

**LEASEHOLD VALUATION TRIBUNAL for the
EASTERN RENT ASSESSMENT PANEL**

**Leasehold Reform, Housing and Urban Development Act 1993 – Section
48(1)**

CAM/00KF/OLR/2010/0012

Properties : **Flats 1, 2 & 3 170 Hadleigh Road,
Leigh-on-Sea SS9 2LP**

Applicants : **Jeffrey Peter Della Mura, Edwina Jane Della
Mura, Raymond Dowell Scurrah and Christine
Ann Scurrah Flat 1
Jeffrey Peter Della Mura, Edwina Jane Della
Mura Flat 2
Katie Beatrice Dawson Flat 3**

Represented by : **Mr Mark Roscoe - Counsel**

Respondents : **Gerald Brian Halibard and Miriam Halibard**

Represented by : **Mr Robert Plant - Solicitor - Tolhurst Fisher**

Date of Application: **2 March 2010**

Date of Hearing : **8 July 2010**

Date of Decision : **26 July 2010**

Tribunal : **Mr John Hewitt Chairman
Mr Richard Marshall FRICS, FAAV
Mr Roland Thomas MRICS**

Decision

1. The decision of the Tribunal is that:

- 1.1 the costs payable by each of the three Applicants to the Respondent pursuant to s60 of the Act is the sum of £622.72; and
- 1.2 the Respondent shall pay to each of the Applicants £100 costs pursuant to paragraph 12 of Schedule 10 to the Commonhold and Leasehold Reform Act 2002 (the 2002 Act).

Thus the net sum payable by each of the Applicants to the Respondents is the sum of £522.72

Background

2. The Applicants each sought a new lease of their respective flats pursuant to Chapter II of the Act. Terms were in dispute and on 2 March 2010 the Applicants made applications pursuant to s48 of the Act.
3. Directions were duly given. After directions were given the parties were able to agree the premiums to be paid for each new lease. Some terms of the new leases were controversial and terms were only finally agreed on or about 7 July 2010.
4. At the hearing the only remaining issue in dispute was the amount of solicitors' costs payable by the Applicants to the Respondents pursuant s60 of the Act. Evidently the Respondents' valuer's costs had been agreed and paid prior to the hearing.

Costs – Findings of fact

5. We find that despite paragraph 6.3 of the directions the Respondent failed to serve a statement of costs by 9 April 2010 as directed.
6. On 14 June 2010 the Applicants' solicitors pressed the Respondents' solicitors to provide details of the costs claimed. A reply was not given until 5 July 2010 when a claim was made against each Applicant for

£702 + VAT + disbursements and courier fees but no breakdown was provided.

7. Mr Roscoe's brief was delivered by Friday 2 July 2010 and was marked with a Brief Fee of £750 + VAT.
8. Lease terms were finally agreed by 16:00 7 July 2010
9. On 7 July 2010 the Respondents' solicitors served a schedule of costs claiming a total of £2,169 + VAT. The costs were based on a charge-out rate of £180 per hour. The work covered by the schedule was the period 26 August 2009 to 7 July 2010 plus some anticipated time for the completion of the leases.

Costs – The Law

10. S60 of the Act imposes an obligation on the person seeking a new lease to pay certain costs incurred by the landlord, as follows:
 - (a) any investigation reasonably undertaken of the tenant's right to a new lease;
 - (b) ...
 - (c) the grant of a new lease under s56.
11. S60(2) of the Act imposes a limitation on recoverable costs and provides that such costs must be reasonable if and to the extent that such costs might reasonably be expected to have been incurred by the landlord if the circumstances were that he was to be personally liable for them.
12. S60(5) of the Act expressly states that a tenant shall not be liable for any costs which a party incurs in connection with proceedings before a Leasehold Valuation Tribunal.
13. Paragraph 32-18 of *Hague – Leasehold Enfranchisement* 5th edition states that s60(1)(c) has been interpreted as meaning "*the costs of and*

incidental to the drafting and execution of the new lease and will not include the costs of arguing or negotiating the claim.” The authors cite *Huff v Trustees of the Sloane Stanley Estate* Unreported 1997 LVT in support of the proposition.

Costs - Submissions

14. Mr Roscoe submitted that costs incurred in connection with the protracted negotiations over lease terms should be disallowed.
15. Mr Roscoe also submitted that the Respondents had acted unreasonably in the conduct of the proceedings and had failed to comply with directions to submit details of their claim to costs and that such conduct caused the Applicants to incur additional costs. Mr Roscoe suggested that if negotiations on lease terms had been conducted in a timely way and if details of costs had been provided earlier it may have been possible to avoid or at least reduce the amount of his brief fee. Mr Roscoe accepted that because the Applicants' solicitors had undertaken the instruction at a fixed unit fee of £500 + VAT no additional solicitors' costs had been incurred.
16. Mr Plant explained that the delay had been caused by his need to get instructions and that his clients had been away on holiday and only returned shortly prior to the hearing date. Evidently he had not been given general or appropriate instructions by them before they went away.
17. Mr Plant submitted that £700 per flat + VAT + expenses was not unreasonable. He also submitted that the costs of negotiating the lease terms were recoverable within the provisions of s60(1)(c) of the Act. He said that the original leases were curiously drafted; perhaps defective, and that this led in increased work in agreeing the new leases.
18. Mr Plant opposed the application for penal costs and said that the delay was due to his clients' holiday arrangements.

19. Mr Plant told us that VAT was payable at the rate of 15% for the 2009 work and at 17.5% for the 2010 work.

Conclusions

20. We were satisfied that the charge-out rate of £180 was reasonable for this type of work because it is a competitive market rate and also that it compares favourably with the guideline rates issued by the Senior Courts Costs Office.
21. We reject Mr Plant's submission that the costs of negotiating the lease terms are recoverable for two main reasons. First we prefer the submissions made by Mr Roscoe as to the proper interpretation of s60(1)(c) of the Act which are supported by the authority cited in *Hague*. Secondly, the negotiations were carried out in compliance with directions given in these proceedings and costs incurred in connection with such proceedings are expressly excluded by reason of s60(5) of the Act.
22. We have concluded that the Respondents are not entitled to recover costs after 19 May 2010 save for the sum of £135 claimed in respect of anticipated costs for completion work. This amounts to a total of £1,611.00

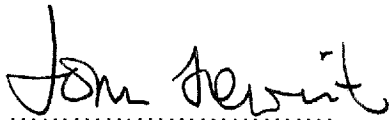
Thus £1,611.00 is recoverable + VAT as follows

Costs	£990.00
VAT at 15%	£148.50
Costs	£621.00
VAT at 17.5%	<u>£108.67</u>
Total	£1,868.17 divided by 3 = £622.72

23. We find that the Respondents' conduct in these proceedings was unreasonable within the meaning of paragraph 12 of Schedule 10 to the 2002 Act. Directions required the Respondents to serve a schedule of costs by 9 April 2010. The schedule was not submitted until 7 July

2010, the day prior to the hearing. Further there was undue delay in the negotiations over lease terms. Again directions were not complied with. The date of the hearing was set a good while ago and the parties notified. We find that it was unreasonable for the Respondents to go away on holiday shortly before the hearing and to do so without giving full and appropriate instructions to their solicitor. Prior to going away they ought to have known that time was critical and matters were still outstanding and that they had to be dealt with.

24. We have no doubt that if directions had been complied with and if the Respondents had made more purposeful progress with the proceedings there was a real prospect that the Applicants would not have incurred the amount of costs which they have in fact done. We find that it may well have been possible to avoid completely, or at any rate reduce the amount of, Mr Roscoe's brief fee. We find that an adjustment of £300 is just and equitable and that this should be shared equally between the three Applicants. We have therefore made an order that the Respondents shall pay costs of £100 to each of the Applicants.



John Hewitt

Chairman

26 July 2010