

Eastern Rent Assessment Panel
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Miss Kathy Brewer
Southern Rent Assessment Panel
First Floor
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Chichester
West Sussex
PO19 1JU

Your ref: CHI/00ML/OC9/2008/0011
Our ref: CAM/00ML/OC9/2008/0004
Date: 05-Mar-2009

Dear Sirs

**RE: LEASEHOLD REFORM, HOUSING & URBAN DEVELOPMENT ACT 1993 -
SECTION 91**

**PREMISES: FLAT 1, 3 PARK VIEW TERRACE, BRIGHTON, EAST SUSSEX, BN1
5PW**

I enclose a copy of the final reasoned decision in respect of the above case for your reference.

I have sent a copy of the decision to both parties as well as the Lease.

Yours faithfully

A handwritten signature in black ink, appearing to be "Jeong-ae Ahn".

**Miss Jeong-ae Ahn
Case Officer**

RESIDENTIAL PROPERTY TRIBUNAL SERVICE LEASEHOLD VALUATION TRIBUNAL

Properties : Flat 1,
3 Park View Terrace,
Brighton BN1 5PW

Applicant : Gari Dillwyn Owen

Respondent : The Estate of Jeffrey Hardy (dec'd)

Case number : CAM/00ML/OC9/2008/0004

Date of Application : 10th December 2008

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

The Tribunal : Mr. Bruce Edgington (lawyer chair)
Mr. David Brown FRICS MCI Arb

DECISION

1. The reasonable costs of the Respondent payable by the Applicant under Section 60 of the 1993 Act are £1,325.00 plus VAT.

Reasons

Introduction

2. This dispute arises from the enfranchisement of the property by the Applicant by way of a lease extension. In these circumstances there is a liability on behalf of any person enfranchising to pay the lessor's reasonable costs.

The Law

3. It is accepted by the parties that an Initial Notice was served and therefore Section 60 of the 1993 is engaged. The Applicants therefore have to pay "*...to the extent that they have been incurred by any relevant person in pursuance of the notice...*" 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)*
4. What is sometimes known as the 'indemnity principle' applies i.e. the Respondent is not able to recover any more than he would have to pay his own solicitors or surveyors in circumstances where there was no liability on anyone else to pay (Section 60(2)).
 5. The Applicant's solicitors have helpfully provided an agreed bundle of documents and both parties have agreed that the issues between them should be decided by the Tribunal following a consideration of the documents rather than an oral hearing. Both parties were told in a directions order dated 23rd December 2008 that the matter would be determined on or after 23rd February unless a hearing was requested before then. No such request was received.

The Issues

6. The Respondent's statement of costs is contained in the bundle at pages 1-4. The legal costs claimed are £2,017.50 plus VAT. These include the fees of another firm of solicitors, namely Winter & Co. No issue is taken with regard to the hourly rates although the Tribunal was surprised that it took 3 fee earners to deal with what is a fairly straightforward matter.
7. The Applicant's points of dispute fall into 2 main categories which, together with the Respondent's comments, are at pages 5-10 in the bundle.
8. The first objection arises from an extremely unusual situation. Unfortunately, the original lessor died whilst the conveyancing process was being undertaken but before completion. Before the death, the Applicant's solicitors asked what the legal costs were going to be so that the necessary monies could be obtained from the Applicant to complete the transaction. The Respondent's solicitors replied that the 'anticipated' costs would be £800 plus the valuer's fee and VAT.
9. The letter of reply also contained a request that the costs were agreed but said that they were '...assessed on the basis as set out above...' i.e. that they were anticipated costs provided that completion took place within 4 weeks. The Applicant's solicitors did agree this and part of their objection is that this was a concluded agreement. With respect to them, the statement of costs was clearly a conditional estimate rather than a quotation and there was no concluded and binding agreement.

10. Thereafter, the death occurred and further costs were incurred in connection with and directly arising from the death which are being claimed. Although the Tribunal has not seen the Respondent's solicitor's file, it seems that those solicitors did not actually deal with the grant of representation. This was undertaken by Winter & Co.
11. The second point of dispute relates to the time spent on the counter-notice. As the Applicant's solicitors say, the schedule of costs is not helpful in identifying exactly what this is but they calculate the costs to be £535.50 plus VAT and the Respondent's solicitors say that the correct figure is £725.56 plus VAT.

The Cost Arising from the Death of the Lessor

12. Although the points of dispute are fairly lengthy and refer to the relevant statutory provisions, the substantive point being made is that the extra costs incurred because of the death do not arise from the service of the initial notice and therefore do not come within the provisions of Section 60. The Applicant should not have to pay them.
13. On the other hand, the Respondent's solicitors say that Section 60 is drawn widely enough to include these costs and they would not have had to be incurred if it was not for the service of the initial notice. The paucity of legal authority for the issue is demonstrated by the fact that the only case relied upon as authority is **Daejan Investments Freehold Ltd. v Parkside 78 Ltd** which is a London LVT decision under reference LON/ENF/1005/03. That case is not particularly helpful because it concentrates on the hourly rates claimed rather than any particular item of work involved. This Tribunal does not consider that Professor Farrand's comments were intended to encompass this sort of situation.
14. It is very difficult for the Tribunal to see exactly what these extra costs relate to. The narrative refers to liaising with the 'Probate Bureau' and keeping the Applicant updated. However, if Winter & Co. were dealing with the grant of representation one does wonder what the Respondent's solicitors were doing liaising with the 'Probate Bureau' which seems, according to its website, to be an unqualified advice agency which refers matters on to solicitors if they are unable to help. Or perhaps they mean the Probate Registry.
15. The position appears to be that if the lessor had not died, the conveyancing costs would have been as stated in the letter of the 7th April 2008. As has been said, the Tribunal accepts that there was no agreement as such, but this inference can clearly be drawn from the correspondence.
16. Therefore, the question to be decided is whether the additional work arising from the death of the original lessor should be paid for by a person in the position of a purchaser of a new long leasehold interest.

The coincidental factor in this case is that the death happened to arise when this transaction was about to be completed. If it had happened at a time when no conveyancing work was being undertaken, the title would have had to be put into the name of the lessor's personal representative and, possibly, a beneficiary if that was a different person. Thus, that expense would have had to be incurred and paid for out of the estate.

17. The Tribunal therefore concludes that it would be unreasonable for the estate to have this cost paid by the Applicant as it would, in effect, be a windfall benefit. The cost arises from the unfortunate death of the original lessor and not "...in pursuance of the notice...".
18. There seems to be an implication in what the Respondent's solicitors say that the costs actually charged here were merely incidental to the obtaining of a grant. If that is the case, then without an adequate explanation, such costs seem to this Tribunal to be excessive in any event. Surely everyone in this case had to accept that the lease extension could not be completed until there was a grant of representation. There seemed to be little point in running up such a large amount in costs.
19. Having said that, the Tribunal concludes that some extra cost should be allowed because some letters would have been necessary over and above the costs of obtaining the grant in order to keep the Applicant apprised of progress and supply a copy of the grant. The sum of £100 plus VAT is therefore considered to be a reasonable figure to add to the figure estimated on the 7th April 2008 making a figure of £450 plus VAT for the lease extension and completion.

Counter-notice costs

20. The Respondent's solicitors said in their letter of the 7th April 2008 that their costs for considering the initial notice and preparing the counter-notice were £450 plus VAT. By that time, of course, this work had been done. Their reply to the objection on this issue is "*for reasons already set out above the Respondent denies there was any agreement in respect of these costs on the 7th April 2008. A lower figure was suggested at that stage and of course was "anticipated" on the basis of a four week completion condition which was not fulfilled.*"
21. It is difficult for the Tribunal to understand this comment. As at 7th April 2008 there was no further work to do in connection with the initial notice and counter-notice. There is no explanation as to why £450 plus VAT suddenly jumped to £725.56 plus VAT. It is up to the Respondent to justify the costs incurred and the Applicant accepted the solicitors' quoted figure of £450 plus VAT.
22. Without any explanation for the increase, the Tribunal is forced to conclude that a figure in excess of £450 plus VAT for this work is excessive and, thus, unreasonable.

Conclusion

23. It is therefore the Tribunal's view that the Respondent's reasonable costs are as follows:-

of the initial notice and counter-notice – £450 plus VAT

the valuer's fee - £425 plus VAT (not disputed)

the lease extension and completion - £450 plus VAT

There was no breakdown of Winter & Co's costs, as claimed, and the Tribunal could not see how the Applicant could be liable for any part of another solicitor's fee in any event.



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Bruce Edgington
Chair
4th March 2009