

2599



**HM Courts
& Tribunals
Service**



**Residential
Property
TRIBUNAL SERVICE**

LONDON RENT ASSESSMENT PANEL

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN
APPLICATION UNDER LEASEHOLD REFORM, HOUSING AND URBAN
DEVELOPMENT ACT 1993 (Sections 60 and 91)**

Case Reference: LON/00BK/OC9/2012/0078

Premises: 12 & 39 Evelyn Mansions, Carlisle Place, London,
SW1P 1NH

Applicant: Mark Christopher Field & Victoria Margaret
Philadelphia Field (1st Applicant)
Sai Asmaan Limited (2nd Applicant)

Representative: Jackson Quinn (Solicitors)

Respondents: Norman Sinclair (Properties) Limited

Wallace LLP (Solicitors)

Representative:

Leasehold Valuation Tribunal: Mrs H C Bowers (Chairman),

Date of decision: 15th January 2013

DECISION

That the costs payable by the Applicant pursuant to section 60 of the Leasehold Reform Housing and Urban Development Act 1993 is the sum of £1,631.25 exclusive of VAT plus £68.49 for disbursements for the Respondent's legal costs for each flat; £1,350 inclusive of VAT for the Respondent's valuation costs for each flat.

Introduction

1.) In applications dated 11th October 2012, the Applicants, Mark Chrisopher Field and Victoria Margaret Philadelphia Field (Flat 12) and Sai Asmaan Limited (Flat 39), sought a determination from the Tribunal as to the landlord's costs under section 60 of the Leasehold Reform Housing and Urban Development Act 1993 (the Act).

2.) In a Notice of Claim dated 18th July 2011 (flat 12) and 15th July 2011 (Flat 39) the Applicants served notice on the Respondent, claiming new leases under the provisions of the Act. The Respondent served counter notices, both dated 28th September 2011.

3.) The costs claimed under section 60 of the Act by the Respondent are £1,750 plus VAT for legal fees and £2,000 plus VAT for the surveyor's fees for Flat 12 and 1,750 plus VAT for legal fees and £1,500 plus VAT for the surveyor's fees for Flat 39. The Applicants initially proposed that an appropriate level of fees would be £1,500 plus VAT for the legal fees and £1,000 plus VAT for the surveyor's fees for each flat.

Hearing

4.) In Directions issued on 18th October 2012 it was directed that this matter would be determined without a hearing in the week commencing 3rd December 2012. However, given the extensive submissions made by the Respondent in this matter, the Applicants were given an opportunity to respond and the date for consideration of this matter was extend to some time after 7th January 2013.

Law

5.) Section 60 of the Act states

(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;...

(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."

Representations

Applicant's Case

6.) Included in the Applicants' case are copies of the relevant completion statements for the two flats with the sum of £2,100 including VAT for legal fees and £2,400 including VAT for the surveyor's fees for Flat 12 and £2,100 including VAT for legal fees and £1,800 including VAT for the surveyor's fees for Flat 39. Copies of correspondence between the parties is provided, including a schedule showing a breakdown of the legal fees indicating £1,862.50 plus VAT of £325.94 for the legal fees and £2,000 plus £400 VAT for the surveyor's fees and disbursements of £68.49 - giving total costs of £4,656.93 for Flat 12 and £1,862.50 plus VAT of £325.94 for the legal fees and £1,500 plus £300 VAT for the surveyor's fees for and disbursements of £68.49 - giving total costs of £4,056.93 for Flat 39. Copies of two invoices from Chesterton Humberts dated September 2011 were provided.

7.) From the correspondence it is suggested that the legal work was a duplication as correspondence was sent out in respect of both flats but could have been dealt with in one correspondence; the schedule shows that each property was charged.

8.) In respect of the legal fees it is submitted that the charging rate for the solicitor's costs range from £275 to £400 per hour. It is acknowledged that the Respondent's solicitors are a London based firm and that an agreed charging rate in the Nottinghamshire area would be £160 per hour. It is suggested that there was scope for a duplication in the work undertaken and that there were 10 occasions when letters were sent out on the same day and that the Respondent should have tried to reduced costs by sending out correspondence that covered both flats. As the Respondent's solicitors deal with all the lease extensions in the block, there should be some type of standard formats/documents that could reduce costs.

9.) In respect to particular aspects of the costs, the 36 minutes to draft the counter notice plus a further 30 minutes to finalise the counter notice and the fact that the work was done by a partner at an hourly rate of £396 plus VAT is disputed. Overall it is suggested that more of the work could have been

undertaken by an assistant and that costs of £1,500 plus VAT and disbursements would be reasonable for each lease extension.

10.) With regards to the surveyor's fees it is noted that the surveyor's invoices do not itemise the work but that a breakdown was subsequently provided by the Respondent's solicitor. The charging rate of £225 per hour is accepted and some of the time involved is not disputed. However, it is submitted that 4.75 hours and 3 hours, respectively to analysis comparables was unreasonable. The Respondent's surveyor subscribed to "Lonres" database and as such the analysis would have been straightforward. Accordingly, a time of three hours for both the properties would be reasonable. Also disputed is 1.75 hours and 1.5 hours respectively to draft the written reports to the Respondent. It is suggested that as the surveyors act on all valuations in the block, there should be a standard reporting document.

11.) The costs proposed were compared against the surveyor acting for the Applicants who charged £750 plus VAT for each valuation. From LVT decisions it was suggested that valuation fees ranged from £750 to £1,000, but in this case there must have been some element of duplication. It is therefore submitted that a valuation fee of £1,000 plus VAT would be reasonable.

12.) In response to the Respondent's submissions on the legal costs, the Applicants' solicitors state that the two lease extensions should have been dealt with in tandem and costs shared accordingly and that is not what appears to have happened. The use of a Partner to undertake all those elements was inappropriate. This was a straight forward matter and costs of £1,500 plus VAT would be reasonable. It is also suggested that it was surprising that standardised documentation was not used, especially when there was evidence of that in the Respondent's submissions to the Tribunal.

13.) With regards to the surveyor's costs it is suggested that the two valuations could have been carried out in tandem. The due diligence carried out to confirm sale prices from Lonres was questioned. It was suggested that the Respondent's valuer had been dealing with four other lease extensions in the block at the same time and one case came to the LVT under reference LON/00BK/OC9/2012/0042. This suggests a duplication of information and that some sort of standard reporting format was appropriate. As to the level of appropriate fees reference was made to two cases LON/00BF/OC9/2012/0066 and LON/00AH/OC9/2012/0006.

Respondent's Case

14.) The Respondent is seeking costs under section 60 of the Act of £1,862.50 plus VAT of £325.94 for the legal fees and £2,000 plus £400 VAT for the surveyor's fees and disbursements of £68.49 - giving total costs of £4,656.93 for Flat 12 and £1,862.50 plus VAT of £325.94 for the legal fees and £1,500 plus

£300 VAT for the surveyor's fees for and disbursements of £68.49 – giving total costs of £4,056.93 for Flat 39.

15.) It was explained that in respect of the legal fees that a Grade A fee earner undertook most of the work with an initial charge out rate of £360 per hour, rising to £375 per hour in August 2012. Some work was done by a paralegal at a charge out rate of £150 per hour. The drafting of the new leases was completed by a Grade A fee earner in the conveyancing department with a charge out rate of £375 per hour rising to £400 per hour in August 2012. An Assistant Solicitor was also involved at a charge out rate of £275 per hour. It is submitted that the solicitors have acted for the Respondent for some time and that the hourly rates and usual for solicitors in Central London. Reference was made to three LVT decisions; *Daejan Investements Freehold Limited v Parkside 78 Limited* (LON/ENF/1005/03); *Daejan Properties Limited v Steven Kenneth Twin* (LON/00BK/OC9/2007/0026) and *Andrew Alexander Allen v Daejan Properties Limited* (LON/00AH/OLR/2009/0343).

16.) It is suggested that in respect of each Notice of Claim an experienced fee earner should consider the Tenant's entitlement to a new lease and the validity of the notice; communicate with the client to obtain relevant information; carry out Land Registry searches; correspond with the Tenant's solicitors; instruct and correspond with the valuer; consider the valuation and take instructions; to prepare and serve a Counter-Notice and prepare and agree a new lease as appropriate. It is stated that the costs claimed are within the provisions of section 60 of the Act and are such that the Respondent would incur if it had been personally liable. This is a complex area of law and as such an experience solicitor should deal with the matter and that the time spent on the matter is reasonable.

17.) Dealing with specific issues raised by the Applicants, it is stated that the use of the Respondent's solicitor is reasonable taking account the experience required to deal with the matter. The charge out rate is usual for solicitors in Central London and there is no obligation that the Respondent should use solicitors based in Nottinghamshire. From *Daejan Investements Freehold Limited v Parkside 78 Limited* (LON/ENF/1005/03) the Respondent is not obliged to find the cheapest or even cheaper solicitor, they are only obliged to give instructions as if the Respondent was bearing the costs themselves. The Respondent's solicitors have been acting for the Respondent for some time and that the charge out rate would satisfy the "reasonable expectation test". The solicitor's rates have been confirmed in *Pearson and Others v Daejan Properties Limited* (LON/00AN/OCE/2009/0162).

18.) Regarding potential cost savings be dealing with the cases in tandem, it is stated that as this is a complex area of law and each case would need to be investigated on an individual basis. However, there were some areas where the

work could be split and the time allocation was split accordingly and shown in the time columns on each statement of costs. It was also stated that as the Applicants were different entities it was necessary to correspond on an individual basis. The use of precedents to reduce costs was not appropriate due to the individual consideration of each Notice of Claim. Finally it was stated that a different fee earner with an appropriate level of experience dealt with the case at different stages.

19.) In respect of the surveyor's fees there is a statement from Mr Kotak the chartered surveyor dealing with these matters. Mr Kotak has over ten years experience and has dealt with over 1,000 valuations for lease extension/enfranchisement cases. It is acknowledged that the charge out rate is not disputed. Mr Kotak detailed the work he had undertaken in respect of the two valuations. In responding to the specific issues raised by the Applicants in respect of the analysis of the comparables, Mr Kotak stated that the information from Lonres required further research in respect of the nature of the property, the type of accommodation, the lease terms and confirmation of the sale price from the Land Registry. Just the additional research would take at least one and a half hours per flat and then there would be the actual analysis of the comparables. In response to the Applicants' criticism regarding the time taken to draft the report, it is explained that the surveyors do not have a report template as each report needs to be tailored to the particular property. It is acknowledged that there was some duplication but only in terms of the location of the flat. The flats were different with one flat of circa 1,150 sq ft and the other 2,850 sq ft. It was also necessary to consult with Mr Shapiro for each valuation to be signed off and although Mr Shapiro spent an hour on both valuations, this time was not charged.

20.) Mr Kotak suggested that the Applicants have already accepted an element of the fee and is therefore only offering £466.74 (Flat 12) and £516.25 (Flat 39) for research and analysis of comparables and drafting the report, equating to 2.07 and 2.29 hours respectively and that this is unreasonable.

The Tribunal's Determination

21.) In respect of the partner's hourly rate of £350 and a rate of £375 for conveyancing partner the Tribunal is of the opinion that this level of charging is slightly on the high side. It is acknowledged that this is a specialist area of law and the Respondent is not under an obligation to seek the lowest provider of legal services, only to ensure that the costs are such that if the Respondent was to be liable for the costs, that those amounts would be payable. In the opinion of the Tribunal an hourly fee of £350 for the time taken would be appropriate for the Grade A fee earners and that the paralegal fee of £150 per hour and the assistant's fee of £275 is reasonable.

22.) In respect of the legal activities undertaken the Tribunal determine that the specification of work provided by the Respondent is in line with provisions of

section 60. The total time claimed was 5.5 hours, with 0.1 hours at £400/hr; 3.5 hours at £360/hr; 0.65 hours at £375/hr; 1.05 hours at £275/hr and 0.2 hours at £150/hr. The Tribunal considers that at this level of fee the Grade A fee earner, as being an expert in that area would be efficient in their use of time and consideration of the issues. It is considered that there would be some degree of duplication, not only in respect of the two cases before the Tribunal, but also having consideration to the Respondent's solicitors past involvement in the block. That being said, it is recognised that the Applicant's are not connected, so correspondence should be sent out to each Applicant, so no duplication of costs would arise on that point. Accordingly, the Tribunal determine that 3.75 hours at £350 per hour; 1.05 hours at £275 per hour plus 0.2 hours at £150 would be reasonable. The total sum allowed for legal costs is £1,631.25 plus VAT and disbursements of £68.49 would be a reasonable sum for the legal costs for each lease extension and are payable by the Applicants.

23.) Regarding the valuation costs the Tribunal is of the opinion that the charging rate at £225 per hour is not unreasonable for a valuer working in this expert area in Central London. This rate has been acknowledged by the Applicants as being acceptable. However, in the opinion of the Tribunal it would appear that given the similarity of the two cases and that there had been other lease extensions valuations carried out in the block there would be some duplication in respect of research and consideration of the issues. The Tribunal is of the opinion that a total of 5 hours at a charging rate of £225 would be appropriate. This equates to £1,125 plus VAT of £225 – total £1,350 for each valuation.

CHAIRMAN: 

DATE: 15th January 2013