



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

Case Reference : **LON/00AX/OLR/2014/0615**

Property : **5 Mellish Court, Ewell Road,
Surbiton, KT6 6EU**

Applicant : **Adrian Hugh Bernard Collins**

Representative : **Mr Bradley Powell,
Calvert Smith Sutcliffe, Solicitors**

Respondent : **Undercrane Limited**

Representative : **Mr Paul Wilmhurst Counsel**

Type of Application : **Determination of the terms of a
new lease – costs - section 60
Leasehold Reform, Housing and
Urban Development Act 1993**

Tribunal Members : **Judge John Hewitt Chairman
Mr Patrick Casey MRICS**

**Date and venue of
Hearing** : **Wednesday 15 October 2014
10 Alfred Place, London WC1E 7LR**

Date of Decision : **15 October 2014**

DECISION

Decisions of the Tribunal

1. The Tribunal determines that;
 - 1.1 The costs payable by the applicant to the respondent pursuant to section 60(1) (a) and (c) of the Act amount to the sum of £2,070.00 inclusive of VAT; and
 - 1.2 Any application which the respondent may wish to make pursuant to rule shall be made in conformity with the directions set out in paragraphs 23 – 25 below.
2. The reasons for our decisions are set out below.

Procedural background

3. By a notice dated 15 October 2013 the applicant sought the grant of a new lease. By a counter-notice the respondent reversioner admitted that the applicant was entitled to a new lease.
4. There were issues between the parties as to the premium to be paid and the terms of the new lease.
5. On 23 April 2014 the applicant issued an application pursuant to section 48 of the Act seeking a determination by the tribunal of the terms of acquisition which were then in dispute. Directions were issued on 9 May 2014.
6. One of the matters in dispute was the terms of the new lease as regards the insurance of the subject development and the demised premises.
7. On 3 June 2014 the respondent sought the opinion of Mr Bromilow of counsel with regard to the insurance point and the contentions of the applicant. Counsel's opinion was obtained on 10 June 2014. A copy of that opinion has not been provided to the applicant.
8. In or about July 2014 the parties agreed the terms of acquisition including the premium to be paid of £47,500 and the terms of the new lease as regards insurance. Evidently the applicant was then prepared to accept the respondent's position on the insurance point.
9. The respondent sought recovery of its costs pursuant to section 60 of the Act. The parties could not agree the amount of costs to be paid and on 21 August 2014 the tribunal gave directions for the amount of costs payable to be determined.
10. By a schedule of costs dated 3 September 2014 the respondent sought to recover a total of £4,614.00 inclusive of VAT based on a charge-out rate of £300 per hour + VAT.
11. The applicant's statement of case in answer is dated 25 September 2014. A number of points were taken including objections to counsel's fee and costs relating to the tribunal proceedings.

12. On 13 October 2014 the respondent purported to serve on the applicant a revised schedule of costs in the sum of £5,118.00 inclusive of VAT to include costs incurred or to be incurred in preparing the revised schedule. The respondent also intimated an intention to make an application for costs pursuant to rule 13(1)(b) in connection with costs incurred during course of the tribunal proceedings.

The hearing

13. The hearing to determine the costs payable by the applicant pursuant to section 60(1)(a) and (c) came on before us on 15 October 2014. The applicant was represented by Mr Powell and the respondent was represented by Mr Wilmhurst of counsel.
14. Mr Wilmhurst intimated an intention to make an application for costs pursuant to rule 13 but no such application was before the tribunal and no grounds for the application and amount of costs claimed had been provided. Mr Powell said that he was not in a position to deal with any such application there and then.
15. In agreement with the parties directions were given for the determination of any such application as may be made. These are set out in paragraphs 23 - 25 below. The parties should note that the time table below is a little different to that discussed at the hearing and had been adjusted to ensure compliance with the rules. If the respondent pursues the application it must set out all matters relied upon in support of its position that the tribunal has the statutory power to make a rule 13 order for costs in these proceedings having regard to section 60(5) of the Act.

The assessment of costs

16. First we considered the claim for counsel's fees in relation to the insurance issue. Mr Wilmhurst submitted that the costs fell within section 60(1)(c) being costs incurred in connection with the grant of the new lease.
17. Mr Powell submitted that the costs were incurred after the commencement of the proceedings before the tribunal and were directly concerned with a disputed term of acquisition which was before the tribunal for determination. He submitted that were not payable pursuant having regard to section 60(5) of the Act and also that costs incurred in connection with detailed negotiations over the terms of the new lease were not embraced within the expression 'the grant of a new lease' as used in section 60(1)(c).
18. In response Mr Wilmhurst took a contrary view and submitted that the insurance issue was raised and was being pursued actively prior to the issue of the proceedings in the tribunal, those proceedings were only issued to preserve the right to a new lease and that it was a legitimate expense incurred by the respondent and would have been incurred if the respondent had been paying the costs himself.

19. On this point we preferred the submissions of Mr Powell which struck a chord with the members of the tribunal. We find that properly construed section 60(1)(c) is aimed at the conveyancing costs on the grant of the new lease to include the preparation of the draft new lease and some modest negotiation over lease terms but does not extend to costs incurred in connection with disputed lease terms which are within the jurisdiction of and before the tribunal for determination.
20. The tribunal informed Mr Powell and Mr Wilmhurst of its decision on this point. In consequence Mr Wilmhurst felt able to withdraw a number of costs claims which were connected with the opinion of counsel, were incurred in connection with the proceedings before the tribunal and the costs incurred with Land Registry and the provision of office copy entries.
21. Mr Powell did not dispute the charge-out rate of £300 per hour. He did not dispute that the respondent was not able to recover VAT. Mr Powell also agreed the costs claimed by way of attendances and the remaining costs incurred in connection with work on documents.
22. In the event and having made the necessary arithmetical adjustments we assessed costs in the sum of £1,725 + VAT of £345 making a total of £2070.00.

Directions for any rule 13 application for costs

23. Any application for cost made pursuant to rule 13 shall be made in accordance with the directions set out below:
 - 23.1 The application shall be made no later than **5pm 7 November 2014**. The application shall be served on the opposite party at the same time as it is filed with the tribunal. The application shall set out the grounds for the application and all matters relied upon to support the submission that the tribunal has the power to make an order for costs. There shall be attached to the application a schedule of the costs claimed to include details of the time spent, the work undertaken the grade of the fee-earner and copies of any supporting invoices/fee notes in respect of any expenses claimed;
 - 23.2 The recipient of an application shall by **5pm 21 November 2014** file with the tribunal and serve on the applicant for costs a statement of case in answer and points of objection to the costs claimed;
 - 23.3 The applicant for costs shall by **5pm 28 November 2014** file with the tribunal and serve on the opposite party a statement of case in reply;
 - 23.4 The applicant for costs shall by **5pm 5 December 2014** file with the tribunal a hearing file (with index and pages numbers) which shall contain copies of:

1. This decision;
 2. The statements of case served by the parties pursuant to these directions together with full supporting papers; and
 3. Any statutory provisions or authorities to be relied upon.
24. In accordance with the agreement of the parties the application will be determined on the papers referred to above without an oral hearing pursuant to rule 31. The tribunal will endeavour to make its determination during week commencing 15 December 2014.
25. However if a party wishes to request an oral hearing any application for such must be made no later than **5pm 28 November 2014**.

Judge John Hewitt
15 October 2014



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Judge John Hewitt
15 October 2014