Neutral Citation Number: [2024] UKUT 361 (LC)

Case No: LC-2024-222

IN THE UPPER TRIBUNAL (LANDS CHAMBER)
IN THE MATTER OF A NOTICE OF REFERENCE

14 November 2024

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

COMPENSATION – disturbance – legal fees – whether transactional fees reasonable in amount – whether fees for legal advice reasonably incurred in addition to fees of surveyor – rule 6, s.5, Land Compensation Act 1961

BETWEEN:

TRACY CHAMBERS

Claimant

-and-

SECRETARY OF STATE FOR TRANSPORT

Compensating Authority

40 Comelybank Drive,
Mexborough
S64 OEP

Martin Rodger KC, Deputy Chamber President

Decision on written representations

The following case is referred to in this decision:

Director of Buildings and Lands v Shun Fung Ironworks Ltd [1995] 2 AC 111, PC

Introduction

1. On 4 April 2018 the claimant, Tracey Chambers, entered into an agreement with the Secretary of State for Transport for the sale of her home in Mexborough which was blighted by the HS2 railway scheme. The agreement was for a sale at an agreed price of £162,500 and provided for the other heads of compensation to which the claimant is entitled under the statutory compensation code to be agreed later. In the event that a consensus could not be reached the agreement provided for compensation to be determined by this Tribunal.

2. The parties have agreed all heads of compensation other than the professional fees of the claimant's solicitors, Charles Russell Speechlys LLP of Guildford in Surrey (the Solicitors), for advising her in connection with the acquisition of her property and for acting on the sale. It is agreed that the claimant is entitled to be repaid professional fees reasonably incurred in consequence of the acquisition as compensation for disturbance under rule 6 in section 5, Land Compensation Act 1961. The amount to which she is entitled is not agreed and has been referred to the Tribunal by the claimant.

3. Comleybank Gardens is a residential street on a modern housing estate which was safeguarded for the route of phase 2 of HS2 in November 2016. In January 2017 a blight notice was served on the acquiring authority on the claimant's behalf by Roger Hannah & Co, chartered surveyors (the Surveyors). The notice was accepted and on 13 March 2017 a claim for compensation was submitted by the Surveyors. A few days later the Solicitors opened a file in the claimant's name, but apart from initial compliance checks no work was recorded on that file until November. Work continued to be recorded on the file until February 2020.

4. The purchase price of the claimant's property was agreed with the acquiring authority by the Surveyors, who also negotiated other heads of compensation. The claimant has received full reimbursement of the Surveyors' fees of £4,467 (inclusive of VAT) for acting for her in connection with the blight notice and compensation claim.

5. The claimant has also received and paid two invoices from the Solicitors. The first, dated 26 February 2020 was in the sum of £5,762 plus VAT of £1,151.20, and was described as being in respect of "HS2 Advice – 40 Comleybank Drive". The second, dated 10 March 2020, was headed "HS2 – Sale of 40 Comleybank Gardens" and totalled £4,809 plus VAT of £960. Including VAT, the total amount paid by the claimant to the solicitors was therefore £12,682.20.

6. Details of the tasks undertaken by the Solicitors are provided in two time sheets, one for each invoice. The first invoice is in respect of work mostly undertaken by Mr Richard Flenley, a partner specialising in real estate disputes. His firm's website quotes a testimonial describing him as "exceptionally gifted at delivering the right outcomes for high value clients in complex property litigation". A second, more junior solicitor also undertook a smaller amount of the work towards the end of the period covered by the first invoice. The time sheet shows that the two litigation solicitors billed a total of just under 20 hours at an average hourly rate (excluding VAT) of just under £294.

7. The second Solicitor's invoice was in respect of transactional work on the sale of the property. Most of that work was undertaken by two solicitors, one handing the file over to

the other early in March 2018. Two more senior solicitors provided a small amount of supervision, and two others are recorded as each having undertaken a very small amount of work on one occasion. The transactional work billed amounted to almost 27 hours at an average hourly rate (excluding VAT) of £177.

8. The payment of compensation for disturbance, including reimbursement of costs incurred by a claimant as a consequence of their property being compulsorily acquired, is necessary to achieve the object of the compensation code, namely, to put the claimant into the same position, so far as money can achieve it, as they would have been in had their property not been taken. This is the principle of equivalence. As Lord Nicholls explained in *Director of Buildings and Lands v Shun Fung Ironworks Ltd* [1995] 2 AC 111, PC:

> "… a claimant is entitled to be compensated fairly and fully for his loss … a person is entitled to compensation for losses attributable to the taking of his land, but not to any greater amount."

9. Like any other type of disturbance compensation, professional fees may be recovered by a claimant only if they were caused by the acquisition, and are not too remote from it, provided the claimant has behaved reasonably in seeking to mitigate the expense which she has incurred.

10. The acquiring authority challenges the claimant's entitlement to recover the full amount claimed essentially on grounds of mitigation. It is said that it was not reasonable to incur fees in the amounts claimed, that much of the work was unnecessary or duplicated work undertaken by the Surveyors, and that the same outcome could have been achieved at a much lower cost. The Solicitors dispute these propositions.

11. The principle of mitigation, as it applies to compensation for disturbance, was explained by Lord Nicholls in *Shun Fung*, as follows:

> "The law expects those who claim recompense to behave reasonably. If a reasonable person in the position of the claimant would have taken steps to eliminate or reduce the loss, and the claimant failed to do so, he cannot fairly expect to be compensated for the loss or the unreasonable part of it. Likewise if a reasonable person in the position of the claimant would not have incurred, or would not incur, the expenditure being claimed, fairness does not require that the authority should be responsible for such expenditure. Expressed in other words, losses or expenditure incurred unreasonably cannot sensibly be said to be caused by, or be the consequence of, or be due to the resumption."

12. I will begin with the fees incurred in the sale of the property. The acquiring authority does not dispute the claimant's right to recover fees for the work covered by the second invoice. The main point taken is that the total of £4,809 (excluding VAT) is disproportionate and excessive for the sale of a modest house of recent construction with an uncomplicated title. The acquiring authority has offered £1,000, which is said to be the average sum paid as compensation in respect of legal fees on the sale of 106 properties on Comleybank Drive. Further details of this figure are provided in a witness statement of Mr Simon Layland, a chartered surveyor working for High Speed Two (HS2) Ltd. He explains that legal fees for a sale only (rather than a sale and purchase) paid to 43 owners on Comelybank Drive ranged between £500 and £2,450 with an average of £880. The highest fee paid for a sale

and purchase was £4,250. These figures omit fees paid to the Solicitors (i.e. to Charles Russell Speechlys LLP) where they acted on two other transactions, one a sale only where the fee paid was £6,500, the other a sale and purchase where the fee paid was £6,000. No details of the Solicitors' fees on these other transactions have been provided and I do not know whether they include fees for advice as well as transactional services.

13. The fees claimed in connection with the sale of the property are almost double the next highest fee paid for the work of any other solicitor on another sale; they also exceed by 13% the highest fee paid to any other solicitor for a sale and purchase, which would necessarily involve more work. These figures suggest either that the work done by the Solicitors in relation to the sale was excessive, or that the rate at which it was charged was excessive.

14. The acquiring authority suggests that the work should have been done by a Grade C fee earner at a rate of £146, whereas the average rate at which it was done was £177, which is equivalent to Grade B. Applying the lower rate to the 27 hours billed would result in a fee of £3,942. The claimant was not required to engage the cheapest solicitors she could find, nor even local solicitors, and having been introduced to a firm who specialised in compulsory purchase at an early stage I do not think it was unreasonable for her to remain with them and for work to be done at their usual rates.

15. It has not been suggested that there was any complexity in the transaction, or that it was more complex than the other acquisitions in Comleybank Drive. It is apparent from the timesheet that considerable time was incurred in internal communications between the transactional lawyers and Mr Flenley; frequent reference is also made to phone calls with the claimant herself.

16. The Solicitors' riposte to the suggestion that more time was spent on the transaction than was reasonable is to agree but to blame delays and lack of engagement by the acquiring authority's solicitors. But apart from a very small sum, fees were incurred in the transaction itself over a period of less than four months. The only examples of delay given by the Solicitors relate to the negotiation of compensation rather than to the transactional work, and nothing in the second time sheet suggests that significant time was spent chasing for responses. I am therefore satisfied that the conveyancing bill, which is out of proportion to the value of the property and the complexity of the job, was not inflated significantly by delay on the part of the acquiring authority's solicitors. Unnecessary internal liaison, and a higher level of communication with the client than perhaps would have been permitted had the bill not been payable by someone else, both contributed more significantly to the time spent on the file.

17. Allowing 20 hours at the transactional Solicitors' average hourly rate produces a fee of £3,540; with disbursements I am satisfied that the reasonable cost of the transactional work done on the claimant's behalf was £3,600 plus VAT.

18. As for the advisory work, the acquiring authority disputes the entirety of the fee incurred by the claimant for the Solicitors' advice. The first invoice suggests that very little advice was given and that most of Mr Flenley's charges before September 2018 were incurred in discussing the acquisition with other people within his own firm, or with the Surveyors. It is said by the Solicitors that after the blight notice had been accepted they were engaged to provide advice "as to the approach to resolving matters if agreement could not be

reached". But agreement was reached on all heads of compensation other than the Solicitors' own fees and they have not demonstrated that they contributed much of any value to that process. The Surveyors were themselves experts in compulsory purchase and compensation and no issue has been identified on which litigation advice was required; had there been some such issue then it no doubt would have been reasonable for specific legal advice to have been sought, but it was not reasonable for one solicitor to incur fees looking over the shoulder of another.

19. For these reasons I allow £1000 to cover the initial work in opening the file and giving initial advice, which ought reasonably to have been to the effect that the matter could safely be left in the hands of the transactional solicitors and the Surveyors, without litigation involvement, unless a problem was encountered.

20. Once the transaction had been completed in September 2018 a further £1,600 was incurred in fees, mostly by a less senior lawyer, in connection with the compensation claim itself. That must have involved some significant overlap with the work being done by the Surveyors. On what appears to have been a straightforward matter, other than in connection with professional fees, it was not reasonable for the claimant to incur the expense of two different professionals to achieve an outcome which either of them could equally well have achieved on their own. The claimant was nevertheless entitled to be advised, including on the disputed transactional fees for which she has recovered more than the acquiring authority was offering, and for that advice I allow a further £600.

21. The total I award in relation to the disputed fees is therefore £5,200 plus VAT of £1,040, totalling £6,240. That total is of the same order as the acquiring authority says it has paid in respect of the fees of the Solicitors on the two other acquisitions at Comelybank Drive on which they have acted.

22. The parties may now make further submissions concerning the costs of the reference which I will determine summarily.

Martin Rodger KC,
Deputy Chamber President
14 November 2024

Right of appeal

Any party has a right of appeal to the Court of Appeal on any point of law arising from this decision. The right of appeal may be exercised only with permission. An application for permission to appeal to the Court of Appeal must be sent or delivered to the Tribunal so that it is received within 1 month after the date on which this decision is sent to the parties (unless an application for costs is made within 14 days of the decision being sent to the parties, in which case an application for permission to appeal must be made within 1 month of the date on which the Tribunal's decision on costs is sent to the parties). An application for permission to appeal must identify the decision of the Tribunal to which it relates, identify the alleged error or errors of law in the decision, and state the result the party making the application is seeking. If the Tribunal refuses permission to appeal a further application may then be made to the Court of Appeal for permission.