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

Case reference : LON/00AG/0C9/2017/0112

Property : Flat 708 Endsleigh Court Upper
Woburn Place London WC1H 0HW

Applicant : Rajinder Paul Dongha

Representative : Roulla Georgiou Solicitors

Respondent : LKB Investments Limited

Representative : Wallace LLP

Type of application : Determination of costs to be paid
under section 60(1) of the
Leasehold Reform Housing and
Urban Development Act 1993 (“the
Act”)

Tribunal member(s) : Ruth Wayte (Tribunal Judge)

Date of decision : 23 January 2018

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the section 60 costs payable by the applicant is £4,000 plus VAT where applicable.

Background

1. This is an application for a determination of costs under section 91(2)(d) of the Act. Under section 60 a claimant leaseholder is required to pay the reasonable costs incurred by the landlord in connection with a claim for a new lease. Copies of both statutory provisions are annexed to this decision.
2. The Applicant is the leasehold owner of the flat known as Flat 708 Endsleigh Court, Upper Woburn Place, London WC1H 0HW registered at HM Land Registry under title number NGL 889602 ("the Flat"). The Applicant instructed Roulla Georgiou Solicitors as his solicitor.
3. The Respondent is the freehold owner of Endsleigh Court, Upper Woburn Place, London WC1H 0HA registered at HM Land Registry under title number NGL963053 and is the landlord of the Flat.
4. On 18 November 2016 the Applicant served on the Respondent a notice of claim to exercise the right to acquire a new lease of the Flat pursuant to section 42 of the Act.
5. On 26 January 2017, the Respondent served on the Applicant a counte notice pursuant to section 45 of the Act.
6. On 24 April 2017 the Applicant applied to the First Tier Tribunal Property Chamber (Residential Property) for determination of the premium and other terms of acquisition remaining in dispute pursuant to section 48 of the Act and for determination of reasonable costs pursuant to section 60 of the Act.
7. On 21 November 2017 the premium and other terms of the lease were agreed between the parties. The premium agreed was £49,651. There is however no agreement as to costs.
8. The tribunal issued its standard costs directions on 1 December 2017 providing for the landlord to send the applicant a schedule of costs suitable for summary assessment and for statements of case from both parties. Neither party requested an oral hearing and the application was therefore determined on the papers on 23 January 2018.

The applicant's case

9. The costs claimed were £2,500 plus VAT for legal costs, £1,500 plus VAT for the valuer's costs and £6 for Office Copy Entries.
10. The objections raised by the applicant can be summarised as follows:
 - (i) The application was not complicated. The title was straightforward, the leases in standard form and the premium modest.
 - (ii) Wallace LLP were familiar with the development and the leases. They were involved in multiple lease extension applications, including 4 current applications.
 - (iii) The rates charged by the partner (£465) and assistants (£365) were too high for the transaction. There was no need for a partner's involvement and a rate of £317 for the assistants based on the SCCO Guidelines is a reasonable hourly rate.
 - (iv) The total time of 6.5 hours was excessive and unreasonable. 4.9 hours was more reasonable, particularly bearing in mind the simplicity of the matter and the experience of the advisors.
 - (v) The disbursements of £6 were not reasonably incurred as title was deduced at the same time as the section 42 notice was served.
 - (vi) The valuation fee was excessive and unreasonable. It was claimed that no inspection took place and that the time taken should be reduced to 2.85 hours at an hourly rate of £300 plus VAT. Again, office copy entries were also provided and should be excluded.
 - (vii) They disputed that the landlord would accept paying full legal and valuer's fees for effectively repeat instructions in the same development.
11. The applicant therefore submitted that legal costs of £1,553.30 plus VAT and valuer's fees of £712.50 plus VAT were reasonable, with no payment for the Office Copy Entries.

The respondent's case

12. The respondent relied on other recent first tier tribunal decisions which accepted the use of a partner, the hourly rates sought and time ranging between 6-8 hours per claim. Their response to the objections raised by the applicant can be summarised as follows:

- (i) The provisions of the Act are in general terms complex, each Notice of Claim served must be reviewed individually and separately to any other notice. The leases are not in standard form.
- (ii) LKB's solicitors do not have a standardised procedure, applications for lease extensions at this block are dealt with at different times and in many cases by different solicitors.
- (iii) LKB's solicitors have a long history of dealing with enfranchisement work for LKB. The rates are consistent with other Central London firms.
- (iv) The time claimed reflects the work required to be undertaken by a conscientious practitioner in the technical area of leasehold enfranchisement. 6-7 hours is spent in every case.
- (v) It is the standard practice of LKB's solicitors to immediately request title documentation upon receipt of instructions, given the strict time constraints for serving a counter-notice.
- (vi) The valuer provided his own statement in reply, providing copies of his inspection notes, clarity that the office copy entries were in respect of comparable flat sales and research was required to check consistency. He maintained that five hours was if anything an understatement of the time taken.
- (vii) It was confirmed that the respondent is charged on the same hourly rates, including partner's time for all non recoverable legal work in respect of enfranchisement and other legal work.

The principles

- 13. The basis for assessing costs in enfranchisement cases was set out in the Upper Tribunal decision of *Drax v Lawn Court Freehold Ltd* [2010] UKUT 81 (LC). Costs must be reasonable, have been incurred in pursuance of the initial notice and in connection with the matters listed in sub-sections 60(1)(a) to (c). Section 60(2) also limits recoverable costs to those that the respondent landlord would be prepared to pay. This was described in *Drax* as a limited test of proportionality. It is not an assessment on the standard or indemnity basis.
- 14. Wallace LLP rely on several first tier tribunal decisions. None of these are binding on this tribunal. They also refer to the Court of Appeal decision of *Wraith v Sheffield Forgemasters Ltd* [1998] 1 WLR 132. That case established the principle that a party has a right to choose their own legal representative but not to demand reimbursement of the extra costs from a "luxury choice".

The tribunal's determination and reasons

15. The tribunal accepts that enfranchisement is of sufficient complexity and importance to require the attention of a partner, particularly at the initial stage. As stated above, the respondent is entitled to choose their own legal representative. The respondent has claimed that it does indeed pay the rates sought which, while towards the upper end of reasonableness, reflect the firm's expertise and reputation in this line of work. The SCCO Guidelines have not been updated since 2010. In the circumstances the tribunal considers that the hourly rates charged by Wallace LLP are reasonable in the context of a section 60 application.
16. Again, the time taken of 6.5 hours was not excessive or unreasonable. From the tribunal's own expertise in these matters and as has been demonstrated by the copies of other decisions, 5 to 7 hours is the average.
17. Although this is a minor matter, the tribunal is not convinced that separate office copy entries were reasonable given the fact that title was deduced with the application and therefore does not allow the additional £6.
18. Likewise, the surveyor's costs are within the range of average costs for these cases. The tribunal finds as a fact that an inspection was carried out and in the circumstances the time taken was reasonable. An hourly rate of £300 is also not unreasonable. Disbursements do not appear to have been charged separately.
19. In the circumstances the tribunal determines that the section 60 costs are as claimed less £6 in respect of the office copy entries, making a total of £4,000 plus VAT.

Name: Ruth Wayte

Date: 23 January 2018

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).

Annex

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.