urban
Development Act 1993 ("the 1993 Act"))

Tribunal : Bruce Edgington (Lawyer chair)
David Brown FRICS MCI Arb

DECISION

1. The Respondent's legal costs in dealing with the matters set out in Section 60 of the 1993 Act are limited to £750.00 plus VAT assuming that she is unable to recover VAT.
2. The Respondent's reasonable valuer's fee is £425.00 plus VAT assuming that she is unable to recover VAT

Reasons

Introduction

3. Patricia Gill applied to the Respondent for the surrender of an existing lease and the granting of a further long lease pursuant to Section 48 of the 1993 Act. A Counter-Notice was served on Patricia Gill. The Applicant is Anthony Gill and according to a copy of the leasehold title at HM Land Registry dated 20th February 2006, the owners were then Alan Gill and Patricia Gill.
4. The position is therefore confusing but both parties appear to accept that the further long lease should be in the name of the Applicant and it is to be assumed that it is the Applicant who has assumed liability for the costs. For these reasons the Tribunal has not considered the status of the Applicant any further.

5. Agreement has been reached on all matters save for the costs to be paid pursuant to Section 60 of the 1993 Act.
6. Written representations have been received from the parties who have agreed to this matter being dealt with by way of paper determination i.e. without an oral hearing. As neither the **Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003** nor the **Leasehold Valuation Tribunals (Procedure) (Amendment) (England) Regulations 2004** allow for parties to 'agree' to a paper determination, 28 days' notice was given pursuant to Regulation 5 of the Amendment Regulations of the Tribunal's intention to deal with this matter on paper on the 15th November 2007. At the same time, it was pointed out that either party may apply for an oral hearing and neither has.
7. Upon consideration of this case, the Tribunal noticed that the Respondent had, in her Counter-Notice, said that her valuation fee was £425 plus VAT and her legal costs "payable" were £750 plus VAT. This was "...subject to revision should the matter be referred to the Leasehold Valuation Tribunal."
8. In recent years there has been a line of authorities culminating with the Court of Appeal case of Cawthorne and others v Hamdan [2007] 2 WLR 185 which have made it reasonably clear that a landlord is bound by what is put in a Counter-Notice. There has been no case dealing specifically with the matter of costs so far as this Tribunal is aware. It therefore felt that compliance with Article 6 of the European Convention on Human Rights dictated that the problem should be put to the parties to give them an opportunity to make representations.
9. A letter was therefore written to them on the 2nd January 2008 giving them until 18th January to make representations. None have been received on behalf the Respondent. The Applicant's solicitors have written to say that they adopt the argument that the Respondent's costs are limited to those in the Counter-Notice.

The Law

10. When lessees use the enfranchisement provisions, they become liable to pay the landlord's "*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"*
- (Section 60(1) of the 1993 Act)

11. The method of assessment of both legal and valuation fees is what is sometimes called the solicitor and client basis. In other words the costs to be allowed by the Tribunal are those which would be payable by the client "*if the circumstances had been such that he was personally liable for all such costs*".

(Section 60(2) of the 1993 Act)
12. Of particular relevance to this dispute is Section 60(5) of the 1993 Act which says that "*a tenant 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*".
13. If the Respondent is registered for VAT purposes, she will be able to recover the VAT on the legal and valuation fees because the legal and valuation services will have been supplied to the Respondent, not the Applicant. Therefore, if this is the case, no VAT will be payable by the Applicant.

The Issues

14. The Respondent's solicitors have prepared a statement of costs showing profit costs of £1,659.00 plus disbursements of £6 and VAT. The valuation fee is said to be £425 plus VAT.
15. Points of dispute have been prepared by the Applicant's solicitors which are short. Communications with the Respondent are disputed simply because no detail is given. In respect of anticipated time to conclude, this is repeated and it is also said that "...this appears to include time spent in relation to LVT proceedings and such elements are not recoverable."
16. The remaining parts of the costs are disputed mostly by use of the word "ditto". It is noted that the valuation fee is not mentioned and the Tribunal therefore assumes that the amount is not disputed. Indeed, the subsequent letter from the Applicant's solicitors confirms agreement to this figure.

Conclusions

17. For the avoidance of doubt the Tribunal agrees entirely with the Applicants' choice not to challenge the valuation fee for dealing with the Initial Notices and the grant of the new leases. It is reasonable.
18. As far as the legal costs are concerned, the Tribunal takes the view that the Court of Appeal has given a clear 'steer' that if matters are identified in or omitted from the Counter-Notice, then the landlord is bound by what is in such notice. Even if that were not the case, it seems to this Tribunal that the Respondent is *estopped* from asserting that the legal costs are higher than those which she has described as being 'payable'. The expressed reservation in the Counter-Notice is, of course, unlawful, as the payment of such legal costs is excluded by Section 60(5) of the 1993 Act. No unreasonable etc. behaviour is

being alleged which would engage Paragraph 10, Schedule 12 to the **Commonhold and Leasehold Reform Act 2002**.

19. Having said that, the Tribunal is conscious of the fact that a number of other applications have been lodged in respect of Blenheim Court and the parties may be looking to the Tribunal for guidance as to an appropriate level of legal fees.
20. The first thing to point out is that the Respondent's solicitors appear to have used no less than 3 fee earners on what is clearly a fairly routine enfranchisement case. These fee earners are a partner with more than 8 years post qualification litigation experience, a solicitor with less than 4 years post qualification experience and a trainee solicitor. It appears to this Tribunal that without a clear and specific breakdown of those fees in accordance with the direction this Tribunal gave by Order dated 24th October 2007, it is impossible to estimate what unchargeable duplication and supervision there has been.
21. The Tribunal will therefore use its experience and knowledge of assessing solicitors' bills over a large number of years. It considers that enfranchisement cases are sufficiently specialised to demand the attention of a Grade A fee earner i.e. someone in the category of the partner in this case. £215 per hour is a little high for a Grade A fee earner. In litigation bills assessed in the courts, the starting point for a grade A fee earner in Liverpool was £195 per hour in 2007 and has just been increased to £203. However, £215 per hour is within the bounds of reasonableness.
22. If all time is calculated on the basis that the work was undertaken by a Grade A fee earner, then the client is entitled to expect the matter to be dealt with efficiently and expeditiously. A straightforward enfranchisement case should involve no more than 24 minutes of discussion with the client and 9 outgoing letters and telephone calls. Thus 1.3 hours at £215 is allowed i.e. £279.50. Routine incoming letters are not chargeable.
23. The Tribunal agrees with the Applicant that a substantial proportion of the attendances on opponent would have been incurred as a result of these proceedings. A reasonable figure for this item would be 14 outgoing letters and telephone calls i.e. £301.00
24. As to time spend on documents, the Tribunal considers that a Grade A fee earner should not have spent so long on these. Reasonable times would be 7 units to consider the Initial Notice and draw a Counter-Notice and 7 units for dealing with the new lease which was, after all, drafted by the Applicant's solicitors and is in the simplest of forms. The balance of the time claimed is not allowed. Thus the amount allowed is 1.4 hours at £215 per hour i.e. £301.00.
26. The total costs which this Tribunal finds would have been reasonable is therefore £279.50 + £301 + £301 = £881.50 plus any VAT and the

disbursements of £6. In any subsequent case dealt with by the same solicitors, one would expect economies in respect of any document which is the same in each case. In other words, proof reading to ensure that a document in respect of one flat is the same as for another flat is not fee earner's work.

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Bruce Edgington
21st January 2008