



HM COURTS AND TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

Section 91(2)(d) of the Leasehold Reform, Housing and Urban Development Act 1993 – application for determination of reasonable costs under section 60(1)

Case number: BIR/00CN/OC9/2013/0005

Property: 1 Lloyd Square, 12 Niall Close, Edgbaston, Birmingham B15 3LX

Applicant: Roger Joseph Ritchie

Applicant's representative: Mr Graham Ritchie, Solicitor, of Margetts & Ritchie

Respondent: Sir Michael William Bunbury Baronet KCVO, Andrew Ashenden, and Roderick David Kent, being the Trustees for the time being of the Calthorpe Estate

Date of hearing: 10 May 2013

Tribunal: Mr C J Goodall, LLB, MBA Chairman
Mr N Wint MRICS

Date decision Issued 13 JUN 2013

Background

1. The Applicant has exercised his right to request an extended lease of 1 Lloyd Square, 12 Niall Close, Edgbaston, Birmingham B15 3LX under Chapter II of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act"). It appears that all issues are resolved except for the Respondent's legal costs, which are payable under section 60 of the Act.
2. Section 60(1) requires that the Applicant must pay the Respondent's "reasonable costs" in connection with any investigation reasonably undertaken of the tenant's right to a new lease, and the costs incurred in the grant of that new lease.
3. Section 60(2) says that "any costs incurred by a [landlord] 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."
4. The Respondent engaged Shakespeares, Solicitors, to act in relation to the extended lease application. Shakespeares seek the sum of £600 plus VAT and disbursements as their costs. The Applicant says this is excessive and has made this application to the Tribunal for a determination of the issue.

Hearing

5. Given that the dispute relates to costs only the Tribunal considered it unnecessary to inspect the subject property.
6. The Applicant requested a hearing which took place on Friday 10 May 2013 at the Tribunal Hearing Centre in Birmingham. Mr G Ritchie, solicitor, attended the hearing for the Applicant. However neither the Respondent nor any representative on its behalf wished to be present.
7. Mr Ritchie's evidence to the Tribunal comprised an undated written submission with supporting documentation, received on 23 April 2013, in addition to his further oral evidence presented at the hearing itself. The Respondent's evidence was presented to the Tribunal in the form of a letter dated 18 April 2013. The Tribunal has considered both the written documentation presented to it by the parties as well as the additional oral evidence submitted by Mr Ritchie.

The Respondent's case

8. The Respondent has requested a fee of £600 plus VAT. It advises that an extended lease case takes on average 3 hours of time by a part qualified assistant and half an hour of a partners time. These are said to cost £180 per hour and £280 per hour respectively. The work required is, according to the letter

of 18 April, to provide the form of transfer, which is a document of above average complexity as it needs to deal with a scheme of management to which the Property is subject. On the basis of three and a half hours work at the fee earner levels referred to, the cost, they say, should be £680, but they claim £600. The Respondent claims this is a reasonable fee and in support of this refers the Tribunal to two previous Tribunal decisions (in Hussain v The Trustees of the Calthorpe Estate (BIR/00CN/OAF/2011/0081) and Campbell v The Trustees of the Calthorpe Estate (BIR/00CN/OAF/2012/0059)) in both of which £550 was allowed as the landlords legal fee.

The Applicant's case

9. The Applicant claims that Shakepeares fee is unreasonable for the following reasons:
- a. The work is routine, volume work as the Calthorpe estate deals with this type of application very regularly;
 - b. It is carried out by a fee earner who is experienced at this type of work, and so can do it fairly quickly, but who is an unqualified person, and therefore should not be costly;
 - c. Partner supervision should be minimal because of the above two points;
 - d. Standard forms are used;
 - e. The form of transfer referred to by the Respondents in their letter of 18 April was not a transfer but a simple form of lease by reference to the previous lease, and made no reference to the scheme of management;
 - f. Similar work undertaken by Shakepeares for the Bournville Village Trust is charged by them at £385 per transaction;
 - g. The evidence of Tribunal determination of reasonable costs for enfranchisement work also contains cases where lower fees have been awarded; in particular, 31 Cheswick Close (£360), 9 Hollyberry Close (£405) and 34 Rosafield Ave (£385).
10. Mr Ritchie advised the Tribunal that in his view the work should have taken in the region of two hours, and he considered that a reasonable fee would be £435 plus VAT and disbursement.

The Tribunal's determination

11. In accordance with section 60 of the Act the Tribunal has to determine the Respondent's reasonable costs for this transaction, which do not necessarily equate to rates agreed in other transactions. Regrettably, the Tribunal considers the Respondent's evidence in support of their claim to be somewhat limited. The Respondent failed to present to the Tribunal any time sheets or provide a detailed breakdown/description of work undertaken on this case. Instead the Respondents case was simply based on an unsupported statement that this type of work, on average, takes three and a half hours. There was nothing further submitted to the Tribunal by the Respondent to indicate how that statement is evidenced, or

whether this was an above or below average case. Mr Ritchie, who states that he is an experienced conveyancing solicitor, and was not opposed at the hearing, advised that in his professional opinion the time taken by the Respondents was excessive and therefore unreasonable.

12. Evidence of costs determinations in other Tribunal cases might be instructive but cannot be determinative of the outcome of this case which must be determined on the evidence presented. In any event, other Tribunal decisions do not show clear support for a particular fee level.
13. On the balance of the evidence presented, the Tribunal is more persuaded by the evidence presented by Mr Ritchie and therefore finds in favour of the Applicant. The Tribunal determines that the reasonable costs of the Respondent recoverable from the Applicant for this transaction are £435 plus VAT and disbursements.

Date 13 JUN 2013

C. Goodall

C J Goodall

Chair

Leasehold Valuation Tribunal