

869



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

**Case Reference** : **BIR/00CN/OC6/2013/0005**

**Property** : **15 Limberlost Close Handsworth Wood  
Birmingham B20 2NU**

**Applicant** : **City & Country Properties (Midland)  
Limited**

**Representative** : **Wallace LLP Solicitors**

**Respondents** : **Joel Ian Riley and Gurpal Singh Gahir**

**Representative** : **In person**

**Type of Application** : **Application pursuant to section  
21(1)(ba) of the Leasehold Reform Act  
1967 for a determination of the  
landlord's reasonable costs payable  
pursuant to section 9(4) of the Act**

**Tribunal Members** : **Mr Roger Healey (Chairman),  
Mr Robert Brown FRICS and  
Mr Stephen Berg FRICS**

**Date and venue of  
determination** : **Paper determination made on 10 September  
2013 at Temple Court 35 Bull Street  
Birmingham**

**Date of Decision** : **3<sup>rd</sup> October 2013**

---

**DECISION**

---

## **Introduction**

1. This is an application for the determination of landlord's costs payable pursuant to the provisions of section 9(4) of the Leasehold Reform Act 1967 ("the Act") arising from an abortive application for a lease extension.

## **Background**

2. City & Country Properties (Midlands) Limited ("the Applicant") is the freeholder of a number of properties at Limberlost Close Butlers Road Handsworth Wood Birmingham of which 15 Limberlost Close ("the Property") forms part.

3. Joel Ian Riley and Gurpal Singh Gahir ("the Respondents") held the leasehold estate in the Property by virtue of a lease dated 23 April 1975 ("the Lease") whereby the Property was demised for a term of 99 years from 25 December 1973.

4. The Lease describes the Property as a "ground floor flat". It is not denied that the Property is a flat and not a house.

5. On or about 28 December 2011 Joel Ian Riley (one of the Respondents) served a Notice of Claim ("the Notice") pursuant to the provisions of Part 1 of the Leasehold Reform Act 1967 seeking an extended lease of the Property.

6. On or about 17 February 2012 the Applicant's solicitors wrote to the Respondents' solicitors and advised that the Notice was misconceived because the Property was a flat and accordingly any application to seek a lease extension should be made in accordance with the provisions of the Leasehold Reform Housing and Urban Development Act 1993 ("the 1993 Act"). The Applicant's solicitors requested confirmation that the Notice was invalid but no such confirmation was forthcoming.

## **The Law**

7. The relevant law is contained within section 9(4) of the Act as follows –

*(4) Where a person gives notice of his desire to have the freehold of a house and premises under this Part of this Act, then unless the notice lapses under any provision of this Act excluding his liability, there shall be borne by him (so far as they are incurred in pursuance of the notice) the reasonable costs of or incidental to any of the following matters –*

- (a) any investigation by the landlord of that person's right to acquire the freehold;*
- (b) any conveyance or assurance of the house and premises or any part thereof or of any outstanding estate or interest therein;*

- (c) *deducing, evidencing and verifying the title to the house and premises or any estate or interest therein;*
- (d) *making out and furnishing such abstracts and copies as the person giving the notice may require;*
- (e) *any valuation of the premises;*

*But so that 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.*

### **Directions**

8. The Tribunal issued standard directions on 4 July 2013. In accordance therewith the Applicant lodged with the Tribunal its bundle of documents. No bundle was received from the Respondent.

### **The Applicant's claim for costs**

9. The Applicant's claim for costs amounts to £534 plus VAT. The claim is supported by time records. In addition Land Registry fees of £20 and courier's fees of £28.44 plus VAT are claimed.

10. The Applicant's hourly charge out rates are £360 for a grade A fee earner and £150 for a paralegal. The paralegal's time records show 12 minutes recorded time and the balance is claimed by a Partner in Wallace LLP charging as a grade A fee earner.

### **Applicant's submissions**

11. Wallace LLP submits that it has acted for the Applicant and other companies within the Freshwater group in respect of enfranchisement matters for many years. Wallace LLP is the Applicants choice of solicitor which has the knowledge and capacity to deal with the work.

12. Wallace LLP submits that it is reasonable for a fee earner with the relevant experience to have conduct of the matter and to perform work on the same. The Tribunal is referred to the principles set out in *Daejan Investments Limited -v- Parkside 78 Limited LON/ENF/1005/03* ("the Parkside decision").

13. The Tribunal particularly notes paragraph 9 of the Parkside decision which reads as follows –

*"As to what is "reasonable" in this context [section 33(1) of the 1993 Act], it is merely provided that "any costs incurred by the reversioner or any other relevant landlord in respect of any 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”.*

14. Wallace LLP submits that the provisions of section 33(1) of the 1993 Act are analogous to section 9(4) of the Act.

15. Wallace LLP submits that it is appropriate to charge for a Grade A fee earner and their rates are “entirely consistent with the usual charge out rate for solicitors in Central London.”

### **Findings by the Tribunal**

16. The Tribunal notes that in the Parkside decision the time of a Grade A fee earner was allowed. The decision made reference to “the complex circumstances of the premises and leases” and “the values apparently involved”. The Tribunal finds that these matters are relevant to the determination of the appropriate level of fee earner. The Tribunal finds that value and risk are relevant considerations for determining the appropriate level of fee earner. The Tribunal finds the value of the Property likely to be less than that of the property the subject of the Parkside decision.

17. For the reasons set out in the preceding paragraph the Tribunal finds that it is not appropriate for a Grade A fee earner to be involved in any of the work. The Tribunal finds that a Grade Fee B Earner is appropriate.

18. The Applicant submits that its solicitors charge out rate is “entirely consistent with the usual charge out rate for Solicitors in Central London”. The Tribunal notes that the postal location of Wallace LLP is shown on their letterhead as W1B and therefore finds that the appropriate charge out rate in the present application should be guided by London 2 rates rather than London 1 rates.

19. The Tribunal notes that the wrong form of claim was given by the Respondents. The Tribunal determines that such an error should be immediately apparent to a Grade B Fee Earner with experience of enfranchisement and lease extension work. The Tribunal finds that the reasonable and appropriate response should be simply to reject the notice and notify the parties. The Tribunal determines that section 9(4) of the Act allows the Applicant’s costs of investigating the Respondents’ title but not the Applicant’s costs of preparing and serving the Notice in Reply nor serving copies on other persons. The Tribunal determines that the work allowed to be undertaken by the Act may be fairly undertaken in three units of time (18 minutes). The Tribunal finds no reason to conduct any further work, nor to employ a courier, nor to obtain official copies of the register of title from the Land Registry.

20. The Tribunal proceeded to consider the appropriate chargeable rate for a Grade B fee earner in London 2 area. The Tribunal considered the Senior Courts Costs Office “Guide to Summary Assessment of Costs” and noted the hourly guideline rate for a Grade B fee earner in London 2 at £242. The Tribunal considered this guidance, their knowledge as an expert tribunal, in particular in relation to solicitors costs, but not any special or secret knowledge, and the evidence before it and finds an hourly rate of £296 appropriate.

### **Determination**

21. The Tribunal having carefully considered the Applicant’s submissions and the relevant law, balancing the Tribunal’s findings set out above and, using its own knowledge as an expert tribunal, but not any special or secret knowledge determines the Applicant’s costs be allowed at three units (18 minutes) of time at an hourly rate of £296. No disbursements are allowed.

22. The Tribunal therefore determines the Applicant’s costs at £88.80 plus VAT if applicable.

### **Appeal**

23. A party seeking permission to appeal this decision must make a written application to the Tribunal for permission to appeal. The application must be received by the Tribunal no later than 28 days after the date the Tribunal sends this decision to the party making the application. Further information is contained within Part 6 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (S.I. 2013 No. 1169).

Roger Healey

Chairman