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Case reference: LON/00BJ/LAC/2012/0016

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN  
APPLICATION UNDER PARAGRAPH 5 OF PART 1 OF SCHEDULE 11 TO  
THE COMMONHOLD AND LEASEHOLD REFORM ACT 2002**

**Premises:** 24 Bishop's Wharf House, 49/51 Parkgate  
Road, London SW11 4NA

**Applicant:** Valerie Ann Pears

**Respondent:** Bishop's Wharf (Battersea) Management Limited

**Determination without an oral hearing in accordance with regulation 13  
of the Leasehold Valuation Tribunals (Procedure) (England) Regulations  
2003**

**Tribunal:** Margaret Wilson  
Trevor Johnson FRICS

**Date of decision:** 22 October 2012

1. This is an application by the leaseholder ("the tenant") of a flat in a block of 40 flats under paragraph 5 of Part 1 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the Schedule") to determine her liability to pay a variable administration charge to the landlord for dealing with her request for a licence to assign and enquiries before contract in connection with the proposed assignment.

2. Neither party having asked for an oral hearing, the application is dealt with on the basis of the papers alone in accordance with the procedure set out in regulation 13 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003. Directions were made for the preparation of the determination with which both parties have complied.

3. Administration charges are defined by paragraph 1 of the Schedule to include *an amount which is payable, directly or indirectly (a) for or in connection with the grant of approvals under [a] lease, or applications for such approvals.* By paragraph 3 of the Schedule, *"variable administration charge" means an administration charge payable by a tenant which is neither (a) specified in his lease, nor (b) calculated in accordance with a formula specified in his lease.* By paragraph 2 of the Schedule, a variable administration charge is payable only to the extent that it is reasonable.

4. In the present case the landlord has charged a total of £1368, including VAT, in connection with the tenant's application for a licence to assign her lease and share in the management company. The charge comprises a fee of £288 (£240 plus VAT) and a further fee of £180 (£150 plus VAT) charged by the landlord's managing agent, Esskay Management Services, and legal fees of £900 (£750 plus VAT) charged by the landlord's solicitors, Radcliffes Le Brasseur.

5. Clause 3(16) of the lease requires the tenant to pay the costs incurred by the landlord and the management company incidental to applications by the tenant for any consent required under the lease. Clause 3(18) requires the tenant to obtain the landlord's consent to assign and is concerned with the

tenant's obligations in respect of the assignment of the lease and of the tenant's share in the management company. Clause 3(19) is concerned with registration of any assignment. The charges made in the present case relate to consent to assignment and clearly fall within paragraph 1 of the Schedule. The charge is not specified in the lease and is thus a variable administration charge, which is payable only to the extent that it is reasonable.

6. The tenant has also asked in her application for an order to vary clause 3(18)(b) of her lease. However we do not have the power to do so. The power to vary leases under the Schedule is contained in paragraph 3, and is restricted to administration charges which are either specified in the lease or calculated according to a formula specified in the lease, neither of which applies in the present case.

7. It should also be noted that paragraph 4 of the Schedule requires that the demand for payment of an administration charge must be accompanied by a summary of the tenant's rights and obligations, and, by paragraph 4(3), the tenant may withhold payment of the charge if such a notice has not been served. The pre-determination directions ordered the landlord to produce the summary of the tenant's rights and obligations which was served with the demand but it does not appear to have been produced. Until such time as it is produced, the administration charge is, strictly, not payable. Having said that, the tenant was clearly aware of her rights because she has made the present application, and no purpose is served by our postponing a determination, since, if and when the required document is served on her (assuming that it has not already been served) the charge will, to the extent that it is reasonable, become payable.

8. The tenant says that the charge was excessive, particularly because her application for consent to assignment was dealt with so slowly and inefficiently by the landlord's managing agents that she lost the sale. The landlord says that the charges were reasonable for the amount of work which was necessary and that there was no undue delay in dealing with the application.

9. On behalf of the landlord, Ezra Timan of Esskay Management Services, the managing agent, said that his firm's charges for dealing with enquiries before contract and licences to assign were not covered by the basic managing agent's fee and were based on £90 per hour of time spent, plus VAT. He produced a document giving the managing agent's basis of charging for dealing with requests for assignment, which included £150 plus VAT for dealing with the request, obtaining references for the proposed purchaser, and, once all was in order, referring the request to the landlord's solicitors. The document provided that a separate fee was charged for dealing with solicitors' enquiries. He said that in the present case his firm's fee of £240 plus VAT for dealing with solicitors' enquiries were reasonable because of the numerous requests and extensive correspondence with which it had to deal, and that a fee of £150 plus VAT was a reasonable amount for dealing with references, instructions to solicitors, and preparing and executing the licence to assign and the transfer of the share certificate in the management company. He enclosed a chronology of the relevant events between 29 February 2012 when an enquiry was received from the vendor's solicitors and 14 June 2012 when the executed licence to assign was received from the directors of the landlord company and sent to the landlord's solicitors. He also enclosed some of the relevant correspondence and documents. Of the solicitor's charge of £750 he said that the solicitors were based in London, and he enclosed a schedule of work done by them, commencing with a letter of instruction from Esskay Management Services on 26 April 2012 and concluding with receipt of the completion payment after the licence to assign was sent to the parties on 19 June 2012. The schedule was enclosed in an email from Ms Head, the trainee solicitor who appears to have had conduct of the case, in which she explained that there were two bank holidays during the period when the work was done which slowed progress and that two of the directors were ill on 14 June so that the licences had to be posted rather than collected.

10. E R Pears FCA, on behalf of the tenant, did not dispute that the landlord was entitled to charge for dealing with requests to assign, but submitted that the charges were excessive, and made for an inadequate service. He (or

she) said that he had been involved in the management of blocks of leasehold flats for many years and was aware that managing agents and their solicitors saw charges made for assignments as an easy method of making money. He said that he was also aware that some managing agents made no charge, save for solicitors' fees, for granting licences to assign, and that he was not aware that the agency agreement between the landlord and the managing agent permitted the agent to charge fees for dealing with requests for licences to assign. He said that Mr Timan's statement that £240 was charged for dealing with solicitors' enquiries "in view of the numerous questions and details requested" was inconsistent with his firm's statement in a letter to his solicitors dated 2 March 2012 that a charge of £288 plus VAT was "a standard charge" for dealing with the enquiry relating to the sale of the property. He said that in his opinion, dealing with enquiries and providing documents should take no more than half an hour, since the questions were standard ones and readily answerable, and that the work done in connection with the grant of the licence to assign demonstrated an unnecessarily complicated procedure. Of the solicitors' charges he said that the work done was disproportionate, and that a standard licence to assign could be taken from the internet. He said it was not in the interests of the leaseholders for top London solicitors to be engaged for such routine work, and that his own solicitor had told him that the landlord's solicitors' charges were excessive. He said that he remained dissatisfied about the managing agent's delay in dealing with the request which had, he said, caused the sale to fall through, the formal application for a licence to assign having been made to the managing agent by the tenant's solicitors on 20 March 2012, solicitors having been instructed on 26 April, five weeks later, and the licence having been granted on 19 June 2012.

11. Mr Pears referred to two decisions of the Upper Tribunal relating to charges made for dealing with licences to assign, and, particularly, *Bradmoor Limited, Re 10 Meadow Court* [2012] UKUT 3, where it was held that charges of £135 for granting consent to sublet and £75 for registration of the subletting were excessive, and only one charge of £40 was allowed.

12. We are satisfied that the charges made by the managing agent are not unreasonable. This case is not comparable with *Bradmoor*, where the charge was made only for dealing with what appears to have been an entirely straightforward request to assign. In this case, as we are satisfied from the chronology and documents which the managing agent has provided, the charges were made for dealing with a number of enquiries and fairly extensive correspondence. Mr Pears did not challenge the landlord's request for a guarantor which occupied some of the time taken by the landlord's advisers, and we are in any event satisfied that the requirement for a guarantor was not unreasonable given that the proposed purchasers were students with, presumably, little income. We would not expect the work carried out by the managing agent to be covered by the basic fee for management, and we certainly would not expect it to be done for nothing. We see nothing in the chronology which would lead us to conclude that there was undue delay in dealing with the matter, and, in particular, we would not have expected solicitors to be instructed earlier than they were. We can understand that the tenant might not be pleased that the purchasers withdrew from the sale, but there may have been many reasons for their so doing and we cannot be satisfied that their decision was caused by excessive delay on the part of the managing agent.

13. On the other hand we regard the solicitors' charges as too high. Much of the work listed in Ms Head's schedule comprised merely the receipt and sending of documents, and the charging rates and time spent are not explained. We would expect the licences to be fairly standard documents requiring limited expertise and time. Doing the best we can on limited information we conclude that a reasonable fee for the work done by the landlord's solicitors would have been £400 plus VAT, a total of £480.

14. The administration charge payable by the tenant, subject to service upon her of a summary of her rights and obligations, is thus £958, comprising fees of £790 and VAT of £168.

15. The tenant has also asked for an order for costs. The tribunal does not make orders for costs save in exceptional circumstance which do not apply here. It does however have the power under regulation 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003 to order reimbursement of the application fee of £100 and the power to order under section 20C of the Landlord and Tenant Act 1985 to order that the landlord's costs shall not be regarded as relevant costs for the purpose of calculating any service charge. The pre-determination directions made it plain that those requests would be considered as part of the determination and that the parties' representations should deal with them, but the landlord has not chosen to make any comment in this regard.

16. The tenant has been to some extent successful in her application and, taking all the relevant circumstances into account we determine that the landlord should reimburse one half of the application fee, namely £50, and that it should place on the service charges of all the leaseholders no more than half the reasonable fees (if any) which it has incurred in connections with these proceedings.

  
CHAIRMAN.....

DATE: 22 October 2012