



**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **BIR/00CN/OAF/2015/0049**

Property : **37 Clifton Road Sutton Coldfield
B73 6EB**

Applicant : **Mr S P Baker**

Representative : **Anthony Brunt & Co Surveyors
& Valuers**

Respondent : **The Halliard Property Co. Limited**

Representative : **Wallace LLP**

Type of Application : **Application under Section 21(1)(ba) of
the Leasehold Reform Act 1967 for a
determination of the landlord's
reasonable costs payable pursuant to
section 9(4) of the Act**

Tribunal Members : **Judge M K Gandham
Mr N Wint FRICS**

**Date and venue of
determination** : **Paper Determination made on 2nd
June 2016**

Date of Decision : **30 JUN 2016**

DECISION

1. The Tribunal determines that the reasonable legal costs of the Respondent in dealing with the matters in section 9(4) of the Leasehold Reform Act 1967 are **£1,089.00** (plus VAT), together with Land Registry disbursements of **£24.00** and courier fees of **£11.75** (plus VAT).

Reasons for Decision

Introduction

2. An application was received by the Tribunal on 14th October 2015 from Mr Stephen Paul Baker, the leaseholder, in respect of a determination for the proper price payable for the freehold of the property known as 37 Clifton Road, Sutton Coldfield B73 6EB ("the Property"), together with an application for a determination of the landlord's costs payable by the tenant under section 21 (1) (ba) of the Act.
3. Directions were issued by the Tribunal in relation to both matters on 15th October 2015. On 4th December 2015, the Tribunal was informed that the price for the freehold of the property had been agreed and new directions were issued by the Tribunal on 16th December 2016.
4. The Tribunal understands that the terms of the acquisition, other than reasonable costs, have been agreed.
5. Submissions and counter submissions were received from both parties, which included a detailed schedule of costs and disbursements ("the Costs Schedule") received from the Respondent's representative, Wallace LLP.
6. The parties are agreed that the Tribunal may determine the matters in issue on the papers submitted without the need for an oral hearing.

The Law

7. The relevant law is set out below:

Leasehold Reform Act 1967, section 9(4)

(4) Where a person gives notice of his desire to have the freehold of a house and premises under this Part of this Act, then unless the notice lapses under any provision of this Act excluding his liability, there shall be borne by him (so far as they are incurred in pursuance of the notice) the reasonable costs of or incidental to any of the following matters: –

- (a) any investigation by the landlord of that person's right to acquire the freehold;*
- (b) any conveyance or assurance of the house and premises or any part thereof or of any outstanding estate or interest therein;*
- (c) deducing, evidencing and verifying the title to the house and premises or any estate or interest therein;*

- (d) *making out and furnishing such abstracts and copies as the person giving the notice may require;*
- (e) *any valuation of the house and premises;*

but so that 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.

Applicant's Submissions

8. On 1st April 2016 the Tribunal received a report from the Applicant's Representative, Mr Brunt, enclosing his submissions together with a reply to each of the items referred to in the Costs Schedule.
9. Mr Brunt referred the Tribunal to the fact that the wording in the Act only required the Tenant to pay the *reasonable costs* of those matters referred to in section 9(4). He submitted that "reasonable costs" are consistent with what a "reasonable person would pay in the same or similar circumstances for the same business of the same or similar item". As such, he argued that a tenant should only have to pay a contribution towards a landlord's costs if they were higher than that which would be considered reasonable.
10. He went on to state that, as the Landlord's solicitors have dealt with sales of previous properties on the estate, similar deeds would have been prepared and the provisions of a draft transfer would have already been ascertained. He argued that the matter was routine and could have been dealt with by standard letters.
11. In relation to the valuer's costs, he stated that the Respondent had not shown that a recoverable valuation fee had been incurred as, he submitted, the surveyor had inspected the property prior to the date of service of the Applicant's Notice of Claim. Had a desktop valuation been undertaken after the service of the Notice, he argued that a fee of £125 would be reasonable.
12. In relation to his submissions on the Costs Schedule, although Mr Brunt did agree to some items of costs, he stated others were either too high or not payable.
13. He submitted that the costs in dealing with the Notice of Claim did not need to be dealt with by a partner and argued that much of the conveyancing work could also have been dealt with by persons more junior, thus reducing the costs incurred.
14. In relation to correspondence to the valuer; researching historic rateable values; submitting a Notice in Reply; preparing the draft transfer; as well as much of the correspondence with the solicitors acting for owners of the remainder of the estate, he submitted that these did not fall within the remit of section 9(4) of the Act and were, therefore, not chargeable. He also argued that any costs in relation to anticipated time for future correspondence, as well as courier's fees were also not payable.

15. Having submitted alternative costs for each item, his calculations suggested that the legal costs should be no more than £616.00 (exclusive of any VAT and Land Registry disbursements).

Respondent's Submissions

16. After initially producing a detailed Statement of Costs, as per the Directions, the Respondent's representatives, Wallace LLP, then submitted a Statement in Reply, received by the Tribunal on 4th April 2016.
17. They contended that their reasonable legal costs for work carried out were £3,057.00 plus VAT (plus disbursements of £26.00 for Land Registry fees and £11.75 plus VAT for courier's fees); and £500.00 plus VAT for valuer's fees.
18. The Tribunal was referred to the principles set out in *Daejan Investments Limited -v- Parkside 78 Limited LON/ENF/1005/03*. Wallace LLP submitted that the provisions of section 33(1) of the 1993 Act were analogous to section 9(4) of the Act. In that decision, they pointed to the fact that the test of reasonableness did not turn on what a tenant might reasonably expect to be their liability nor that the landlord was required to find the cheapest (or cheaper) solicitors from a location closer to the property.
19. Wallace LLP confirmed that it had acted for the Respondent, and other companies within the Freshwater group, in respect of enfranchisement matters for many years, and was the Respondent's choice of solicitor as they had the knowledge and capacity to deal with the work.
20. Wallace LLP referred to the Costs Schedule which, they submitted, detailed that each item of work had been carried out by an appropriate level of fee earner including: a Grade A fee earner at a charge out rate of £450 per hour; a Grade A assistant solicitor at charge out rate £330 per hour; a Grade A conveyancing partner at a charge out rate of £450 an hour as well as a paralegal at a charge a rate of £200 per hour.
21. They confirmed that it was perfectly reasonable for the respective fee earner that dealt with each item of work to charge out their standard rate, which they argued were rates entirely consistent with the usual charge out rates for solicitors in Central London.
22. They submitted that all items detailed in the Costs Schedule were recoverable under the Act, which allowed for items "incidental to" the matters in referred to sections 9 (4)(a) to (e).
23. In relation to the Notice in Reply, they stated that this was recoverable under (or incidental to) section 9(4)(a). In addition, they argued that correspondence with the valuer was also recoverable under the Act.

24. In relation to the draft transfer, they submitted that it was appropriate for this to be prepared by a partner in the property department, given the nature of the document, and that costs in relation to correspondence with the solicitors acting for the freehold interest in the remainder of the estate, were also appropriate and recoverable in this matter. In addition, they believed that their claim in relation to any further correspondence was also reasonable.
25. Regarding courier's fees, they stated that a courier had been engaged to effect service of the Notice in Reply. They asked the Tribunal to note that, had this been supplied in the DX or by mail, delivery could not be guaranteed and therefore personal delivery by courier was used for service of all notices by them. They referred the Tribunal to the case of *Daejan Investments Limited and Fencott Limited -v- Mr and Mrs Gilligan* (LON/00 AH/OLR/2012/0020), in which the tribunal allowed reasonable courier's fees.
26. In respect of the valuer's fees, Wallace LLP stated that the valuer had submitted a report after an informal enquiry from the Applicant. A further copy of the report had been submitted following service of the Notice of Claim. They stated that the valuer's fees, of £500.00 (exclusive of VAT), were consistent with the usual fees for valuers in Birmingham.

The Tribunal's Deliberations

27. The Tribunal has considered all of the written evidence submitted by the parties and has made its determination by firstly considering which services would be recoverable under Section 9(4) of the Act, secondly by considering the time that should reasonably be taken to deal with those matters and finally the reasonable charge for the work carried out. The Tribunal is not bound by previous decisions of the tribunal.

Items recoverable under Section 9(4)

28. Section 9(4) of the Act is quite clear in its wording. It confirms that items that are payable are "*reasonable costs of or incidental to*" any of the matters referred to in parts (a) to (e) of that subsection.
29. In relation to whether a Notice in Reply falls within the remit of section (4) of the Act, the Tribunal is aided by the recent decision of the Upper Tribunal (Lands Chamber) in the case of *Sinclair Gardens Investments (Kensington) Limited v Paul Kenneth Charles Wisby and Lesley Barbara Mary Wisby* [2016] UKUT 203 (LC). The decision specifically dealt with costs under the Leasehold Reform, Housing and Development Act 1993, section 60, and the Upper Tribunal determined that the service of a counter-notice fell within the expression "of and incidental to" subparagraphs (a) (b) and (c) of section 60(1). The Tribunal considers that, it must therefore follow, that the costs of the Notice in Reply are also *incidental to* those matters referred to in section 9(4) of the Act.

30. As the courier's fees appear to have been incurred in relation to the sending of the Notice in Reply, the Tribunal considers these also to be reasonable and recoverable.
31. Although it is generally within the remit of a leaseholder's solicitors to draft the transfer in relation to the purchase of the freehold of a property, the Tribunal note that in this particular matter the Property lies in an estate and additional rights and restrictions are therefore required in relation to the same. In addition, the Tribunal can appreciate the necessity to ensure that all such transfers are in a similar format in the interests of all parties on the estate. As such, the Tribunal considers that the drafting of the transfer, and investigation of the rights required in relation to the same, to be matters which are reasonable in pursuance of the conveyance. In addition, the Tribunal considers that, if questions are raised by a tenant's solicitors in relation to the draft transfer, it is reasonable for the landlord's solicitors to deal with the same.
32. The Tribunal does not consider any anticipated further correspondence can be included under the remit of section 9(4) as these are speculative.
33. In relation to the valuer's costs, although the Tribunal considers the sum of £500.00 plus VAT to be reasonable, it is minded to agree with Mr Brunt, in that it appears that the actual valuation was carried out prior to the Notice of Claim. This point is admitted by Wallace LLP, who confirm in paragraph 59 of their submission, that "a report had been prepared following an informal enquiry from the applicant. A further copy of the report had been submitted following service of the Notice of Claim".
34. Section 9 (4) of the Act is quite clear – it starts with the words "Where a person gives notice of his desire to have the freehold of a house..." and continues "...there shall be borne by him (so far as they are incurred in pursuance of the notice) the reasonable costs of or incidental to...". This includes in section 9(4)(e) any valuation of the house and premises. In this particular matter, it appears that the valuation was not carried out in *pursuance of the notice*, but prior to any notice. There is no evidence that any new valuation was carried out, but that "a copy" was simply "resubmitted". As such, the Tribunal determines that the valuer's costs in this matter are not recoverable.
35. It follows that any correspondence between Wallace LLP and the valuer in relation to the preparation of a report which had already been produced, are also not recoverable.

Time taken

36. The Tribunal notes that as Wallace LLP are the solicitors of choice for the Respondent, they would, no doubt, have dealt with a significant number of transactions previously, which would have an effect on the time spent.

37. As previously stated, the Tribunal does consider that, in this particular matter, time taken to draft the transfer is something which is considered reasonable; however, as the solicitors have dealt with properties on the estate previously, the Tribunal would have expected some degree of knowledge of the rights required in relation to the same.
38. The Tribunal does not consider, on the evidence presented, that the matter was particularly complex nor were there any particularly taxing questions or amendments raised by the Applicant's solicitors. In fact, the Tribunal notes from the correspondence, that some of the issues raised by the Applicant's solicitors were simply dealing with minor errors in the draft transfer received.

Chargeable Rate

39. The Tribunal considered in detail the submissions by both parties as to the charge out rate and subsequent costs.
40. The Tribunal notes that Wallace LLP, who appear to be located (based on their postcode) in London 2, are the chosen solicitor by the Respondent for this type of work. As their usual solicitors for this type of work, the Tribunal considers that they would be experienced in dealing with matters of the type and, consequently, the time spent on having to deal with each matter would be reduced, even if the charge out rate might be higher. The Tribunal would not normally regard the work involved in these cases as requiring a Grade A fee earner.

Determination

41. Taking all of this in to account, the Tribunal considers that, based on the evidence submitted in relation to legal costs, 45 units of time (each unit of time equating to 6 minutes) is a reasonable amount of time for the work falling under section 9(4) of the Act. It also considers that it would be reasonable for the work in the cases to have been carried out by a Grade B solicitor at a rate of £242 per hour, amounting to a sum of £1,089.00 (plus VAT), together with Land Registry disbursements of £24.00 and courier fees of £11.75 (plus VAT).
42. If the Respondent is registered for VAT purposes, it will be able to recover the VAT on those fees because those services will have been supplied to the Respondent, not the Applicant. In such circumstances VAT will not be payable by the Applicant.
43. For the reasons given above, the Tribunal does not consider that the valuer's fees are payable under section 9(4) of the Act.

Appeal Provisions

44. If either party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

30 JUN 2015

M. K. GANDHAM

.....
Judge M. K. Gandham