

RESIDENTIAL PROPERTY TRIBUNAL SERVICE LEASEHOLD VALUATION TRIBUNAL

Property : 45 The Grangeway,
Rustington,
Littlehampton,
BN16 2QS

Applicant : Colin Karsten Brown

Respondent : Daejan Properties Ltd.

Case number : CAM/45UC/OC9/2009/0002

Type of Application : To determine the costs
payable on enfranchisement (Section 60
of the Leasehold Reform and Urban
Development Act 1993 ("the 1993 Act"))

Tribunal : Bruce Edgington (Lawyer chair)
Robert Brown FRICS
John Dinwiddy FRICS

DECISION

1. The reasonable legal costs of the Respondent in dealing with the matters set out in Section 60 of the 1993 Act are £1,769.00 plus VAT if applicable and the disbursements claimed.

Reasons

Introduction

2. The Applicant is the lessee of the property under a long lease and has applied to the Respondent for the surrender of his existing lease and the granting of a further long lease pursuant to Section 48 of the 1993 Act.
3. Agreement has been reached on all matters save for the legal costs to be paid by the Applicant pursuant to Section 60 of the 1993 Act.
4. Written representations have been received from the parties who have agreed to this matter being dealt with by way of paper determination i.e. without an oral hearing.

The Law

5. When lessees use the enfranchisement provisions, they become liable to pay the landlord's "*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"*

(Section 60(1) of the 1993 Act)

6. The method of assessment of both legal and valuation fees is what is sometimes called the solicitor and client basis. In other words the costs to be allowed by the Tribunal are those which would be payable by the client *"if the circumstances had been such that he was personally liable for all such costs"*.

(Section 60(2) of the 1993 Act)

7. If the Respondent is registered for VAT purposes, it will be able to recover the VAT on the legal fees because the legal services will have been supplied to the Respondent, not the Applicant. Therefore, if this is the case, no VAT will be payable by the Applicant on the solicitors' fees.

The Issues

8. If the Respondent had followed the Tribunal's directions, the issues would have been easy to see because the objections and the Respondent's replies would have been contained in one document. This happens with every bill of costs assessed by the court. The principle is similar to a Scott Schedule in building disputes. No explanation is given as to why the Tribunal's direction has been ignored by the Respondent.
9. The objections amount to (a) charging rates are too high (b) time taken for the Counternotice should have been either 1.5 hours or 2 hours (both are mentioned in the objection) instead of the 3 hours 12 minutes claimed (c) the claim for the courier's fee is unreasonable and (d) time taken and to be taken on conveyancing should be 2 hours rather than the 3 hours 24 minutes claimed.

Charging rates

10. The Applicant's solicitors are in central London. The Applicant is a substantial property company in central London. The property is in West Sussex. In her statement to the Tribunal at paragraph 14, Fleur Neale says that the Respondent has used Wallace LLP as its solicitors for a number of years. Therefore it is clear that the Respondent has chosen to use solicitors who are in close proximity and has accepted their charging rates. A Tribunal must allow the charging rates which the Respondent would have paid if it was personally liable for the costs. The Tribunal is satisfied that the Respondent would have used Wallace LLP in any event and central London rates are therefore reasonable.

11. For assessing solicitors' costs on an *inter partes* basis in the county court, a Grade A fee earner is a senior solicitor with more than 8 years' post qualification experience in litigation and a Grade B fee earner is a solicitor or legal executive with more than 4 years' post qualification in litigation. Higher rates can be allowed to Grade A fee earners for substantial and complex litigation which this is not, in this Tribunal's view. As from 1st January 2008, the hourly rates being awarded to solicitors in W1 in detailed assessments were as follows:-

Grade A	£304
Grade B	£231
Grade C	£189

12. In 2009, the equivalent rates are:-

Grade A	£312
Grade B	£238
Grade C	£193

13. These rates are not mandatory, particularly when one is assessing on an indemnity basis. However, they are helpful as a starting point for assessment. It has long been this Tribunal's view that enfranchisement is a very specialised area of legal work which justifies a Grade A fee earner. It is the Tribunal's view that the rate of £325 per hour claimed by the Applicant's solicitors is reasonable in a situation where the indemnity principle applies. However, for a rate of £325 per hour, one would expect the work to be undertaken by an experienced Grade A fee earner.
14. Both solicitors refer to various LVT decisions which are, of course, of only limited value as they are not binding. The 'evidence' from a previous LVT decision is not evidence at all. Furthermore the issue raised in one of those cases i.e. that of using a local solicitor as opposed to a local valuer is different. Local knowledge can be very useful in valuation matters which could, of itself, make it more 'reasonable' to use a local valuer. The same issue does not arise with solicitors.

Time taken on Counternotice

15. The Applicant infers that the time spent on this subject consists of items 1-9 and 1-14 in the schedule of costs at page 1 of the bundle and this is not disputed by the Respondent.
16. As to the times themselves, the only time which the Tribunal finds somewhat concerning is a period of 1 hour to consider the Notice of Claim and the further 1 hour spent preparing the Counternotice. There is certainly nothing complex about the Notice of Claim and the Counternotice is about as short and simple as it can be.
17. Indeed, if one looks at the Counternotice, it does not seem to have been prepared with the greatest of care in any event. Clause 3(a) does not make sense and clause 3(b) appears to be a complete denial

of everything in the Notice of Claim which is clearly not what is intended.

18. A Grade A fee earner experienced with franchising work will have his/her own templates and precedents and should be able to consider a Notice of Claim and prepare a Counternotice well within a total of 1 hour. 1 hour is therefore deducted from the time spent.

The use of a courier

19. The answer to the objection raised is that Wallace LLP have a policy of using couriers to serve a Counternotice because there are strict time limits and the use of post or DX cannot guarantee delivery. Once again, the Tribunal has to consider this assessment on the indemnity principle. This involves resolving any doubt in favour of the receiving party.
20. The Respondent was entitled to leave it until the 15th January 2009 to serve the Counternotice particularly with the Christmas period intervening. There is certainly a case for saying that the only way they could have proved service by the 16th January was to use personal service. The sum of £20.81 plus VAT does not seem excessive for ensuring personal service.

Time taken on conveyancing

21. The times taken by the Respondent's solicitors do not seem to be excessive. Whilst the 1993 Act is fairly prescriptive about the lease terms, it is necessary to consider the existing lease in some detail to ensure that it is compatible with today's conditions. However the Respondent has not really explained why a more expensive fee earner is used.
22. A Grade A fee earner experienced in enfranchisement work should be able to deal with the notices and the drafting and completion of the lease. If the conveyancing has to be handed to another fee earner, there is no logic to the work being dealt with by someone more experienced and more expensive. The charging rate is therefore reduced to £325 per hour.
23. Ms. Neale does say in the last paragraph of her statement that the Tribunal does not have jurisdiction to determine costs which have not yet been incurred.
24. This point is, so far as the members of this Tribunal are concerned, a novel one. Presumably it is novel because most landlords would insist on the costs being payable as part of the completion monies. Preparing a calculation of costs in readiness for completing must involve a certain amount of anticipation and estimation of what those costs are going to be.
25. No application has been made to adjourn the determination of costs until after completion of the lease which makes this assertion somewhat bizarre. It is certainly common practice in dealing with these assessments that some of the costs assessed are estimates of

costs to be incurred and the submission that the Tribunal has no power to do this is not accepted.

Conclusions

26. A charging rate of £325 per hour is reasonable in the particular circumstances of this case.
27. The charge for a courier is reasonable
28. The time for dealing with the Counternotice is reduced by 1 hour i.e. by £325.
29. The time for dealing with the conveyancing is allowed in full but at the rate of £325 per hour i.e. a reduction of £80



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Bruce Edgington
29th June 2009