

SOUTHERN RENT ASSESSMENT PANEL AND LEASEHOLD VALUATION TRIBUNAL

Case No: CHI/00HN/OC9/2008/0007

BETWEEN:

GEORGE FREDERICK GREENING

Applicant

- and -

STANSMORE BUILDERS LIMITED

Respondent

PREMISES:

Flat 5 Thornbury
33 Marlborough Road
Westbourne
Bournemouth
Dorset
BH4 8DF ("the Premises")

TRIBUNAL:

Mr D Agnew LLB, LLM (Chairman)
Mr P. D. Turner-Powell FRICS

DETERMINATION DATE:

5th December 2008

Determination and Reasons

DETERMINATION

The Applicant shall pay £344 plus VAT in respect of the Respondent's costs incurred under Section 60 of the Leasehold Reform Housing and Urban Development Act 1993 ("the Act").

REASONS

1. **Background**

- 1.1 The Applicant is the lessee of the Premises. The original lease was granted for a term of 99 years from 24th June 1971 (less the last 10 days).

- 1.2 On or about 29th June 2007 the Applicant made an application under Section 41 of the Act for information as to the various interests in the property and on or about 25th July 2007 served a notice under Section 42 of the Act seeking a new lease. The Respondents, Stansmore Builders Limited were the head lessees. They were not the competent Landlords under the Act because the residue of its term was insufficient to enable it to grant a new lease for a further 90 years after the end of the original term.
- 1.3 Lester Aldridge LLP were the Respondent's solicitors and a member there, Ms Suki Samra was engaged in certain work in connection with the two notices referred to above on behalf of her client.
- 1.4 The competent Landlord served a counter notice on or about 1st November 2007. No notice as to separate representation on behalf of the Respondent was served by Lester Aldridge after the counter notice was served. The main terms for the new lease including the price to be paid to the Respondent were agreed so that it was not necessary for the Applicant to apply to the Tribunal to decide those terms. Costs, however, were not agreed and so when Lester Aldridge LLP submitted to the Applicant a claim for costs on behalf of their client the Applicant made an application to the Tribunal for a determination as to costs.
2. The issue of principle
- 2.1 The issue of principle between the parties was whether or not the head lessee was entitled to seek its legal costs at all from the Applicant as it had never served a notice under Schedule 11 paragraph 7 of the Act that Stansmore Builders Limited were to be separately represented. Messrs Lacey's, on behalf of the Applicant, argued that this failure meant that the Respondent was disentitled to look to the Applicant for any costs at all.
- 2.2 Lester Aldridge LLP argued that the question of costs is governed by Section 60 of the Act. On a true construction of Section 60 (1) an intermediate landlord is entitled to look to the lessee for reasonable costs of and incidental to certain matters, that is, those incurred by the "relevant person" in pursuance of a notice under Section 42 of the Act and a "relevant person" includes any other landlord in addition to the competent landlord. It is not

necessary, they argued, for a notice as to separate representation to be served. This can only be done after service of the counter notice and if the Applicant's solicitors are correct in their argument, this would mean that an intermediate landlord who incurred costs in relation to a Section 42 notice prior to the service of a Schedule II notice could not recover any costs at all which, they said, "clearly cannot be correct".

3. The Law

3.1 Section 40(2) of the Act states that: "Where in accordance with subsection (1) the immediate landlord under the lease of a qualifying tenant of a flat is not the landlord in relation to that lease for the purposes of this Chapter, the person who for those purposes is the landlord in relation to it shall conduct on behalf of all the other landlords all proceedings arising out of any notice given by the tenant with respect to the flat under Section 42 (whether the proceedings are for resisting or giving effect to the claim in question).

3.2 By Section 40(4)(c), "other landlord" means any person.... in whom there is vested a concurrent tenancy intermediate between the interest of the competent landlord and the tenant's lease.

3.3 By Section 60(1) of the Act it is stated that: "(1) Where a notice is given under Section 42 then..., 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.....
 - c) The grant of a new lease
-"

3.4 By Section 60(5) of the Act it is provided that:

"A tenant shall not be liable under this section for any costs which a party to any proceedings under this Chapter before a leasehold valuation tribunal incurs in connection with the proceedings".

- 3.5 Section 60(6) of the Act defines a "relevant person" as "the landlord for the purposes of this Chapter, and any other landlord (as defined by Section 40(4) or any third party to the tenant's lease.

4. Determination of the point of principle

- 4.1 The Tribunal noted that Section 60 is the section which deals with costs and the Tribunal decided that the drafting of this section was wide enough to cover costs incurred by an intermediate landlord such as Stansmore Builders Limited in this case.

- 4.2 Schedule II, paragraph 7(1) requires any such intermediate landlord who wishes to participate in legal proceedings (emphasis added) after the landlord's counter-notice has been served, must serve a notice to that effect. Here, however, there were no legal proceedings (other than concerning costs) as the terms of the new lease were agreed without the need for any such proceedings.

- 4.3 Section 60(1) specifically provides that the tenant must pay the reasonable costs of any "relevant person" which are incurred in consequence of a Section 42 notice and "relevant person" specifically includes an intermediate landlord (Section 60(6)). Consequently, the Tribunal accepted the principle of the Respondent's solicitors' argument that the Applicant was liable to pay its reasonable costs incurred pursuant to the Section 42 Notice.

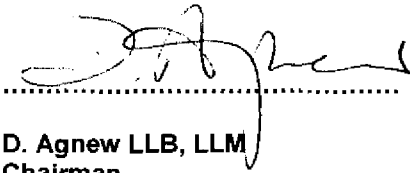
5. Evidence in support of the claim for costs

- 5.1 The Respondent's solicitors provided the Tribunal with a schedule giving a breakdown of their costs and copies of some of the documentation to support that breakdown but it was by no means comprehensive. The Tribunal decided that it was incumbent upon the receiving party to ensure that the Tribunal was furnished with sufficient material to make a judgment as to the amount of time and importance of the work done to enable the Tribunal properly to assess the reasonableness of the costs claimed. This is particularly so where the matter is being decided on paper without an oral hearing where a full explanation as to

what was entailed can be given and documentation can be requested and perused where necessary.

5.2 Attached hereto is a schedule setting out the costs claimed and those allowed together with reasons for the Tribunal's decision. Where costs have been disallowed this is either because they were not incurred pursuant to a Section 42 notice or the Tribunal considered the time claimed to be excessive or because there was just no evidence of the work having been done to justify the claim.

Dated this 6th day of January 2009



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D. Agnew LLB, LLM
Chairman

Schedule to costs claimed and allowed/disallowed

Date	Time Claimed	Time Allowed	£	Reason
28.06.07	:06	0	-	Not under Sec 42
02.07.07	:30	0	-	Not under Sec 42
11.07.07	:12	0	-	Not under Sec 42
21.08.07	:06	:06	21.50	
24.08.07	:12	0	-	No supporting evidence
10.09.07	:30	0	-	No supporting evidence
15.10.07	:12	:12	43	
19.10.07	:12	:12	43	
19.01.07	1:00	:30	107.50	Time considered excessive
06.03.07	:30			
19.10.07	:12	:12	43	
31.10.07	:12	:12	43	
07.03.07	:12	0	-	No supporting evidence
07.04.08	:12	0	-	No supporting evidence
15.04.08	:12	0	-	No supporting evidence
16.04.08	:12	0	-	Valuer's negotiations not claimable under Sec 60
17.05.08	:06	-	-	No supporting evidence
14.05.08	:30	-	-	No supporting evidence
03.06.08	:24	-	-	No supporting evidence
27.08.08	:12	:06	21.50	No evidence but some liaison re completion to be expected
25.09.08	:12	-	-	No supporting evidence
16.10.08	:06	:06	21.50	
30.10.08	:06	-	-	No supporting evidence
10.11.08	:30	-	-	Not claimable under Sec 60 and no supporting evidence
10.11.08	:18	-	-	Not claimable under Sec 60 and no supporting evidence

Total costs allowed 1 hour 36 minutes @ £215 per hour = £344 plus VAT