

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL

Property : 82a Southwold Road, Watford, Herts WD24 7FH

Applicant : David Howard Warren

Respondents : Peter John Cutler
Anne Nellie Cutler
Barnett Waddingham Trustees Limited
(Trustees of the SGIK Directors Pension Scheme)

Case Number : CAM/26UK/OC9/2008/0001

Dated of Application : 8th May 2008

Type of Application : To determine the reasonable costs payable by the applicant to the respondents in connection with the grant of a new lease pursuant to section 60 of the Leasehold Reform, Housing & Urban Development Act 1993.

Tribunal : Stephen Reeder, lawyer chair
Mrs HC Bowers BSc(Econ) MRICS MSc
Mrs Sarah Redmond BSc ECON MRICS

DETERMINATION

Determination

- 1. The Tribunal determines that the costs payable by the applicant to the respondents in connection with the grant of a new lease of 82a Southwold Road, Watford, Herts WD24 7FH are £1911.34 (incl VAT). The Tribunal's reasoning is set out below.**

Background

- 2. The respondents are the freehold landlords of the property. The applicant is the tenant of the same and applied for a new lease pursuant to Leasehold Reform, Housing & Urban Development Act 1993. The landlord admitted the tenant's right to a new lease. The**

parties agreed the lease term, covenants, rent payable and premium for grant. The sole issue requiring determination by the Tribunal is of the costs payable by the tenant pursuant to section 60 of the 1993 Act.

Procedure

3. The applicant served on the respondents a section 42 Notice of Claim to exercise his right to a new lease of the premises on 27th August 2007. The respondents admitted that right by section 45 Counter Notice dated 11th October 2007. The parties reached agreement on all matters bar the issue of the costs payable by the tenant pursuant to section 60.
4. By application dated 8th May 2008 the applicant sought a determination of the costs payable by the tenant pursuant to section 60. A hearing was sought. The Tribunal issued an order allocating the application for a determination by hearing on the standard track, and issued directions. By correspondence dated 5th June, 3rd July and 4th July the parties elected for the application to be re-tracked to a paper determination. On 11th July the Tribunal notified the parties that a paper determination would be made on 4th September 2008.

The Law

5. Section 60(1) of the 1993 Act provides –

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, 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.

6. Section 91(1),(2)(d) of the 1993 Act provides that, in default of agreement, any question arising in relation to the costs payable pursuant to section 60 shall be determined by a leasehold valuation tribunal.

The Respondents' claim

7. The Respondents rely upon their completion statement and written costs submissions from their solicitors Messrs P Chevalier, together with supporting documents from their valuer Messrs Hurst Management and from the respondent Sinclair Gardens Investments (Kensington) Ltd ('SGIK'). Mr Chevalier also provides a voluminous bundle of legal materials including CPR Pts 44 & 48 extracts, Court of Appeal decisions, High Court (QBD) decisions, LVT decisions, Lands Tribunal decisions, and an insurer's newsletter. Those materials are referred to in his submissions but would be of greater assistance if properly bundled and indexed. Mr Chevalier supports his charge out rate of £230 p/h stating that he was admitted in 1974, conducted all work as a sole practitioner, is an experienced specialist in the field, and includes care and conduct in the rate. His submission identifies the individual costs items incurred throughout the process. He provides a helpful tabulated chronological summary of the time recorded costs items. He confirms that time recording is manual rather than electronic/computerised. Paragraph 11.2 of his submission refers to reproducing his file notes at paragraph 10. In fact no notes are reproduced in that paragraph. This may be intended to refer to the Tables within paragraph 11. In any event, the Tribunal must do the best it can on the materials before it and so has careful regard to the Tables and all other information provided in and with Mr Chevalier's submissions.

The applicant's contentions

8. On 4th July a written response to the respondents' costs submissions was filed by applicant's solicitor David Kosky of Messrs Lawrence Stephens solicitors. He provides a tabulated summary of the costs agreed and disputed. He contends that the basis of assessment should be on the standard basis pursuant to CPR 44 rather than the indemnity basis. He contends that Mr Chevalier's hourly rate is excessive when considered against the HMCS 2007 guide to the summary assessment of costs. It is disputed that a Grade A fee earner was required as it was straightforward matter. Mr Kosky submits that the solicitors costs of preparing the Counter-Notice are outwith the scope of section 60, and that the valuer's costs are limited to the inspection and report upon value by that section. In summary, he submits that the costs should comprise legal work of 2 hours at the 2007 Grade C rate of £145 p/h, valuation work of 2 hours at £150 p/h, and a conveyancing charge of 1.5 hours at £145 p/h. Mr Kosky also identified that the respondent's completion statement records valuer costs at £446.50 whereas the actual invoice from Messrs Hurst Management is £470.

The Tribunal's conclusions

9. The language of section 60 of the 1993 Act is clear and unambiguous. The Tribunal do not accept that is to be read to exclude the cost of the

Counter-Notice or restrict the valuation costs to inspection and report on value as Mr Kosky submits. Section 60 operates so that the indemnity principle applies and any doubt is to be resolved in favour of the receiving party. The costs incurred are recoverable subject only to the requirement that they are reasonable and might reasonably be expected on a private client basis. That requirement is not offended merely because the respondents might have engaged cheaper solicitors. Mr Chevalier is a senior solicitor admitted in 1974 experienced in this specialised type of work. This type of work can reasonably require the attention of someone of his seniority and experience. It is reasonable for him to be engaged by the respondents and reasonable for him to undertake the work himself.

10. The hourly rate charged of £230 (expressly inclusive of care and conduct) is reasonable for a solicitor of his seniority and experience engaged on such work. The HMCS costs guide is exactly that. It is not intended to operate as a cap but to provide broad approximations for charging rates as a guide. Moreover, it is intended for application to contentious litigation business and for use in assessments on the standard rather than indemnity basis.
11. Having regard to these findings the Tribunal carefully considered the costs as summarised in the Tables set out in paragraph 11 of the respondent's costs submissions and determined the following –

7th September items

- (a) 'Personal attendances on client obtaining instructions and advising' on 7th September is allowed as claimed at 15 minutes.
- (b) 'Drafting preliminary Notice under the Act on 7th September is allowed as claimed at 10 minutes.
- (c) 'Instructing Valuer' on 7th September is allowed as claimed at 15 minutes.

18th September items

- (d) 'Considering tenant's notice and researching questions which need to be confirmed in connection with investigating tenant's right to new lease' on 18th September is allowed at 15 minutes. This is a reasonable time for an experienced specialist to take to research any substantive and procedural issues arising from the tenant's notice.

3rd October items

- (e) 'Considering tenant's notice and researching questions which need to be confirmed in connection with investigating tenant's

right to new lease' on 3rd October is allowed at 15 minutes. This is a reasonable time for an experienced specialist to take to revisit his research on any substantive and procedural issues arising from the transaction information since he last did so on 18th September.

- (f) 'Considering valuation and discussing the same with client and valuer' on 3rd October is allowed as claimed at 10 minutes.
- (g) 'Personal attendances on client obtaining instructions and advising on' 3rd October is not allowed in view of the fact that the separate item is billed and allowed for that date for 'considering valuation and discussing the same with client and valuer' and the Tribunal is mindful that the £230 p/h rate claimed and allowed is expressly stated as including care care and conduct.
- (h) 'Considering the lease and Office Copy Entries' on 3rd October is allowed as claimed at 20 minutes.

4th October items

- (i) 'Considering valuation and discussing the same with client and valuer' on 4th October is allowed as claimed at 10 minutes.

11th October items

- (j) 'Personal attendances on client and obtaining instructions and advising' on 11th October is allowed as claimed at 15 minutes.
- (k) 'Drafting counter notice' on 11th October is allowed as claimed at 15 minutes.

Undated items

- (l) 'Consider service on third party' is allowed as claimed at 15 minutes.
- (m) The '8 letters out and 3 telephone attendances' claimed at £253 in total are not allowed as the Tribunal allows the charge out rate of £230 p/h for Mr Chevalier as an experienced specialist and determines that it might reasonably be expected that this includes all letters and telephone calls over and above those recorded as separate substantive cost items elsewhere. Neither the letters nor the telephone attendance notes are provided to us.

Conveyancing items

- (n) The undated conveyancing items recorded in Table B as 'drafting new lease, consider revisions, prepare 2 engrossments, correspondence with management company, prepare completion statement and attend to completion' are allowed as claimed at 2.75 hours @ £230 p/h, totalling £632.50.
- (o) The additional item for '5 other letters out' claimed at £115 in total is not allowed as the Tribunal allows the charge out rate of £230 p/h for Mr Chevalier as an experienced specialist and determines that it might reasonably be expected that this includes all letters and telephone calls over and above those recorded as separate substantive cost items elsewhere. The letters referred are not provided to us.
- (p) The Tribunal notes Mr Kosky's objection that the respondent's completion statement records valuer costs at £446.50 whereas the actual invoice from Messrs Hurst Management is £470. The completion statement her refers to is expressly provisional stating "this is a provisional completion statement for guidance only which the freeholder reserves the right to vary at any time prior to completion". The sum claimed is backed by an actual invoice from Messrs Hurst Management dated 12th June in the sum of £470 (incl VAT). The Tribunal determines that this is the figure due but considers this to be the final Valuer costs as his role is concluded.

12. Therefore the Tribunal determines that the costs payable by the applicant to the respondents comprise –

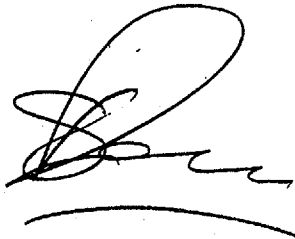
Legal costs @ 2hrs 35 mins @ £230 p/h totalling £698.15 (incl VAT) ;

Conveyancing costs @ 2.75 hrs @ £230 p/h totalling £743.19 (incl VAT) ; and

Valuer costs of £470 (incl VAT)

The total costs payable are £1911.34 (incl VAT).

Dated this 4th day of September 2008



Stephen Reeder
Chair

