

2870



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

Case Reference : **CHI/24UE/OC9/2013/0012**

Property : **14 Willow Court
Cleveland Drive
Fareham
Hampshire PO14 1TD**

Applicant : **David Maw**

Representative : **Glanvilles Solicitors**

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

Representative : **P Chevalier & Co, Solicitors
W H Mathews & 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 RTA Wilson**

Date of consideration: **24th February 2014**

Date of Decision : **17th March 2014**

DECISION

© CROWN COPYRIGHT 2014

The Application

1. By an application filed in October 2013, the Applicant lessee 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.
2. The application arose following service by the Applicant of a Notice of Claim under Section 42 of the Act, seeking a new lease of his flat. A new lease has been granted and in such circumstances the Applicant is 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.
3. Directions dated 11th October 2013 gave the parties 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.
4. Statements of case and a response with supporting documentation were filed as directed by the Tribunal.
5. There was no inspection of the property.

Summary of Decision

6. The conveyancing costs payable to the Respondent by the Applicant, pursuant to Section 60(1) of the Act, are £350 + VAT.

The Law and Jurisdiction

7. 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) ...

8. To be reasonable, costs must be reasonably incurred and reasonable in amount.

9. 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

10. The Respondent served a Counter-notice admitting that the Applicant had the right to acquire a new lease, but disputing the amount of the proposed premium. Following negotiation the premium was agreed and a new lease completed. On completion the Respondent requested payment of its conveyancing costs in the sum of £575 plus VAT. This sum was based on 19 x 6 minute units equating to a little less than 2 hours work charged out at an hourly rate of £250 plus £100 for letters which were charged for separately.
11. The sum of £780 was also requested for a valuation fee, which is not in dispute.
12. The Applicant contends that as from the 5th August 2013 the work was dealt with by Mr Chevaliers successor practice WH Mathews & Co and that it is inappropriate to sustain the argument from Mr Chevalier that he alone could deal with the work at his hourly rate of £250. He suggests that the work could and should have been carried out by a less senior fee earner at an hourly rate of £185.
13. The Tribunal is satisfied 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 18th October 2013 that it is liable to pay the amount of costs now being claimed. The hourly rate of £250 is approved throughout, 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. The Tribunal is not persuaded that immediately following the merger of practices it would have been cost effective to the paying party for different fee earners to be appointed. It is possible that the introduction of a new fee earner might have resulted in more time being spent in the new fee earner acquainting themselves as to the background facts and as to the title of the property.

14. However the Tribunal accepts that Section 60(2) requires the Tribunal to consider whether the costs claimed 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 the lease, and how long that work should reasonably take.
15. In respect of costs claimed under Section 60(1)(c) Mr Chevalier's time breakdown discloses that he spent nearly two hours; spread over 5 different dates running from 8th May 2013 to 4th October 2013.
16. The Applicant submits that a reasonable time to carry out the work under Section 60(1)(c) would be one hour given the wholly unexceptional documents involved in the transaction. They point to the fact that the new lease was drafted by reference to the previous lease and that the terms are virtually identical to six other lease extensions that were completed in the same block between March and September 2012. It is stated that the Applicant's solicitors prepared the draft lease extension based on the previous extensions.
17. 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". Mr Chevalier did not cite this authority but it runs contrary to several of the assertions made in his submissions.
18. 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.
19. However there is no evidence to suggest this was not an entirely straightforward lease extension without any complicating features. Although this is a specialised area of practice, an expert such as Mr Chevalier who can justify an hourly rate of

£250 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 understands what is involved. These factors should have reduced the time required on attendances, obtaining instructions and undertaking research.

20. It is unnecessary and disproportionate for the Tribunal to undertake a detailed analysis of each separate item of work/time claimed and comment on each authority cited by the parties. The Tribunal is entitled to rely upon its collective experience gathered over the years in deciding the amount of time reasonably required to undertake the conveyancing elements of this straight forward transaction
21. Having regard to all the evidence and submissions, and bearing in mind the work reasonably required for this wholly unexceptional transaction, the Tribunal determines that the maximum reasonable time for an experienced fee-earner who can justify an hourly rate of £250 to deal with the Section 60(1)(c) costs for the lease in this case would be 1 hour which equates to £250 + VAT. In addition £100 is allowed for the costs of letters.
22. These costs do not exceed those, which could reasonably have been expected to be incurred had the Respondent been personally liable to pay them.

Judge RTA Wilson

Dated: 17th March 2014

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.