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Residential
Property
TRIBUNAL SERVICE

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL of the
LONDON RENT ASSESSMENT PANEL

LON/00BK/0C9/2009/0030

Reachout Estates Limited — Applicant

Grosvenor West End Properties — Respondent

Premises:- Lower Ground Floor Flat,
36, Green Street,
London W1Y 3FH

Section 60 of the Leasehold Reform, Housing and Urban Development Act 1993 (the Act)

TRIBUNAL
MR A.ENGEL M.A.(Hons.) - Chairman
MR C. NORMAN F.R.I.C.S.

DECISION

The Applicant is liable for the Respondent's costs in the sum of £5,301-25p.

REASONS

Background

1. By written notice, dated 18th July 2008, the Applicant (Tenant) gave notice to the Respondent (Landlord), pursuant to Section 42 of the Act, that it claimed a new lease under Chapter II of Part 1 of the Act.

2. The Respondent's counter-notice, pursuant to Section 45 of the Act, is dated 19th September 2008.

3. On 24th November 2008, application was made to a (differently constituted) Tribunal, pursuant to Section 48 of the Act, for determination by the Tribunal of disputed terms of acquisition.

4. The hearing had been fixed for 17th and 18th March 2009.

   However, on 13th March 2009, the Applicant withdrew the application (referred to at No.3), pursuant to Section 52 of the Act, prior to the matter being heard or determined by the Tribunal.

5. By notice, dated 7th April 2009, the Applicant applied to the Tribunal for a determination of the Applicant's liability for the Respondent's costs under Section 60 of the Act.

6. In Directions, dated 8th April 2009, the Respondent (Landlord) was directed by the Tribunal to serve on the Applicant (Tenant) a detailed statement of costs claimed identifying the basis for charging – to include detail of fee earners, time spent, hourly rates and disbursements.

Section 52 and Section 60

7. The relevant parts of Section 52 provide:-

   " (1) At any time before a new lease is entered into in pursuance of the tenant's notice, the tenant may withdraw that notice by giving a notice to that effect under this section ("a notice of withdrawal").

   .....

   (3) Where a notice of withdrawal is given by the tenant to any person in accordance with subsection (2),the tenant's liability under section 60 for costs incurred by that person shall be a liability for costs incurred by him down to the time when the notice is given to him.

8. Section 60 provides:-

"(1) Where a notice is given under section 42, then (subject to the provisions of this section) 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 in connection with the grant of a new lease under section 56;

(c) the grant of a new lease under that section;

but 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.

(2) For the purposes of subsection (1) any costs incurred by a relevant person in respect of 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.

(3) Where by virtue of any provision of this Chapter the tenant's notice ceases to have effect, or is deemed to have been withdrawn, at any time, then (subject to subsection (4)) the tenant's liability under this section for costs incurred by any person shall be a liability for costs incurred by him down to that time.

(4) A tenant shall not be liable for any costs under this section if the tenant's notice ceases to have effect by virtue of section 47(1) or 55(2).

(5) 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.

(6) In this section "relevant person", in relation to a claim by a tenant under this Chapter, means the landlord for the purposes of this Chapter, any other landlord (as defined by section 40(4)) or any third party to the tenant's lease.

The Hearing

9. A hearing took place before the Tribunal on 28th May 2009.

10. At the hearing, the Applicant was represented by Mr Serota, a partner of Wallace LLP (Solicitors) and the Respondent was represented by Mr Kerrigan, a partner of Boodle Hatfield (Solicitors). These firms had acted for the parties throughout.

The issues

11. By letter dated 16th March 2009, the Respondent claimed costs as follows:-

Valuation fees (Gerald Eve) :- £1,527-50
Valuation fees (Paul Tayler) :- £1,352-25
Legal fees :- £6,277-95

However, the Respondent abandoned the claim for Paul Tayler's fees prior to the hearing.

12. Mr Serota did not dispute that the Respondent had incurred these costs but he submitted that the Applicant was liable for lesser sums under Section 60 of the Act.

13. It was agreed that both valuation and legal fees attracted VAT at 17.5 % - save that the Second Fee Note (see below) attracted VAT at 15%.

Valuation Fee

14. Mr Kerrigan did not produce any documentation but he informed us that the amount claimed was based on 6 ½ hours @ £200 per hour = £1,300 (+ £227-50 VAT). He confirmed that Gerald Eve had inspected the property, which we noted is a short distance from the West End offices of Gerald Eve.

15. Mr Serota agreed that £200 per hour (+VAT) was reasonable but he submitted that no more than 5 hours was reasonable for the time expended by the Valuer.

    Mr Serota produced an invoice in the sum of £650 + VAT from the Applicant's Valuer, Douglas & Gordon – but this did not assist us in reaching our decision.

16. We consider that the burden of proof lies on the Respondent to establish that more than 5 hours was reasonable. The Respondent has not adduced any oral or documentary evidence on this point (not even an invoice from the Valuer).

17. In these circumstances, we consider that the Respondent has failed to discharge the said burden of proof and we determine that (only) 5 hours was reasonable

18. Accordingly, we determine the Applicant's liability in respect of Valuation Fees to be £1,000 + £175 VAT = £1,175.

Legal Fees

19. Mr Kerrigan is a partner of Boodle, Hatfield, Solicitors. He told us that he had done all the work himself and that he had charged £385 per hour – which he explained was discounted from his usual hourly rate of £415.We accept this evidence.

20. Mr Kerrigan adduced two (copy) Fee Notes in evidence.

First Fee Note

21. The first Fee Note is dated 24th September 2008 and charges a total of £4,162- 95, being:-

    £3,500 (+ £612-50VAT) for Mr Kerrigan's work

    £4-64 (+ £0-81 VAT) for the cost of a courier

    £45-00 for Land Registry Fees

    Mr Kerrigan informed us that his fee of £3,500 was based on (approximately) 9 hours work. The work done is itemised in general terms on the Fee Note, although the dates on which items of work were done are not specified.

    Despite the absence of dates, we accept Mr Kerrigan's evidence that he carried out the work set out on the Fee Note and that it took him some 9 hours.

22. Mr Serota disputed the cost of the courier and Mr Kerrigan agreed not to pursue this item.

23. Mr Serota also disputed the Land Registry Fees on the basis that they were unnecessary as the information was otherwise available. However, we consider that this was reasonable expenditure in the light of Mr Kerrigan's evidence that, in his experience, other sources might have provided inaccurate information.

24. The main issue on the First Fee Note concerned the appropriate hourly rate and time expended.

    Mr Serota submitted that an hourly rate of £250 (+VAT) was appropriate and that only 6 hours was reasonable.

25. Mr Kerrigan was unable to supply a breakdown of the 9 hours between the items of work listed on the Fee Note.

We agree with Mr Serota that the majority of the work could have been carried out by a fee earner of a lower grade than Mr Kerrigan.

26. We consider:-

    (a) that Section 60(2) of the Act applies to the majority of the items;

    (b) some partner input was reasonable and might reasonably be expected if the Respondent (or an individual) was liable to pay – but we are unable to gauge the extent thereof on the evidence before us.

    (c) that on the evidence before us, an overall hourly rate of £250 is reasonable.

27. There is no evidence to support Mr Serota's assertion that only 6 hours should have been spent on the work. We have accepted Mr Kerrigan's evidence that he spent 9 hours doing the work. He is a senior and experienced practitioner and we find that 9 hours work was reasonable and that it is not caught by Section 60(2).

28. Accordingly, we allow:-

    £2,250 (+£393-75 VAT) plus £45 Land Registry Fees = £2,688-75.

Second Fee Note

29. The Second Fee Note is dated 31st March 2009. It charges £1,840 (+ 15 % VAT £276). The work is itemised on the Fee Note.

30. Mr Kerrigan told us that this work took him approximately 5 hours. We accept this evidence.

31. Mr Kerrigan was unable to supply a breakdown of the 5 hours between the items of work listed on the Fee Note.

32. We agree with Mr Serota that the majority of the work could have been carried out by a fee earner of a lower grade than Mr Kerrigan.

33. We consider:-

(a) that Section 60(2) of the Act applies to the majority of the items;

(b) some partner input was reasonable and might reasonably be expected if the Respondent (or an individual) was liable to pay – but we are unable to gauge the extent thereof on the evidence before us.

(c) that on the evidence before us, an overall hourly rate of £250 is reasonable.

34. Mr Serota submitted that the Applicant is not liable at all in respect of the items on the Second Fee Note as they were either "in connection with the proceedings" (and, therefore excluded by Section 60(5) of the Act) or they were excluded as "negotiation".

35. Mr Serota referred us to Regulation 7(1) of the Leasehold Reform (Collective Enfranchisement and Lease Renewal) Regulations 1993, which provides:-

"The Landlord shall prepare a draft lease and give it to the tenant within the period of fourteen days beginning with the date the terms of acquisition are agreed or determined by a leasehold valuation tribunal".

He submitted that this meant that if preparation of a draft lease was done whilst proceedings before a Leasehold Valuation Tribunal were in being (as in this case), they were necessarily "in connection with the proceedings".

We reject this submission. In our view, Regulation 7(1) sets out a maximum time limit and it would be impracticable to expect no work to be done on preparation of a draft lease until after a determination by a Leasehold Valuation Tribunal and for a draft lease then to be produced within 14 days.

36. Mr Serota submitted that where application was made to a Tribunal (pursuant to Section 48 of the Act), any time spent on negotiating disputed terms or preparing a draft lease was ancillary to the application and therefore "in connection with the proceedings".

In this regard, Mr Serota told us that, in his experience, negotiation of disputed terms whilst an application (under Section 48 of the Act) was in being had always been accepted as being "in connection with the proceedings" but he was unable to refer us to any authority on the point.

We reject this submission. In our view negotiation of disputed terms and preparation of a draft lease are required whether or not proceedings are in being; they flow from the initial notice (under section 42 of the Act). We consider that the work itemised on the Second Fee Note is not caught by Section 60(5) of the Act; this work would have been required in any event, whether or not application (under Section 48) had been made to the Tribunal.

37. We should add, for completeness, that Mr Serota also referred us to the Directions made by the (differently constituted) Tribunal on 9th December 2008 and submitted that work required by the Directions was caught by Section 60(5). Again, we reject that submission for the reasons set out in the last Paragraph of No. 36 above.

38. There is no evidence that 5 hours is unreasonable in respect of the time spent.

39. Accordingly, we allow £1,250 (+ £187-50 VAT) = £1,437-50 in respect of the second Fee Note

SIGNED:

(A.J.ENGEL – Chairman)

DATED: 8th June 2009