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

Case reference : LON/00BJ/OC9/2016/0184

Property : Flat 205, Chalmers House, York Road, London, SW11 3QT

Applicants : Dennis Paul Forrest and Margaret Rosemary Forrest

Representative : CG Naylor LLP

Respondents : Fuad Joseph Kateb and Stella Kateb

Representatives : Wallace LLP

Type of application : Section 60 of the Leasehold Reform, Housing and Urban Development Act 1993

Tribunal member : Mrs Helen Bowers MRICS

Date of determination and venue : 31 August 2016 at 10 Alfred Place, London WC1E 7LR

Date of decision : 31 August 2016

DECISION

The Tribunal determines that the Respondents' costs under section 60 are as follows:

- **Legal Fees - £2,836.00 plus VAT**
 - **Disbursements - £44.40 including VAT**
 - **Valuation Fees - £1,006.00 plus VAT**
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REASONS

Background

1. This matter arises from an application made by The Applicants, as the leaseholders of 205, Chalmers House, York road, Battersea, SW11 3QT (the subject property). The application is dated 4 May 2016.
2. The Tribunal issued Directions on 5 July 2016. These Directions allocated the matter to be dealt with on papers unless either party requested a hearing. There was no request for a hearing and accordingly, this issue has been considered on the basis of the papers provided by the parties.
3. The section 60 costs being claimed are the legal costs of £3,141.00 plus VAT, plus £24.00 for land registry fees, £17.00 plus VAT for courier fees and the valuation costs are £1,506.00 plus VAT. Totalling £5,610.60.

The Law

4. Sections 60 and 91 are reproduced in the Appendix to this decision.

Applicants' Case

5. The Applicant suggests that following *Dashwood Properties Ltd v Christom-Gooch [2012] UKUT 215 (LC)* in considering whether costs are reasonable, consideration should be had to the level of premium. In this case the premium is £5,000 and therefore the costs of £3,141 plus VAT are disproportionate.
6. In respect of the legal costs it is stated that the hourly charging rate is excessive and more the level the landlord would have paid if they had been responsible for the fees themselves. The employment of a partner at £450 plus VAT per hour for routine work was excessive and that the work could have been undertaken by an associate solicitor. The central based London solicitor acting for the Applicants charged £225 per hour and their bill was £1,100 plus VAT. Reference is made to a decision of the Tribunal under case number BIR/00CN/OLR/2015/0016 where the costs claimed by Wallace LLP were reduced from £1,926 to £978. It is acknowledged that the Respondents' disbursements are agreed.
7. In respect of the valuation fees it is claimed that the costs were excessive and unreasonable. The valuation fee should be restricted to the valuation work and no allowance should be permitted for any negotiation costs. A total of six hours is claimed and the Applicants consider that four hours

would be reasonable. Four alternative quotes were obtained on the basis that the advice would be provided to a landlord. These quotes were from Fanshawe White at £650 plus VAT; Boston Radford at £1,160 plus VAT; Myleasehold at £950 plus VAT and disbursements of £25 and Harding at £750 plus VAT.

8. It is stated that if the landlord had been personally responsible for the fees then they would have chosen a more competitive option.

Respondent's Case

9. It is explained that the fee earner dealing with this case was a partner and a grade A fee earner with a charging rate of £450 per hour. Also working on the case as a paralegal at a rate of £200 per hour. An assistant solicitor prepared the draft lease that was contained in the counter notice, prepared the lease engrossment and the completion statement and has a charge out rate of £330.00 per hour.
10. It was explained that Wallace LLP was the solicitor of choice for the Respondents and have represented the Respondents for many years in enfranchisement work. Reference was made to Daejan Investments Limited v Parkside 78 Limited [LON/ENF/1005/03], Daejan Properties Limited v Steven Kenneth Twin [LON/00BK/2007/0026] and Andrew Allen v Daejan Properties Limited [LON/00AH/OLR/2009/0343] where the principles as to the reasonableness of costs, charge out rates and the use of partners were set out. Numerous other cases were referred to where the FtT have approved the use of a partner was considered reasonable. It is explained that the nature if this work is complex and the various stages of the process are described. Particular reference was made to the Tribunal decision in Rubin v Faroncell [LON/00AM/OC9/2016/0072] in which the Tribunal held that it was reasonable that the use of a partner for the consideration of the Initial Notice and the delegation of some of the work to an assistant was not unreasonable.
11. In respect of the valuation fees the level of fees is consistent with the usual level of fees for valuers based in Central London. Following principles mentioned above the respondents are entitled to instruct a valuer of their own choice.

Scott Schedule

12. In addition to the general submissions by both parties mentioned above specific comments were made on the Scott Schedule in relation to the legal costs. The following items were agreed, 12, 19, 25, 26, 27, 29, 30, 35 -40, totalling £746.00 plus VAT. Also agreed are the disbursements of £24.00 for land registry charges and £17.00 plus VAT of £3.40 for courier fees.

13. In respect of the items 2-6, 8-11, 14, 16-18, 21-24 the total time involved was 1.9 hours at £450 per hour calculating to £855 plus VAT. The work involved is described as preparing letters and emails and considering office copies (item 8). The Applicants state that the time spent is agreed but dispute the hourly rate as being excessive. In response the Respondents relied on the guidance given by the Court of Appeal in *Wraith v Sheffield Forgemasters Ltd; Truscott v Truscott* [1998] 1 WLR 132 and considered in 35 Ashbourne Court [LON/00AC/OC9/2015/0158] in that a party has the right to choose their own legal representation.
14. In respect of item 1, the time spent was 0.8 hours at a rate of £450 and equated to £360 plus VAT. The Applicant suggest that at this stage the solicitors would not have had access to the office copies or the lease so that the only work to have been carried out was to identify that the notice was served under the relevant legislation and contained the correct information. As such it is suggested that only 0.2 hours should be allowed. The Respondents refer to 29 Beaumont Court [LON/00AM/OC9/2014/0072] where similar submissions were made and dismissed. The scope of work undertaken is described and that in this case consideration needed to be given to the third party in the lease and consequentially additional work would be undertaken.
15. Item 7 is described as obtaining office copy entries and lease. The time expended was 0.2 hours at a charge out rate of £200 per hour, totalling £40 plus VAT. The Applicants state that they sent the office copies and the lease to the Respondents on the following day. The general position is that the charging rate allowed for letters/emails going out and telephone calls will include the consideration of letters and emails coming in. As the Respondents have already charged for their letter requesting the documents, then they cannot charge for receipt of the documents. The Respondents explain that the work undertaken under this category is not the receipt of the documentation, but consideration of the material to ascertain whether the Applicants had the right to extend their lease. It is submitted that the lowest fee earner undertook this work and the time involved was only 12 minutes.
16. Item 13 is for the consideration of the valuation report. This is 0.2 hours at £450 per hour amounting to £90 plus VAT. The Applicants suggest that if the landlord had been responsible for the cost the valuation report would have been carried out by an expert and therefore it only required a brief look at the report to ascertain the counter-notice figure, as such only 0.1 hours should be allowed. In response the Respondents refer to other the Upper Tribunal decision in *Sinclair Gardens Investments (Kensington) Limited v Paul Kenneth Charles Wisbey & Barbara Mary Wisbey* (LRA/118/2015). This decision confirmed that the costs of considering the valuation report are within the scope of section 60. It was also suggested that the perusing of the valuation report includes ensuring that the correct legal assumptions have been made and

consideration of the inspection notes to identify any issues regarding any alterations to the subject property.

17. Item 20, a sum of £45 plus VAT for reviewing the draft lease and item 28 a sum of £33 plus VAT for preparing an email to the valuer have been conceded by the Respondents.
18. Items 31 and 34 are described as preparing an email to the valuer and amount to a total of £66 plus VAT. The Applicants stated that time spent in negotiating the premium is not allowable as a cost under section 60. The Respondents state that these are typographical errors and should have read as emails being sent to the client, with copies of the correspondence being sent to the valuer and as such the costs are recoverable under section 60.
19. Item 32 and 33 are each for 0.1 hour at £330 per hour amounting to a total of £66 plus VAT the work is described as preparing a letter to the tenant's solicitors. The Applicants state that this time should not be allowed as this work involved discussions about the inclusion in the lease of terms relating to the payment of compensation to the tenant in the event of a re-development should be reserved. As the clause had no impact on the landlord then if the landlord had been personally responsible for the costs, he would not have pursued the issue. The Respondents state that more legal work was required as the Applicants refused to accept the wording in the draft lease to deal with this issue. The proposed wording from the Respondents reflected the recommended draft wording from Hague. It is suggested that if the Applicants had accepted the proposed wording then the legal costs would have been closer to £2,500. The Applicants had insisted on additional wording and this had resulted in extra costs.
20. Item 41 a time of 0.2 hours at £330 per hour and equating to £66 plus VAT related to the preparation of the engrossments. It is submitted by the Applicants that non-qualified support staff could have carried out this work and that the hourly rate should be half of what is claimed. The Respondents state that this is an important task to be overseen by the fee earner and that it is not a basic administrative task.
21. Items 42 – 44 are for the preparation of correspondence to the tenants' solicitor, to the third party and to the client. The total time claimed is 0.3 hours at £330 and this totals £99 plus VAT. The Applicants accept the time spent on these tasks but suggests that it work that should have been done by the paralegal at a rate of £200 per hour plus VAT. The Respondents suggest that due to the technical nature of enfranchisement cases it is important that this aspect was to be dealt with by the Assistant Solicitor. The work undertaken following the agreement is crucial and still needs to be conducted by an individual with indemnity cover and due to specific requirements the work is beyond standard conveyancing work.

22. The final item is item 45 and involves the anticipated time to deal with completion. The time claimed is 0.6 hours at £330 per hour and amounting to £198 plus VAT. The Applicants state that the remaining steps involve the tenant sending to the landlord the balance to complete and for the landlord to send the tenant the completed lease, the time allocated should be 18 minutes, namely 0.3 hours. The Respondents state that there are seven steps including a call/email to establish that funds are on the way; a call/email to the Applicants' solicitors to effect completion and date the lease; a letter to the Applicants' solicitors enclosing the signed/dated lease; preparing a statement of account to the third party including sending arrears or apportionments; a letter to the third party with the lease and accounting for ground rent and service charges so accounts can be amended; a letter to the valuer reporting with section 60 costs and completion; and a letter to the client with the signed lease.

Decision and Reasons for the Tribunal's Determination

23. It is accepted that enfranchisement work is complex, specialist work. The landlord is entitled to choose a specialist solicitor to act for them and it is noted that the Respondents have used Wallace LLP previous in respect of enfranchisement work. The higher charging rate proposed by Wallace LLP of £450 per hour is at the higher end of the spectrum but on balance it is not unreasonable. Therefore in respect of the issues raised in paragraph 13 above the time was accepted and the Tribunal determines that the rate of £450 per hour is not unreasonable. Therefore the total of £855.00 plus VAT is determined.
24. In respect of paragraph 14 above it is accepted that the work undertaken by the Respondents' solicitors is to ensure compliance regarding the initial notice and that the work is more extensive because of the involvement of a third party. However as a senior practitioner in this expert field undertakes this work, the Tribunal is of the opinion that the time taken in considering the initial notice of 48 minutes is excessive. Such a practitioner could deal with this matter including the additional issues in relation to the third party in 30 minutes (0.5 Hours). Therefore the Tribunal determines that the sum permitted for this item is £225 plus VAT.
25. Regarding the points raised in paragraph 15, the Tribunal accepts the explanation of the Respondents that the work involved was not requesting the documentation, but considering the documentation. Therefore the Tribunal confirms the sum of £40.00 plus VAT.
26. Paragraph 16 deals with the consideration of the valuation report. It is accepted that the consideration of the report does not amount to any specialist valuation knowledge. The report would need to be considered in its whole as ascertain whether the main legal aspects have been dealt with and to extract the relevant premium. The time claimed is 12 minutes (0.2 hours) and this is not unreasonable. The Tribunal confirms

the sum of £90 plus VAT.

27. The sums in paragraph 17 have been conceded by the Respondents.
28. The Tribunal accepts the explanation given by the Respondents that there was a typographical error and that the correspondence was sent to the client. Therefore the Tribunal confirms the sum of £66.00 plus VAT.
29. Items 32 and 33 described in paragraph 19 above relate to the clauses in the new lease. The Tribunal accepts that the additional work was as a consequence of the requirements of the Applicants. Therefore the Tribunal confirms the sum of £66.00 plus VAT.
30. Paragraph 20 above is for the sum of £66.00 for the preparation of the engrossments. The Tribunal accepts that this is more than an administrative task but considers that the work could have been undertaken by the paralegal. Therefore the Tribunal accepts the time of 0.2 hours but at a charging rate of £200. Therefore the sum determined by the Tribunal is £40.
31. In respect of the items described in paragraph 21, the dispute relates to the use of the assistant solicitor rather than the paralegal to undertake this work. The Tribunal accepts the Respondents' explanation that this involves some degree of conveyancing work and needs to be undertaken by the assistant solicitor. Therefore the Tribunal confirms the sum of £99.00 plus VAT.
32. Paragraph 22 deals with the final completion stage. The Tribunal notes the steps undertaken at this stage as detailed by the Respondents. However, the Tribunal are of the opinion that it would be unreasonable to spend this much time for the final stage given the level of knowledge of the assistant solicitor. The Tribunal determines that a reasonable amount of time for this item of work would be 0.4 hours and therefore the sum is £132.00 plus VAT.
33. There is not a full reconciliation between the Scott Schedule and the statement of account provided at pages 146 & 147 of the bundle. The total reduction in the legal fees either conceded or determined by the Tribunal is £305 plus VAT. The disbursements totalling £44.40 are agreed. Therefore the Tribunal determines the legal costs of £2,836.00 plus VAT and disbursements of £44.40.
34. In respect of the valuation fees, the Tribunal accepts the principle that the Respondents are entitled to utilise the services of the agent of their choice, subject to the principle that the costs would be reasonable if they are costs that the Respondents would pay if they were personally liable for those costs. The invoice that is provided suggests that the valuer took six hours to undertake the work at an hourly charging rate of £250.00 per hour. This level of fee would suggest a valuer with sufficient degree of

expertise to carry out this work. This is a straightforward lease extension case. The term was 125 years from 1984 and so at the valuation date there was no marriage value element. In the opinion of the Tribunal the time claimed for the valuation process in these circumstances seems excessive. The Tribunal consider that for a straightforward valuation undertaken by an expert in his field would take in the region of four hours. Therefore the Tribunal considers that a valuation fee of £1,000.00 plus £6.00 for disbursements plus VAT would be reasonable in this case.

Name: Chairman - Helen Bowers **Date:** 2 September 2016

Appendix

Leasehold Reform, Housing and Urban Development Act 1993

S60.— 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) Where by virtue of any provision of this Chapter the tenant's notice ceases to have effect, or is deemed to have been withdrawn, at any time, then (subject to subsection (4)) the tenant's liability under this section for costs incurred by any person shall be a liability for costs incurred by him down to that time.

(4) A tenant shall not be liable for any costs under this section if the tenant's notice ceases to have effect by virtue of section 47(1) or 55(2).

(5) A tenant shall not be liable under this section for any costs which a party to any proceedings under this Chapter before [the appropriate tribunal] ¹ incurs in connection with the proceedings.

(6) In this section “*relevant person*”, in relation to a claim by a tenant under this Chapter, means the landlord for the purposes of this Chapter, any other landlord (as defined by section 40(4)) or any third party to the tenant’s lease.

S91.— 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) the terms of acquisition relating to—

(i) any interest which is to be acquired by a nominee purchaser in pursuance of Chapter I, or

(ii) any new lease which is to be granted to a tenant in pursuance of Chapter II,

including in particular any matter which needs to be determined for the purposes of any provision of Schedule 6 or 13;

(b) the terms of any lease which is to be granted in accordance with section 36 and Schedule 9;

(c) the amount of any payment falling to be made by virtue of section 18(2);

(ca) the amount of any compensation payable under section 37A;

(cb) the amount of any compensation payable under section 61A;

(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) the apportionment between two or more persons of any amount (whether of costs or otherwise) payable by virtue of any such provision.

(9) [The appropriate tribunal] may, when determining the property in which any interest is to be acquired in pursuance of a notice under section 13 or 42, specify in its determination property which is less extensive than that specified in that notice.

(11) In this section—

“*the nominee purchaser*” and “*the participating tenants*” have the same meaning as in Chapter I;

“*the terms of acquisition*” shall be construed in accordance with section 24(8) or section 48(7), as appropriate

(12) For the purposes of this section, “*appropriate tribunal*” means—

(a) in relation to property in England, the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal; and

(b) in relation to property in Wales, a leasehold valuation tribunal.