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**First-tier Tribunal
Property Chamber
(Residential Property)**

Case Reference : **CAM/00KF/OLR/2013/0137**

Property : **123A High Street,
Shoeburyness,
Essex SS3 9AU**

Applicant : **Jemma Louise Lee**

Respondent : **Regisport Ltd.**

Date of Application : **8th November 2013**

Type of Application : **To determine the terms of acquisition
and costs of the lease extension of the
property**

The Tribunal : **Bruce Edgington (Lawyer Chair)
Evelyn Flint DMS FRICS IRRV
Roland Thomas MRICS**

**Date and place of
Hearing** : **30th January 2014 at Southend
Magistrates' Court, Victoria Avenue,
Southend-on-Sea SS0 7NG**

DECISION

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1. The reasonable legal costs of the Applicant in dealing with the matters set out in section 60 of the **Leasehold Reform, Housing and Urban Development Act 1993** ("the Act") are £516.00 plus VAT on profit costs but subject to the consideration of whether VAT is recoverable by the Respondent. If it is, no VAT is recoverable from the Applicant.

Reasons

Introduction

2. This is an application for the Tribunal to determine the terms of a deed of surrender and new lease of the property plus the costs and valuation fee in accordance with section 60 of the Act. As usual in cases of this nature, the Tribunal gave clear directions timetabling the case to a final hearing. The hearing date was fixed to suit the parties.
3. The hearing bundle arrived and it was noted that, once again, the Respondent failed to serve its valuation report as ordered. The words

'once again' are used because Regisport Ltd. owns many properties within the jurisdiction of the Tribunal and appears regularly as both Applicant and Respondent. Where it is Respondent, it appears to have a standard policy that it will not serve any valuation report despite charging the Applicant for such report and being ordered to serve it.

4. The problem with this is that neither the Applicant's valuer nor the Tribunal has any real idea as to how Regisport's valuer – almost always the same chartered surveyor – argues his case. Negotiations almost invariably involve someone else from Regisport i.e. not the valuer. On many occasions, as with this case, negotiations appear to be very much a last minute affair and a settlement is reached on the morning of the hearing when hundreds of pounds of taxpayers' money have been spent setting up the Tribunal.
5. Warnings have been given to Regisport before about this practice and, once again, they were extremely lucky not to have faced an application for wasted costs. Those representing the Applicant clearly took the greatest exception to the lack of a valuer's report from the Respondent.
6. The Tribunal members attended at the property at 10.00 am on the morning of the hearing to undertake their inspection. The only person there was the Applicant. The Tribunal was in the course of its inspection when the telephone rang and this was answered by the Applicant. After a fairly lengthy conversation, she told the members of the Tribunal that some sort of settlement had been negotiated although she did not appear too sure as to the terms.
7. The Tribunal chair explained that the Tribunal would proceed to the hearing venue to see who turned up and find out what they had to say. This they did. The only person in attendance was Mr. Michael Marriott FRICS. After waiting for some time in case anyone else attended (which they did not), the hearing commenced. Mr. Marriott produced an e-mail dated 30th January 2014 at 9.27 am from a Ryan Bridges on behalf of the Respondent. He describes himself as an Asset Manager and puts terms as to the premium, term and ground rent for the new lease plus an agreed valuation fee. Mr. Marriott said that these terms were agreed. He also said that the terms of the deed of surrender and new lease had also been agreed. It was to his great credit that he had the professional courtesy to actually attend the hearing.
8. Mr. Marriott did his best to assist the Tribunal but was not in a position to say whether the legal costs had been agreed. He could produce no evidence or information to suggest that they had. He referred to some without prejudice negotiations but he knew of no concluded agreement. He was told that the Tribunal would therefore determine the reasonableness of the legal fees claimed based on the statement of costs and the objections filed.

The Law

9. It is accepted by the parties that an Initial Notice was served and therefore Section 60 of the 1993 Act is engaged. For the reasons set

out below, the Applicant therefore has to pay the Respondent's reasonable costs of and incidental to:-

- (a) *any investigation reasonably undertaken of the tenant's right to a new Lease;*
- (b) (not now relevant)
- (c) *the grant of a new lease under that section;*
(Section 60(1) of the 1993 Act)

8. What is sometimes known as the 'indemnity principle' applies i.e. the Respondent is not able to recover any more than it would have to pay its own solicitors or valuer in circumstances where there was no liability on anyone else to pay (Section 60(2)).

The Respondent's claim

10. The Respondent's solicitor is Laura Cleasby who describes herself as "*an in-house solicitor employed by the Regis Group PLC. For the purposes of this matter she has been instructed by the Respondent to act and is trading as Pier Legal Services of Pier Management Limited which falls under the Regis Group PLC*". She adds that she has over 7 years' post-qualification experience and was instructed to act for the Respondent "*in connection with all matters arising from the Applicant's Notice of Claim dated 6 March 2013*". She claims a charge out rate of £220 per hour plus VAT.
11. It is clear from her submissions that she has no electronic time recording system and that all her overheads are met by Regis Group PLC. She says that £220 per hour is reasonable for a Grade B fee earner of her experience based in Central London (W1) and Essex. Her salary has, she says, some London 'weighting'.
12. She then sets out her time spent and to be spent on this case which totals 5 hours 30 minutes. As the only objections raised relate to the hourly rate and 2 further small points, it is not necessary to go into the other items of time spent. As the Upper Tribunal has said several times recently, these are adversarial proceedings and both sides are represented by solicitors. Thus it is not for the Tribunal to raise further questions of its own even though its members did express some surprise about the time taken for some other tasks.
13. VAT is only payable by the Applicant if the Respondent is not able to reclaim the VAT and no doubt this will be considered by the parties. The reason, of course, is that the legal service has been supplied to the Respondent even though the costs are being paid by the Applicant. VAT on these fees is recoverable by the Respondent if it is registered for VAT purposes and it would therefore be unfair for the Applicant to have to pay this.

The Points of Dispute

14. The solicitor representing the Applicant would be, if in private practice, what is known in the courts as a Grade B fee earner in view of her seniority and experience. She is well known to this Tribunal as being someone with experience in dealing with these matters. She will be very well aware of what a leaseholder needs to do to establish a claim for a new lease. What is more relevant to this claim is that a client employing a solicitor of this experience will expect speedy and expert service.
15. The first thing to consider is the Respondent's solicitor's charging rate of £220 per hour. It is generally recognised that 'in-house' solicitors can charge an hourly rate but £220 is much more than a Grade B fee earner would expect to be awarded in a court local to Shoeburyness. The Initial Notice was addressed to, and received by, the Respondent at 7-11 Nelson Street, Southend-on-Sea. The starting point for a Grade B fee earner in a detailed assessment of costs by a District Judge in the Southend County Court is £192 per hour.
16. The fact that Ms. Cleasby may work in London for part of her time is completely irrelevant. The Respondent is in Southend-on-Sea and so is Pier Management. They may have offices in London as well, but they cannot 'pass on' London overheads in the way suggested. A client in Southend-on-Sea would certainly not expect to have to pay anything towards overheads for a solicitor's London office.
17. Charging rates for in-house solicitors are not the same as those allowed in the courts for solicitors in private practice. Those rates are worked out and agreed by the central costs office on behalf of the judiciary as guideline figures taking into account the overheads which would normally be paid by a solicitor in private practice. These overheads would include substantial sums which would not be incurred by an in-house solicitor e.g. professional indemnity insurance (tens of thousands of pounds per annum for most solicitors), an accounts department to ensure compliance with the Solicitors' Accounts Rules, fully mechanised time recording system and all of the reception, staff and telephone expenses necessary for a professional person dealing direct with the public.
18. The figures used by the costs office are calculated on what chargeable hours a solicitor would be able to achieve in the working day (normally 5 hours). Holidays etc. would then be taken into account to work out an annual number of chargeable hours which would usually amount to 1,000 – 1,250 hours. Overheads would then be calculated including salaries, rents, insurance and other usual overheads incurred by a solicitor in practice plus a profit element.
19. Based on a 5 hour working day, 7 weeks' holiday per year and assuming a salary for the solicitor of £40,000 per annum would mean an hourly rate of just under £36.00 (25 hours per week for 45 weeks per year – 1,125 hours - @ £40,000 per annum). If the cost of support staff and contribution towards the office overheads was just over £60,000, then an overall hourly rate of £100.00 would cover the expenses. A partner in a provincial firm of solicitors would expect that just over half of his or her gross fee income would be taken up by overheads.

20. The Tribunal, of necessity, has to take a robust approach to this as neither the Respondent nor the solicitor has supplied any information about this issue. Ms. Cleasby has apparently taken the view that she is entitled to ask for the same amount as a solicitor in private practice in the full knowledge that this would give her employers a level of profit which would be well above that of a firm of solicitors in private practice. Taking all the above matters into account, the Tribunal determines that a reasonable hourly rate for the Respondent's solicitor would be £100 per hour.
21. As Ms. Cleasby did not turn up at the hearing to answer questions about these matters, despite her clear professional duty to either attend or arrange for someone else to do so, the Tribunal has had to do the best it can. She or her employers may be disappointed about this decision but should know that a similar calculation of an hourly rate for an in-house solicitor (a Grade A fee earner in central London) was conducted in the case of **Samnas Ltd v. Market Quarter Ltd.** CAM/38UB/LCP/2012/0004. In refusing permission to appeal, the Deputy President of the Upper Tribunal (ref: LRX/42/2013) said, of the LVT, that *"it fully explained the basis on which it arrived at an overall hourly rate...as the reasonable rate for the work carried out on the applicant's behalf and I am satisfied that its decision contains no error of law, nor is any other reason established which would provide a prospect of the Upper Tribunal interfering with the LVT's decision"*
22. As to the other 2 points, the Applicant says (1) that 24 minutes for drafting a Notice of Statutory Deposit and deduction of title is excessive and 12 minutes is offered and (2) 30 minutes for reviewing the validity of the Initial Notice, the title documents and the qualification of the tenant to proceed is also excessive and 18 minutes is offered.
23. Ms. Cleasby has not answered these points, despite being ordered to do so, and the Tribunal agrees with the objections. Thus a total of 24 minutes is deducted from the time spent leaving a balance of 5 hours 6 minutes. At £100 per hour, this comes to a total of £510 plus any VAT payable. The disbursement of £6 for office copy entries is not disputed.

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Bruce Edgington
Regional Judge
31st January 2014