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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference : LON/00BK/OC9/2017/0088

Property : Flat 4, Astral House, Regency Place,
London, SW1P 2EA

Applicant : Brickfield Properties Ltd

Representative : Wallace LLP

Respondents : F H & E A S Goetzen

Representatives : F Barnes Solicitors

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 May 2017 at
10 Alfred Place, London WC1E 7LR

Date of decision : 31 May 2017

DECISION

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

- Legal Fees - £1,528.00 plus VAT.
- Disbursements - £74.00 plus VAT

The Tribunal further makes an order that the Respondents reimburse to the Applicant the application fee of £100.00.

REASONS

Background:

1. This matter arises from an application made by the Applicant, Brickfield Properties Limited as the competent landlord of the Flat 4, Astral House, Regency Place, London, SW1p 2EA (the subject property). The application is dated 4 April 2017. The Respondents in this case are F H & E A S Goetzen, the leaseholders of the subject property. The application notes that the Nationwide Building Society have a mortgage or charge over the property and as such are an interested party.
2. The Tribunal issued Directions in respect of the application on 6 April 2017. 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 for the Applicant are the legal costs of £1,650.00 plus VAT; Land Registry fees of £30.00; courier fees of £44.00 plus VAT. The application form indicated that valuation fees of £750.00 plus VAT were being sought, however, in the Applicant's submission on costs it is stated that no valuation fees are recoverable.
4. The current application arises from an Initial Notice dated 25 October 2016 which suggested a premium of £10,000.00 and a Counter Notice of 21 December 2016 which suggested a premium of £129,975.00 for a lease extension for the subject property. The Counter Notice attached a form of a draft of the new lease and was accompanied by a letter that indicated that the Counter Notice was served without prejudice that the Initial Notice was invalid as it was not served on the competent landlord. Correspondence from Barnes Solicitors acknowledged the issue of validity of the Initial Notice and stated that the Respondents would not pursue the claim for a lease extension under the existing Initial Notice.

The Law:

5. Sections 60 and 91 of the Leasehold Reform, Housing and Urban Development Act 1993 are reproduced in the Appendix to this decision.

Costs Claimed:

6. A costs schedule was prepared by the Applicant. This schedule explained that the work was undertaken by two fee earners, a partner (Grade A) charging £465.00 per hour and a paralegal charging £200.00 per hour. The schedule indicated that the partner spent 3.7 hours on this matter and the paralegal spent 0.2 hours. The description of the partner's work involved the consideration of the Notice of Claim, various letters, emails and telephone calls to the valuer, the lessees and the client, considering the office copy entries, consideration of the valuation aspect of the claim, preparing the draft lease and the preparation of the Counter Notice. The paralegal spent 0.2 hours obtaining the office copy entries and the lease. These costs were incurred during a period from 31 October 2016 to 21 December 2016. In particular it is noted that the partner considered the office copy entries and the lease on 1 November 2016. There were various communications with the Applicant between 1 and 15 November 2015. Consideration of the valuation aspects of the claim (0.3 hours) occurred on 25 November 2016 and the preparation of the draft lease (0.5 hours) occurred on 6 December 2016.
7. Disbursements of £30.00 is sought for the Land Registry fees for the official office copies. Also a sum of £44.00 plus VAT is sought for courier fees. This sum seems to have been incurred on 21 December 2016 where it would appear the Counter Notice are associated documents was served on the Respondents' solicitors.

Applicant's Case:

8. The background of this case is that Astral Estates (London) Limited are the freeholder of Astral House, in which the subject property is located. The Applicant holds a head-lease of several flats in Astral House, including the subject property. The head-lease is dated 16 February 2011 and is for a term of 999 years. As such the Applicant is the competent landlord. The Respondents served a Notice of Claim, dated 25 October 2016 on Astral Estates (London) Limited. On serving the Counter Notice the Applicant indicated that as the Notice of Claim had not been served on the competent landlord it was invalid. This position seemed to have been accepted by the solicitors acting for the Respondents in their letter of 30 December 2016.
9. It is stated that Wallace LLP have been acting for the Applicant for several years and are the Applicant's solicitors of choice. The charge out rates are the usual rates for solicitors in Central London who have the relevant experience to deal with this complex area of law. Reference is made to the Tribunal decisions in Daejan Investments Limited v Parkside 78 Limited (LON/ENF/1005/03); Daejan Investments

Limited v Steven Kenneth Twin (LON/00BK/2007/0026) and Andrew Allen v Daejan Investments Limited (LON/00AH/OLR/2009/0343) that supported the level of charging rates and the use of a partner for this type of work as being reasonable.

10. It is further stated there have been no submissions from the Respondents and therefore it should be taken that there are no objections to the costs. As the Respondents have not engaged with the process and have not complied with the Tribunal's Directions, the Applicant also seeks a reimbursement of the £100.00 application fee.

Respondents' Case:

11. There are no representations from the Respondents in this case. The Nationwide Building Society are noted to be an interested party. Whilst they have sought a copy of the application, they have made no submissions.

Decision and Reasons for the Tribunal's Determination

Legal Costs:

12. Enfranchisement and lease extension work is a complex and specialist area of law and as such it is the opinion of the Tribunal that the Applicant is correct that it is entitled to utilise the services of a suitably qualified and experienced practitioner to undertake this work. The Tribunal acknowledges the principles set out in the cases cited by the Applicant. The respective charging rates proposed for the partner and the paralegal are reasonable for this type of work. Therefore, the Tribunal accepts the charging rates proposed by Applicant.
13. It is appreciated that the Respondents have made no submissions and as such would appear to have no objection to the costs being sought. However, given the level of experience and the length of their involvement with the Applicant, the Applicant's solicitors would have quickly been aware of the status of the Applicant as the competent landlord and the implications that this would have on the validity of the Notice of Claim. As such whilst it would have been necessary to take all prudent steps to protect the Applicant's interests there should have been some regard to the work undertaken at this stage. Especially given the principle under section 60(2) of the 1993 Act. In this case if the Applicant would have been personally liable for these costs then the solicitors would have had a duty to keep these costs to a minimum. The preparation of a draft lease at this stage would not appear to have been a reasonable step. The appropriate action to have taken is the preparation of the Counter Notice and letter noting the validity issue and for the Applicant to have reserved its position in relation to the draft lease. There is a total of 0.5 hours in relation to drafting the lease. Accordingly, the Tribunal makes a reduction to the total time spent by

the partner from 3.7 hours to 3.2 hours. At a charging rate of £465 per hour the costs in relation to the partner are £1,488.00. To this should be added the paralegal fees of £40.00, so total legal fees are £1,528.00 plus VAT.

14. The disbursements of £30.00 for the Land Registry fees seems reasonable considering the enquiries that had to be made and as such the tribunal determine that these are payable. The sum of £44.00 plus VAT for the courier fees are perhaps a prudent step to ensure that the documentation is received by the Respondents' representatives. There are certainly other steps that would be slightly cheaper to ensure safe receipt, but the difference in costs would be negligible. As such the Tribunal determines that the total disbursements of £74.00 plus VAT are reasonable and payable under section 60.

Valuation Fees

15. It is noted that the Applicant state that no valuation fees are recoverable.

Re-imbusement of Application Fee

16. The Applicant has made an application under Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. Under this rule the Tribunal may make an order requiring a party to reimburse to any other party the whole or part of any fee paid by the other party. In this case the Respondents have not engaged with the Applicant in discussing and trying to resolve this issue, additionally they have not complied with any of the Tribunal's Directions. Given that the whole issue may have resolved without the need for the application and the lack of engagement of the Respondents, it seems to the Tribunal that it would be reasonable for it to order that the application fee of £100.00 is reimbursed by the Respondents to the Applicant.

Name: Chairman - Helen Bowers Date: 31 May 2017



ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

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.