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**First-tier Tribunal
Property Chamber
(Residential Property)**

Case reference : **CAM/26UF/OLR/2018/0103**

Property : **18 Park Gate,
Hitchin,
SG4 9BP**

Applicant : **Patricia Ann Eagling**

Respondent : **Hargreaves Residential Developments
Ltd.**

Date of Application : **18th May 2018**

Type of Application : **To determine the terms of acquisition
and costs of the lease extension of the
property**

Tribunal : **Bruce Edgington (lawyer chair)
David Brown FRICS**

DECISION

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1. The form of Deed of Surrender and New Lease is approved in the form submitted to the Tribunal by the Respondent's solicitors on the 26th July 2018. excluding those draft clauses highlighted in yellow. This is subject to re-numbering as appropriate and to any reasonable requisition from the Land Registry. For the avoidance of doubt, all the changes agreed by the Applicant's solicitors are accepted. Otherwise, none are agreed by the Tribunal.
2. Of the claim for legal fees and disbursements (save for the valuer's fee), the sum of £1,134.00 is deemed to be reasonable and payable by the Applicants and a valuation fee of £500.00 is deemed to be reasonable and payable.
3. As the services supplied by the solicitors and valuer were and are to the Respondent, VAT is only payable on such fees by the Applicant provided that the Respondent is not registered for VAT purposes or cannot recover such VAT as an input. A certificate of such status from the Respondent's auditors or solicitors will be sufficient evidence

Reasons

4. This is an application for the Tribunal to determine the terms of the lease extension for the property and the amount payable by the Applicant for the Respondent's legal and valuation costs. The Tribunal issued its usual directions order on the 7th June 2018 timetabling the case to a determination. The Tribunal indicated that as the premium was not in issue, it would determine the outstanding matters in dispute on the basis of the written evidence and submissions of the parties on or after 3rd August 2018. It made it clear that if either party wanted an oral hearing, one would be arranged if the Tribunal was notified before 20th July. No such notification was received.
5. Bundles were delivered in accordance with the Tribunal's order. However, the documents included in this first bundle were far from what the Tribunal had ordered:-
 - There was no statement of costs certified by a solicitor to say that they were the costs contractually payable by the Respondent. However, this point has not been taken by the Applicant's solicitors who presumably accept that legal costs and a valuation fee have been incurred. The Tribunal therefore takes the point no further.
 - There were objections to the costs but no Respondent's reply.
 - The draft deed of surrender and new lease had sections crossed out and altered and marked with 'stet'. The only indication about the markings is on the front sheet where it says "I.D. indicates clauses proposed by landlord to which lessee objects". The application form says "The amendments which appear in red on the document are those which are accepted by the Landlord's solicitors but the others which are shown as crossed through or amended are those which are in dispute". There is no colouring.
 - There are no representations one way or the other from either party concerning the terms of the deed of surrender and new lease.
 - There is no copy of the original lease.
 - The objection to the valuer's fee is on the basis that the directions order was not complied with. No details are given.
 - There is no copy of the initial notice and counter-notice so that the Tribunal can judge how much time was spent considering and drafting those documents.
6. Thereafter, a letter was received from the Respondent's solicitors dated 26th July saying that in view of the 'very tight deadlines set by the Tribunal' the content of the bundle had not been agreed. The Respondent's replies to the costs objections were enclosed, as was a fresh copy of the draft lease extension and a copy of a letter from the Respondent's solicitors dated 5th July setting out their final views on the original draft and their proposed amendments.
7. The Tribunal would just say that its directions order allowed at least one week between each stage in the process and two weeks in most cases. There were no 'tight deadlines' as suggested. There is also still no explanation as to why the other documents referred to above, such as the original lease, are omitted.
8. A letter was then received from the Applicant's solicitors dated 27th July which enclosed a long letter to the Respondent's solicitors which just confirmed the

objections to the proposed changes and then mentions other objections. Some of these are not entirely understood by the Tribunal but the wording of the decision above is clear.

The Inspection

9. As the premium was agreed, there was no inspection of the property and no request for an inspection by either party.

The Lease

10. As has been said, no copy of the original lease was with the papers submitted in the bundle but the draft deed of surrender and new lease indicates that it was dated 26th July 1982 for a term of 99 years from 25th March 1982.

The Law

11. The starting point under section 57(1) of the **Leasehold Reform, Housing and Urban Development Act 1993** ("the 1993 Act") is that the new lease to be granted under section 56 shall be on the same terms as those of the existing lease, as they apply on the relevant date but with such modifications as may be required or appropriate to take account of matters set out in that subsection, none of which are material to the present case.
12. Section 57(6) provides that either party may require that for the purposes of the new lease any term of the existing lease shall be excluded or modified in so far as:
 - (a) It is necessary to do so in order to remedy a defect in the existing lease; or
 - (b) It would be unreasonable in the circumstances to include, or include without modification, the term in question in view of changes occurring since the date of commencement of the existing lease which affect the suitability on the relevant date of the provisions of that lease
13. It is accepted by the parties that an Initial Notice was served and therefore Section 60 of the 1993 Act is engaged. The Applicant therefore has to pay the Respondent's reasonable costs of and incidental to:-
 - (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;*
(Section 60(1) of the 1993 Act)
14. What is sometimes known as the 'indemnity principle' applies i.e. the Respondent is not able to recover any more than it would have to pay its own solicitors or valuer in circumstances where there was no liability on anyone else to pay (Section 60(2)). Another way of putting this is to say that any doubt is resolved in the receiving party's favour rather than the paying party.

Discussion – the form of lease

15. The second version of the draft has a large number of proposed disputed amendments all highlighted in yellow. They cover almost 4 sides of A4 paper. In the letter from the Respondent's solicitors to those of the Applicant dated 5th July, the phrase 'this clause appears in all standard documentation and is very familiar in property law' is mentioned and then 'an entirely standard term for a lease extension' or similar is repeated thereafter in virtually all responses to continued objections.
16. The Respondent's solicitors do not seem to have even considered subsection 57(6) of the 1993 Act. Whatever their view might be about standard documentation, this is not a completely new lease. There must be a good reason for any change because, as is said, it is a lease 'extension', not a redraft. The Tribunal cannot see that any of the yellow amendments in the draft comply with subsection 57(6) and they are all disallowed. It is trite law to say that subsection 57(6)(b) only allows variations to existing clauses – not entirely new clauses. A number of changes are agreed and the wording of the decision above is clear.
17. The last document in the bundle is a copy of an extended lease relating to 11 Park Gate on the same estate where the previous lease was dated 25th June 1982 and the term is 99 years from the 25th March 1982. The term, the freeholder and the management company are the same as in this case which leads this Tribunal to the view that the original lease in that case was the same as in this case save for the formalities such as date, premium, name of lessee etc.
18. As at the date of the lease extension, the only changes to the original lease in the case of 11 Park Gate are to delete the term and ground rent and to insert the new term with the statutory ground rent of a peppercorn. It seems clear to this Tribunal that as a matter of good conveyancing practice the lease extension for 11 and that for this property should be in the same broad terms. Only the term and the ground rent have changed. Nevertheless, as certain amendments have been agreed by the Applicant and these are adversarial proceedings, the Tribunal's decision is as above.

Discussion – legal costs

19. Firstly, it should be said that the Tribunal considers that enfranchisement and lease extension work is Grade A fee earner work when considering risk and legal rights. There is a case for saying that the work to complete the lease could be dealt with by a lower grade but it would make little real difference to the overall cost, as a Grade A fee earner should take less time than a lower grade.
20. Assuming that the Respondent's solicitors are in the National 1 band, the recommended hourly rate in 2010 was £217 per hour. A percentage uplift of about 15% over 8 years to cover inflation is not unreasonable and £250 per hour would not be considered to be unreasonable. In this case, the leading fee earner appears to be someone called Jo Ironside who is described as an associate solicitor and is therefore hardly likely to be a Grade A fee earner. He or she is 'assisted' by a trainee solicitor and a paralegal.

21. The costs schedule and objections are rather perfunctory and the replies hardly make any reference to section 60 of the 1993 Act. The Respondent must understand that section 60 is not an entitlement to be refunded all of the Respondent's costs. That seems to be exactly what is being argued. As a simple example, the statement of costs appears to just include every item of correspondence and telephone use without any real explanation of what part of section 60 of the 1993 Act is relied upon. The Tribunal feels that the only thing it can do is use its knowledge and experience over many years to make a general assessment of the costs which it considers to be reasonable under the 2 subsections of section 60 for which reimbursement is appropriate.
22. It is considered that 2 hours to look at the initial notice and the existing lease, advise the client, and draft the counter-notice and surrounding documents is reasonable to include the appropriate correspondence and telephone calls. Recent case law on the topic says that whilst the solicitor can charge for looking at the valuation report, a client would not expect to pay the solicitor for writing to the surveyor. It is the client who instructs the surveyor, not the solicitor.
23. Obviously, section 60 does not cover any negotiations and the next stage is to draw the draft deed of surrender and new lease and arrange for completion. The new deed usually just follows the wording of the counter-notice – not seen in this case – which wording is then just put into a template deed on a computer which all experienced practitioners will have readily available. It is respectfully suggested that if this stage has taken much longer than would usually be the case, then the attitude to the drafting of the lease extension may be the reason. Overall, the Tribunal considers that a reasonable amount of time for those tasks, including completion and transferring funds to the client would be another 2 hours.
24. Thus the reasonable time allowable for a Grade A fee earner is 4 hours plus the time spent on the valuation report which would be a maximum of 30 minutes. The appropriate figure for profit costs is therefore assessed at £1,125.00 plus the disbursement for office copy entries in the sum of £9.00. This has been objected to but is usually allowed in each lease case.

Discussion – valuation fee

25. Neither side has been helpful. The Tribunal has no idea which of its directions has not been complied with, and none of the details of breakdown of the charges has been supplied, as ordered. The claim can only be for the valuation and the Tribunal is therefore unable to see why a breach of the directions order is relevant to this item. All the Tribunal can say is that using its knowledge and experience, a figure of £500 is within the range of reasonableness for a valuation of this nature.

Bruce Edgington

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Bruce Edgington
Regional Judge
3rd August 2018

ANNEX - RIGHTS OF APPEAL

- i. 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.
- ii. 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.
- iii. 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.
- iv. 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.