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

Case Reference : **CHI/21UFOC9/2013/0009**

Property : **Littlington Court, Surrey Road,
Seaford, East Sussex BN25 2NZ**

Applicant : **Lessees of Flats 2 ,5,6,7,9,11,12,
14, 15,16,18,19,20,21,22,25,26,27**

Representative : **Dean Wilson LLP, Solicitors**

Respondent : **Sinclair Gardens Investments
(Kensington) Limited**

Representative : **P Chevalier & Co, Solicitors**

Type of Application : **Application for costs under section 91
of the Leasehold Reform, Housing
and Urban Development Act 1993
("the Act")**

Tribunal Members : **Judge E Morrison (Chairman)
Mr B H R Simms FRICS MCI Arb
(Valuer Member)**

Date of consideration: **28 August 2013**

Date of Decision : **17 September 2013**

DECISION

The Application

1. By an application dated 16 April 2013, the Applicant lessees sought, pursuant to section 91 of the Act, a determination of the costs payable to the Respondent freeholder under section 60(1) of the Act.

Summary of Decision

2. The costs payable to the Respondent by each lessee Applicant, save for the lessee of Flat 12, pursuant to section 60(1) of the Act, are £314.71 + VAT for legal fees and £150.00 + VAT for valuation fees.
3. The costs payable to the Respondent by the lessee of Flat 12, pursuant to section 60(1) of the Act, are £250.00 + VAT for legal fees. No valuation fee is payable.

Background

4. This application arises following the simultaneous service by the Applicants of Notice of Claims dated 18 June 2012 under section 42 of the Act, seeking new leases for their flats at Littlington Court. Save in the case of Flat 12, new leases were subsequently granted. In such circumstances the lessees are liable to pay the lessor's reasonable costs pursuant to section 60(1). The amount of the costs not being agreed, the application was made to the Tribunal.
5. By Directions dated 18 April 2013, the parties were given notice that the Tribunal intended to deal with the matter by way of written representations only, unless either side objected. Neither party having objected, the Tribunal has determined this matter on the basis of written representations without an oral hearing.
6. Statements of case with supporting documentation were filed as directed by the Tribunal.
7. There was no inspection of the property.

The Law and Jurisdiction

8. The relevant parts of the provisions in the Act are as follows:

60. 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) – (6) ...

91. 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) – (c) ...

(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) ...

9. To be reasonable, costs must be reasonably incurred and reasonable in amount.
10. Pursuant to the indemnity principle (which is reflected in the introductory wording of section 60(1)), a paying party is obliged to indemnify a receiving party only for expenditure actually incurred. Accordingly a party may not recover more than it is actually obliged to pay its advisers.

Determination for all flats save Flat 12

11. In the case of these flats, the Respondent served Counter-notices admitting that the lessees had the right to acquire a new lease, but disputing the amount of the proposed premium. Following negotiation the premium was agreed and new leases completed. On completion the Respondent requested payment of its legal costs in the sum of £1275.00 per lessee. This sum was broken down as £675.00 + VAT for section 60(1)(a) costs (2.7 hours work) and £387.50 + VAT for section 60(1)(c) costs (1.55 hours work).
12. The sum of £150.00 + VAT per lessee was also requested for a valuation fee, which is not in dispute.
13. In response to the application, the Respondent reduced its claim for section 60(1)(c) costs to £250.00 + VAT per lessee, making the total costs claimed per lessee £925.00 + VAT (£1110.00).
14. The Applicants contend that the hourly rate allowed for Mr Chevalier's work should be £217.00 (the court's guideline rate for a Grade 1 fee-earner in his area) rather than £250.00 as claimed. They point out there is no client care letter agreeing this rate, but only a letter dated 24 April 2013 (after the application was made to the Tribunal) from the Respondent to Mr Chevalier which accepts liability for costs of £1110.00 inc. VAT for each lease, and agrees a rate of £250.00 per hour but only for costs not recoverable from the lessees.
15. The Applicants also say that given there were 17 leases being dealt with at the same time, a reasonable landlord would have negotiated a reduction of the fee basis.
16. The Tribunal is satisfied that the claim for costs does not breach the indemnity principle. Although no client care letter or other demonstrating provision of costs information were produced in advance of the work being carried out, it is clear that the Respondent is a client for whom Mr Chevalier has acted on many similar transactions, and the Respondent has clearly accepted in the letter of 24 April 2013 that it is liable to pay the amount of costs now being claimed. The hourly rate of £250.00 is also approved, on the basis that Mr Chevalier is a highly experienced specialist in this area of practice, and it is not outside the range of reasonable hourly rates.
17. However the Tribunal accepts that section 60(2) requires the Tribunal to consider whether costs of £1110.00 per lease might reasonably have been expected to be incurred by the landlord if he were paying those costs himself. The Tribunal does not consider this factor would affect the hourly rate, but it is a further cross-check after carrying out the section 60(1) exercise of considering the extent of the work reasonably required on each lease, and how long that work should reasonably take,

having regard to the fact that there were multiple simultaneous transactions.

18. In respect of costs claimed under section 60(1)(a) Mr Chevalier's sample time breakdown for Flat 14 states that he carried out work on 3 days: 25 June, 14 August and 16 August 2012. The total time charged over these 3 days was 2.2 hours, and a further 0.5 hours was spent on correspondence (some of which bears other dates). For 17 leases this equates to a total of 37.4 hours, (which does not include 2.4 hours time separately charged for Flat 12) plus 8.5 hours for correspondence.
19. In respect of costs claimed under section 60(1)(c) Mr Chevalier's sample time breakdown for Flat 14 discloses that he spent 1 hour, spread over 8 different dates running from 12 November 2012 – 18 February 2013. This equates to a total of 17 hours for 17 leases.
20. Mr Chevalier states that the amount charged takes account of "some repetition and duplication" and that he has averaged the time spent over each lease extension, but he sets out in his submission the steps that have to be taken separately for each and every lease.
21. He also suggests that there were 3 unusual features that had to be considered, namely that (a) there were 3 different types of flat (b) an RTM company had acquired the right to manage and (c) an adjoining enfranchised block had entered into a rentcharge (presumably with the Respondent) in respect of shared services.
22. The Applicants submit that a reasonable time to carry out the work under section 60(1)(a) would be 1 hour for the first lease and a total of 3.6 hours for the remaining 16 leases. They submit that a reasonable time to carry out the work under section 60(1)(c) would be 1.1 hour for the first lease and a total of 1.4 hours for the remaining 16 leases.
23. The Applicants argue that although there were 3 different types of leases at Littlington Court (for maisonettes, studio flats and two-bedroom flats), this made no material difference to the legal work required as all the leases were substantially in the same format. One form of new lease was agreed for all flats. The correspondence between solicitors was not conducted on an individual lease basis.
24. In his final submission, Mr Chevalier "agreed 20 letters in total", compared with 8 letters per lease (136 in total) originally charged for.
25. The wording of section 60 is clear: only reasonable costs can be recovered, and section 60(2) specifically provides that professional fees will only be reasonable if those costs might reasonably be expected to have been incurred if the person incurring them was personally liable to pay them. The requirements of reasonableness and reasonable expectation bring into play an objective test. CPR concepts referred to at some length by Mr Chevalier, such as the difference between the standard and indemnity bases of assessment, are not referred to in

section 60. However, the Tribunal notes that in the Upper Tribunal (Lands Chamber) decision in *Drax v Lawn Court Freehold Ltd* LRA/58/2009, it was stated (in relation to section 33(2) which is the enfranchisement case equivalent of section 60(2)) that the provision “introduces a (limited) test of proportionality of a kind associated with the assessment of costs on the standard basis”. This authority was not cited by Mr Chevalier but it runs contrary to several of the assertions made in his submissions.

26. The Tribunal accepts that Mr Chevalier is required to take proper care, and that the Respondent is not obliged to shop around for cheaper solicitors. There is also a range of reasonable costs.
27. However there is no evidence to suggest these were not entirely straightforward lease extensions. The “unusual features” referred to by Mr Chevalier would have had no material impact on the work required. Although this is a specialised area of practice, an expert such as Mr Chevalier who can justify an hourly rate of £250.00 working from a suburban office will reasonably be expected to deal with the work efficiently. His experience means that he knows exactly what he has to check and look out for from the outset. Similarly, from long experience, Mr Chevalier’s client already understood what was involved. These factors should have reduced the time required on attendances, obtaining instructions and undertaking research.
28. It is unnecessary for the Tribunal to undertake a detailed analysis of each separate item of work/time claimed. Looking at the work reasonably required, there are obvious economies of time and scale when 17 near-identical leases in the same block are being considered together. For example: it cannot be reasonable for 24 minutes to be spent or charged for client attendances for *each* lease, a total of 6.8 hours; there was no significant difference between the 17 counter-notices yet a total of 3.4 hours is charged for drafting these.
29. Having regard to all the evidence and submissions, and bearing in mind the work reasonably required, the Tribunal finds that the correct approach is to decide the level of reasonable costs for dealing with one new lease at Littleington Court, and then to allow a further reasonable amount of time for each subsequent lease, taking into account the economies of time and scale which come into play when dealing with multiple simultaneous and near identical straightforward transactions. The resulting figure should then be cross-checked against section 60(2).
30. In the view of the Tribunal a charge of £925.00 + VAT per lease, which equates to £15725.00 + VAT for all 17 flats, is clearly excessive and unreasonable. This charge is also higher than the Respondent might reasonably have expected to incur had it been personally liable to pay those costs, because the commercial reality is that a reasonably prudent landlord would have been able to negotiate a more significant reduction

from the usual level of charge per lease based on the nature of this multiple transaction.

31. The Tribunal determines that the maximum reasonable time for an experienced fee-earner who can justify an hourly rate of £250.00 to deal with the section 60(1)(a) costs for the first lease in this case would be 3 hours, which equates to £750.00 + VAT. A further 0.5 hour should then be allowed for repeating the process on each additional lease, a total of 8 hours. The costs under section 60(1)(a) are therefore determined at £2750.00 + VAT for all 17 leases.
32. The Tribunal determines that the maximum reasonable time for an experienced fee-earner who can justify an hourly rate of £250.00 to deal with the section 60(1)(c) costs for the first lease in this case would be 2.4 hours, which equates to £600.00 + VAT. A further 0.5 hour should then be allowed for repeating the process on each additional lease, a total of 8 hours. The costs under section 60(1)(c) are therefore determined at £2600.00 + VAT for all 17 leases.
33. These costs do not exceed those which could reasonably have been expected to be incurred had the Respondent been personally liable to pay them.
34. The consequent total costs of £5350.00 + VAT should be equally apportioned between the 17 Applicants, resulting in a sum of £314.70 + VAT payable by each lessee, together with the agreed valuation fee of £150.00 + VAT.

Determination for Flat 12

35. In the case of Flat 12, the Respondent seeks legal costs of £600.00 + VAT and a valuation fee of £150.00 + VAT. The Respondent's Counter-notice denied that the lessee was a qualifying leaseholder. This was accepted by the lessee and the matter proceeded no further. In such circumstances the lessee is liable to pay the lessor's reasonable costs under section 60(1)(a) and (b).
36. In respect of legal fees under section 60(1)(a) Mr Chevalier seeks payment for 2.5 hours work. No breakdown is provided but the Tribunal assumes it is similar to that provided for the other leases. The comments made above by the Tribunal as to economies of time and scale apply. However in light of the fact that the Counter-notice for this Applicant would have differed from the others the Tribunal allows 1 hour of time at £250.00 + VAT.
37. The Applicant contends no valuation fee is payable, on the basis that it was not reasonably incurred. It is argued that it would have been obvious to Mr Chevalier on receipt of the office copy entries sent with Dean Wilson's letter of 4 July 2012 that this lessee did not qualify for a

new lease (not having been a lessee for 2 years). Therefore no valuation was required.

38. Mr Chevalier argues in his letter to Dean Wilson of 6 September 2012 that the obtaining of a valuation had to be commenced immediately following service of the Notice of Claim due to the very tight time scale, and that a tenant serves a Claim Notice at his own risk. In his submission to the Tribunal, he says that obtaining a valuation has to be commenced immediately to enable the landlord to be in a position to decide how to proceed, including any waiver of invalidity. However a different paragraph of the same submission emphasises that this particular landlord will not grant a new lease unless the tenant is entitled to it.
39. This is a case where the Respondent's solicitor was involved from the time the Claim Notices were served, shortly after 20 June 2012. He had 2 months before the Counter-notices were due. The Land Registry entries for Flat 12 were sent on 4 July 2012. The issue is whether it was reasonable to instruct the valuer before the Land Registry entries had been checked. At section 6 of the Respondent's original statement of case, the narrative of the legal services provided implies that checking the Land Registry entries to check the lessee's entitlement should be done at an early stage. It is mentioned before instruction of the valuer.
40. There is no evidence that the valuation could not have been carried out and considered in good time even if requested after 4 July 2012. The Tribunal finds that it was unreasonable to incur the valuation fee before ascertaining, at least to the extent of checking the Land Registry entries, that Flat 12's lessee was entitled to a new lease. Thus the valuation fee is not a reasonable cost within section 60(1)(b) and is not payable. This conclusion is fortified by the application of the test in section 60(2). The valuation fee would not be reasonably be expected to be incurred by the Respondent in such circumstances if it was personally liable for that fee; to the contrary, it would reasonably be expected that the lessee's entitlement would be verified before incurring that cost.

Dated: 17 September 2013

Judge E Morrison (Chairman)

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.