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

Case Reference : **BIR/OOCN/OLR/2015/0058**

Property : **4 Stratford Court, Maney Hill Rd,
Sutton Coldfield B72 1JH**

Applicant : **Mr MJ and Mrs A Powell**

Representative : **Adcocks solicitors**

Respondent : **Maecroyd Investments Ltd**

Representative : **Brethertons solicitors**

Type of Application : **S60 Leasehold Reform, Housing and Urban
Development Act 1993.**

Tribunal Members : **D Jackson
N Thompson FRICS**

**Date and venue of
Hearing** : **Determination without a hearing Rule 31(4)**

Date of Decision : **7th June 2016**

DECISION

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Background

1. On 1st June 2015 Anthony Brunt & Co, Surveyors for the Applicants applied to the Tribunal for a determination as to the premium payable for lease extension of the Property and also for a determination as to freeholders costs.
2. Ultimately the premium was agreed between the parties and that part of the proceedings was struck out by the Tribunal on 22nd March 2016.
3. The Tribunal issued Directions in relation to s60 costs as part of its Decision of 22nd March 2016.
4. On 20th April 2016 solicitors for the Respondent asked for further time to comply with Directions. An extension of time was granted and Submission provided by the Respondent in the form of a letter from their solicitors dated 5th May 2016 together with enclosures.
5. Solicitors for the Applicant rely on the Submission of Mr Anthony Brunt dated 19th May 2016 sent under cover of solicitor's letter of the same date.
6. The Tribunal indicated in Directions that it proposed to deal with the matter of s60 costs without a hearing under Rule 31(4). Neither party has objected.

Legal Costs

7. At the time of the application to the Tribunal the Respondent was represented by Kerwoods solicitors. However on 23rd November 2015 Kerwoods notified the Tribunal that the Respondent had instructed Brethertons solicitors in their place.
8. Brethertons have, quite properly, not sought to recover their costs under s60. Brethertons involvement has been solely in connection with Tribunal proceedings and accordingly their costs are not recoverable under s60.
9. The sole issue for determination is the recoverability of costs of Kerwoods, whose retainer was terminated in November 2015.
10. In their letter of 20th April 2016 requesting an extension of time Brethertons indicated that they had asked the previous solicitor at Kerwoods for "a copy of the invoice and (presumably redacted) terms of engagement: we have also asked him to provide a note of letters and emails in and out with an estimate of the time spent on documents".
11. Brethertons have correctly anticipated the information that a Tribunal would require in order to make s60 determination. That information should have been readily and easily obtainable by their client's previous solicitor.
12. However when lodging Submission on behalf of the Respondent on 5th May 2016 Brethertons indicated that "We have been unable to obtain any further details from our client's previous solicitors, Kerwoods. The only correspondence we have had in respect of our client's previous solicitors' costs is in the form of the enclosed email."
13. The relevant email from Richard Caley of Kerwoods is dated 19th April 2016:

"Roger,

Thanks for the offer.

Under Heads of Terms we were to be paid a fixed fee of £750 plus VAT and disbursements (£6:00 for office copies of freehold title).

So no time recording. Virtually all work save completion was carried out.

Is this sufficient?

Regards,

Richard Caley"

14. Brethertons concede that there is “an unfortunate paucity of evidence in relation to our client’s previous solicitors’ costs”. They rely on **Metropolitan Property Realizations Ltd v Moss** [2013] UKUT 415(LC) and in particular “Had the LVT asked itself whether on the balance of probabilities, there existed a contract for the supply of legal services which obliged the landlord to pay, there could have been only one answer.”
15. We find as fact that the Respondent has no liability to make payments to Kerwoods and furthermore has not incurred any legal costs for the purposes of s60.
16. We take very seriously the failure of Kerwoods to produce the documents, perfectly reasonably requested, by Brethertons. Kerwoods have failed to produce terms of engagement (i.e the contract for supply of legal services). Kerwoods refer to agreement contained in the Heads of Terms. That is a wholly different basis for recovery from that under terms of engagement with their then client. The failure to enter into terms of engagement or a similar document is a serious professional failing. We find that a solicitor could not recover costs from his client if he had not complied with his professional obligations in regard to providing the sort of information that would be required under terms of engagement or similar document.
17. Here there was a fixed fee arrangement. However Kerwoods did not carry out all work up to and including completion. As Kerwoods have not completed the transaction, in the absence of terms of engagement specifying what would happen on early termination of the retainer, the fixed fee is not payable.
18. A client’s liability to pay only arises on presentation of an invoice. No invoice has been produced by Kerwoods. If a bill had been presented to the Respondent the Tribunal is entitled to have expected that the Respondents current representatives would have produced a copy. In the absence of any such evidence we find as fact that no bill has yet been raised. As Kerwood retainer was terminated in November 2015 they would have been obliged to produce their bill within a reasonable time thereafter. When Brethertons produced their submission nearly 6 months later there was still no bill. It is too late for a bill to be produced after such inordinate delay and if Kerwoods does so now their former client would be entitled to refuse payment on the grounds of delay.
19. In the absence of a bill or terms of engagement the Tribunal can only find that the Respondent has no liability to pay Kerwoods anything at all following termination of their retainer and accordingly we find the Respondent has not incurred any legal costs for the purposes of s60.

Surveyor’s fees

20. In stark contrast to Kerwoods solicitors Ms Sarah Abel of Lawrence and Wightman has produced copy invoice, timesheet and invoice.
21. The claim for surveyor’s fees is for £600 plus VAT.
22. Anthony Brunt in his Submission of 19th May 2016 produces a detailed analysis of the Lawrence and Wightman invoice and submits that the appropriate valuation fee is £300 plus VAT.
23. Mr Brunt does not dispute hourly rate of £150.
24. We agree that the time spent on 9/12/14 of 54 minutes is not reasonable and we reduce that part of the claim to 30 minutes.
25. We also agree that planning enquiries also on 9/12/14 are not recoverable and we do not allow 10 minutes claimed.
26. We find that the rest of the time spent by Ms Abel is reasonable. Accordingly we allow £510 plus VAT.

Decision

27. The Applicant is not liable for any legal fees under s60 of the 1993 Act.
28. The Applicant is liable for surveyor's fee under s60 in the sum of £510 plus VAT.
29. The Applicant is only liable for VAT to the extent that the Respondent is not registered for VAT or is not able recover VAT. Representatives for the Respondent must confirm their client's VAT status to representatives for the Applicant within 7 days of the date of issue of this Decision.

D Jackson
Judge of the First-tier Tribunal.

11 July 2016