



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

Case reference	:	LON/00AH/OC9/2022/0172
Property	:	16 St James Court, St James Row, Croydon,Surrey,CR0 2 SE
Applicant	:	Brickfield Properties Limited
Representative	:	Wallace LLP
Respondent	:	Buy Prop Limited
Representative	:	No appearance
Type of application	:	Section 91(2)(d) and section 60(1) of the Leasehold Reform, Housing and Urban Development Act 1993
Tribunal members	:	Judge Cohen M. Taylor MRICS
Date of determination and venue	:	18 January 2023 by paper determination via video call
Date of decision	:	23 January 2023

DECISION

Background

1. The applicant is the long leaseholder of St James Court, St James Road, Croydon in which the property is situated. The Property is flat in the building. The Applicant is the competent landlord for the purposes of the Leasehold Reform, Housing and Urban Development Act 1993 (the **1993 Act**). Fencott Limited is an intermediate landlord as defined by section 40(4) of the 1993 Act. The intermediate landlord's lease is subject to a lease held at material times from 8 June 2021 until 18 February 2022 by the Respondent. The term of that lease was 99 years from 29 September 1934. The Respondent was a qualifying tenant as defined by section 5 of the 1993 Act. On 8 June 2021, Mr Shen completed a TR1 transfer of his lease of the flat to the Respondent.

2. On 6 July 2021 SCJ solicitors gave a notice of claim to a new lease of the Property to Daejan Properties Limited. Daejan Properties Limited is associated with the Applicant. The notice of claim was given on behalf of Samuel Shen pursuant to section 42 of the 1993 Act. The premium proposed for the grant of the new lease was £84,000. The Applicant now accepts that, by the transfer dated 8 June 2021, the benefit of the notice of claim was assigned to the Respondent. The Tribunal infers that the notice was given on behalf of Mr Shen because although he had transferred his lease of the Property to the previous month, the Respondent was not yet a qualifying tenant in its own right.
3. On 26 November 2021 the Applicant gave to the Respondent (and not Mr Shen) a counter-notice to the notice of claim without prejudice to a contention that the notice of claim was invalid. The premium and other amounts proposed for the grant of the lease claimed were about £170,000.
4. Wallace LLP drafted a new lease to be granted by the Applicant to the Respondent.
5. On 31 October 2021, the Respondent completed the sale of its lease in the Property. That sale was registered at HM Land Registry on 18 February 2022. The new proprietor was MC Housing Limited. but there is no evidence of the benefit of the claim being assigned by the Respondent. The contract entered into on 31 October 2021 provided at clause 30 for the Respondent to assign to the buyer on completion the benefit of the notice of claim. No evidence was produced to the Tribunal that the benefit of the notice of claim was assigned by the Respondent to its buyer
6. On 20 July 2022, Wallace LLP, as solicitors for the Applicant wrote to SCJ solicitors stating that no application had been made to the Tribunal under section 48(1) of the 1993 Act. The notice of claim was deemed withdrawn. The letter claimed the Applicant's costs under section 60 of the 1993 Act as follows (all amounts inclusive of VAT):

Legal fees	£3,000
Land Registry fees	£ 42
Valuation fees	£ 1,080
Intermediate landlord's fees	£ 315
Total	£ 4,437

7. In their ensuing correspondence, SCJ accepted that they acted also for the Respondent. No other agreement was reached.

8. On 21 October 2022 the Applicant applied to this Tribunal under section 60 (1) for a determination of its reasonable costs. The Applicant claimed the amounts and items recorded above. The Respondent was the only party against whom the Applicant sought a determination.
9. The Tribunal finds that the benefit of the notice of claim was assigned by Samuel Shen to the Respondent but was not assigned (on the evidence produced to the Tribunal) by the Respondent to MC Housing Limited. Accordingly, the Tribunal finds that the Respondent is liable for reasonable costs as determined by the Tribunal.
10. The Respondent did not make submissions to the Tribunal.

The Law

11. In this section the Tribunal draws on the review of the principles by Judge Professor Robert M. Abbey in *Deritend Investments (Birkdale) Limited v Harouni* MM/LON/00BK/0C9/2022/0113.
12. The statutory law applicable to this dispute is set out in the Appendix annexed to this decision.
13. Judicial guidance on the application of costs provisions was given in the case of *Drax v Lawn Court Freehold Ltd* [2010] UKUT 81 (LC), LRA/58/2009. That case concerned the proper basis of assessment of costs in enfranchisement cases under the 1993 Act, whether concerned with the purchase of a freehold or the extension of a lease. The decision (which related to the purchase of a freehold and, therefore, costs under section 33 of the Act, but which is equally applicable to a lease extension and costs under section 60) established that costs must be reasonable and have been incurred in pursuance of the initial notice and in connection with the purposes listed in sub-sections [33(1)(a) to (e)]. The respondent tenant is also protected by section 33(2) which limits recoverable costs to those that the applicant landlord would be prepared to pay if it were using its own money rather than being paid by the tenant.
14. In effect, this introduces what was described in *Drax* as a “(limited) test of proportionality of a kind associated with the assessment of costs on the standard basis.” It is also the case, as confirmed by *Drax*, that the landlord should only receive its costs where it has explained and substantiated them.
15. It does not follow that this is an assessment of costs on the standard basis (let alone on the indemnity basis). This is not what section 60 says, nor is *Drax* an authority for that proposition. Section 60 is self-contained.
16. There is further guidance in *Dashwood Properties Limited v Beril Prema Chrisostom-Gooch* 2012 UKUT 215: -

20. The value of a dispute and the amount to be gained, or lost, by a party, is always a matter that a party will bear in mind when considering whether to incur costs and the level of those costs.

*21. While the issues involved in enfranchisement claims can undoubtedly be complex and LVT decisions in *Daejan Properties Ltd v Parkside 78 Ltd* LON ENF 1005/03, followed in *Daejan Properties Ltd v Twin* LON/00BK/0C9/2007/0026 and *Daejan Properties Limited v Allen* LON/00AH/OLR/2009/0343 establish that the LVT accepted that a landlord is entitled to instruct the solicitors of its choice and is not obliged to instruct the cheapest or most local solicitors, the LVT were perfectly entitled to take into account the actual sum in dispute in determining whether the costs of professional services in investigating the tenant's right to a new lease were reasonable and that the investigation was reasonably undertaken. The LVT were entitled to determine that costs far in excess of the amounts involved were not costs that "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" and the appeal on this ground therefore fails.*

The case of *Dashwood* has in setting out the details above helped further clarify how reasonable costs are to be determined in an enfranchisement claim such as this one.

17. Thus, a court would look at what expenses were reasonable and appropriate by looking at the least amount a party in proceedings could be reasonably anticipated to have spent in order to have demonstrated to the court that it had presented its case in an effective and competent manner. Overall, the Tribunal will take a broad-brush approach to the question of costs but only in the light of the clear judicial guidance set out above

The determination

18. The Tribunal turns to the four specific heads of claim.
19. On behalf of the Applicant, Wallace LLP referred to cases in which they had represented the landlord in claims under the 1993 Act. The Tribunal considered that each case must be assessed on its own facts. No useful purpose would be served by a review of those cases and their facts. This would be a disproportionate exercise. What is needed is due consideration of the facts and circumstances concerning this abortive new lease claim.
20. The Applicant submitted that the case was complex and required attention from a partner at Wallace LLP. The Tribunal did not consider that this was a complex case compared to the complete range of property litigation or even cases under rights to enfranchise or to claim a new lease. However, these cases do require experience and, on balance, the attention of a grade A fee earner (having over eight years' experience) was reasonable resourcing.
21. The rate claimed for the principal grade A fee earner was £495 per hour. The Senior Courts Costs Office guideline rate for a grade A fee earner in a central London firm is £373 per hour which is the rate that would be applied on a detailed assessment of costs on the standard basis. This rate is consistent with a solicitor whose time is charged on the London band 2 (which is the band here) charging the solicitor' own client a rate exceeding £500 per hour. Therefore, the rates claimed for the grade A fee earners is not unreasonable.
22. The Tribunal reviewed the work claimed and the breakdown supplied. The Tribunal did not identify any duplication or other points of concern.
23. The claim for Wallace LLP's fees is accepted.
24. The claim for valuer's fees provided for a rate of £280 per hour. The Tribunal, based on its experience, finds that rate to be excessive and that £250 per hour is the maximum reasonable rate. Adjusting the claim, the valuer's fee is reduced to £960 inclusive of VAT.

25. The Tribunal allows £24 for Land Registry fees, which is the amount in the summary produced by Wallace LLP.
26. There was no invoice from the solicitors for the intermediate lessor and no evidence of any work being performed by them. This item is disallowed.
27. The items determined as reasonable total £3984.
28. The Tribunal then stood back to consider overall reasonableness. The premium claimed by the Applicant was £86,000 more than proposed by the Respondent. The Tribunal, in its judgment finds that a reasonable lessor in the position of the Applicant would have paid £3984 for the work performed if paying from its own resources.

The Tribunal's determination

29. The Tribunal determines that Respondent, Buy Prop Limited is liable to pay the Applicant's costs under section 60 of the 1993 Act.
30. The Tribunal determines those costs at £3984.

Name: Judge R Cohen
Tribunal Member M
Taylor

Date: 23 January 2023

Appendix:

The statute law

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) 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 **[F1**the appropriate tribunal**]** 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.

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) 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; ...

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

