



LEASEHOLD VALUATION TRIBUNAL

**LEASEHOLD REFORM HOUSING AND URBAN DEVELOPMENT ACT
1993, SECTION 60**

LDN/OOBK/OC9/2008/0083

Address: 112A QUEENS COURT, QUEENSWAY, LONDON
W2

Applicants: Stella-Ioanna Kourtellidou & Annie-Penelope
Kourtellidou

Respondents: Happybadge & William Pears Group

Date of decision: 3 February 2009

Appearances: Mr Panayiodou (Applicants), Ms Bone (1st
Respondents), Mr Kent (2nd Respondents) – all
solicitors in the respective firms representing the parties
in the transaction

Tribunal: Mr M Martynski (Solicitor)
Miss M Krisko BSc(EstMan) BA FRICS

DECISION

Summary

1. The Tribunal determines that the costs payable by the Respondents in this matter are as follows;

Costs of Wallace LLP : £3,000.00 plus VAT of £474.95 with uncontested disbursements and valuer's fees

Costs of Mackrell Turner Garrett: £1150.00 (inc VAT)

The application

2. An application was made by the Applicants for a determination of the professional costs payable in respect of a claim for a new lease made by the Respondents pursuant to section 42 Leasehold Reform, Housing and Urban Development Act 1993 ("the Act").

Background

3. A notice under section 42 of the Act dated 13 August 2007 was served by the Applicants' predecessor in title on the Respondents.

4. The First Respondent, Happybadge, instructed solicitors, Wallace LLP regarding the notice. Wallace are a well known firm based in London W1 which specialises in this area of work. The matter there was dealt with by Grade A, B and C fee-earners (with one small piece of work being done by a trainee solicitor). The charge out rates for Grade A fee earners is £350, for Grade B it is £300 and for Grade C it is £200.

5. A counter-notice was served, a valuer was instructed and there were various negotiations leading to a lease being agreed.

6. The complication in this transaction was that there is an intermediate landlord, the William Pears Group. This company instructed Mackrell Taylor Garrett solicitors to represent its interests. No valuer was instructed by William Pears.

7. The legal costs (payable by the Applicants) of the respective solicitors were as follows;

Wallace LLP	£3599.00 plus VAT
Mackrell Taylor Garrett	£1,000.00 plus VAT

The objections and the Tribunal's decisions

8. The first objection to the costs of Wallace LLP was that the matter could have been dealt with by an assistant solicitor rather than a partner given that the matter was straight-forward.

9. In answer to this it was argued that Wallace were instructed by its clients on all lease extension matters. Those clients expected their matters to be dealt with by experienced fee-earners. The matter was not straight-forward. There were additional complications given that there had been an assignment of the tenant's claim and there was an intermediate landlord who had to be liaised with and to whom a duty of care was owed.

10. Whilst there were complications regarding the assigned claim and intermediate landlord, the matter was not, in reality, very complicated. However, there is no doubt that this area of law is complex and fraught with pitfalls and that it is right that matters are dealt with by experienced solicitors or that experienced solicitors check the work that is being done.

11. As to the charging rates of Wallace LLP, the rate of £350.00 per hour is at the very top end of the range for work of this sort and cannot be justified as reasonable in a relatively routine transaction such as the one in question.

12. It was right that the matter had some input from a very experienced fee-earner. Such input would only however have been justified at key beginning and end stages and would have (very much giving the benefit of the doubt to the first Respondent) been at a rate of £300 per hour. Other work could be done by a less experienced fee-earner or a more experienced fee-earner but at a reduced hourly rate to reflect the complexity (or lack of complexity) of the transaction.

13. If a fee-earner undertakes work that a less experienced fee-earner could do, then, if there is a third party paying the bill, as far as that third party is concerned, the fee-earner undertaking the work, regardless of status, should only reasonably charge the relevant charge out rate justified by the complexity/value/importance of the work being undertaken.

14. It cannot be reasonable for perfectly routine letters and other communications (which all communications charged at one unit must have been) to be charged out at the rate of £300 per hour in a straight forward matter such as this.

15. The Tribunal considered that, given there were some complications, a third party could not complain if the work was charged out at Grade B rates. The Tribunal has had regard to the Supreme Court Costs Office guidelines for Grade B fee-earners for 2007 and 2008 work. Those guidelines are for costs for litigation work in the region of £222-231 for a firm based in London, W1. It is arguable that the rates allowed for the type of work in question in this case should be higher than these litigation rates (which are of course only guidelines in any event).

16. The Tribunal concludes that in this transaction, a reasonable hourly rate would be in the region of £240 per hour. Based on the number of hours actually claimed for in this case, such a rate would result in total costs of approximately £3,150.00. The Tribunal notes that Wallace reduced its costs to £3,000 plus VAT and that this offer remained at the time of the hearing.

17. Therefore looking at the matter from an hourly rate point of view, Wallace's costs, as reduced to £3,000 plus VAT, were reasonable.

18. The next objection raised was that the total time taken by Wallace to deal with the matter was excessive and that the number of letters and emails was excessive.

19. The Tribunal rejects this objection. The times recorded for preparation, consideration and attendance are modest. The remainder of the time charged for is made up of letters and other communications. There was no evidence to suggest that the communications were not reasonably necessary. On looking at the time claimed for overall, it did not appear excessive for a transaction that took some time to complete and given the additional elements in the transaction referred to earlier in this decision.

20. Next, the Respondent objected to the costs of Mackrell, Turner, Garrett on the basis that they were charging for 98 emails. On the one hand this did appear to be a large number of communications given the nature of the transaction and the numbers of communications charged for by Wallace. However, these emails were only charged at one-quarter of the usual six-minute time unit. The result of this was to make the overall profit costs of £1,000 reasonable in the circumstances. It was said by Wallace, in support of its charges, that it had a duty of care to the interim landlord, however this would not mean that it was unreasonable for the interim landlord to instruct its own solicitor and for those solicitors to properly protect its position.

21. The hourly charging rate of £280 per hour for Mackrell, Taylor, Garrett was high but overall, given the way in which emails were charged for and given that very little other time was charged (just 30 minutes), it could not be said that the overall costs were unreasonable.

Principles to be applied in costs cases

22. The Tribunal was referred to two of its own decisions on issues of principle regarding costs in cases like these. Those decisions were; 78 Wimbledon Parkside, SW19, reference number LON/ENF/1005/03 and 44 Park West, W2, reference number LON/00BK/OC9/2007/0026.

23. The Tribunal considered these decisions and another of its decisions to which it was not referred by the parties, this decision being 50 & 60 Wellesley Court, W9, reference numbers LON/00BK/OLR/2008/0770 and LON/00BK/OC9/0049. The latter decision disagreed with the other decisions on the issue of approach to costs claims in cases such as this and as to the principles to be applied in such cases.

24. Insomuch as the Respondents relied on arguments that they were entitled to indemnity costs, the Tribunal rejects those arguments and adopts the reasoning of the latter decision referred to above. The law requires a leaseholder to pay the landlord's reasonable costs and that entitles the Tribunal, using the information on costs put before it and relying on its own expertise, to assess what costs are in the circumstances of each case reasonable and payable by a leaseholder.

Duties owed to the Tribunal

25. A legally represented party, when presenting a case before a court, would have a duty, if referring that court to previous relevant decisions on an issue, to present all such decisions to the court whether or not they favoured that party's case. The Tribunal considers that it would be, at the very least, prudent for legal representatives to adopt the same course when presenting previous decisions of any kind to the Tribunal.

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Mark Martynski – Tribunal Chairman

3 February 2009