

975



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

Case Reference : BIR/OOCN/OC6/2016/0038

Property : 3 South Drive, Edgbaston, Birmingham, B5 7RU

Applicant : Suuna Hamza Kagga

Representative : A.W. Brunt of Messrs Anthony Brunt & Co. Surveyors

Respondent : WEL (No.1) Limited

Representative : Messrs Stevensons Solicitors

Type of Application : An Application to determine the freeholder's and head leaseholder's costs legal costs and surveyor's fees under section 21(1)(ba) of the Leasehold Reform Act 1967.

Tribunal Members : I.D. Humphries B.Sc.(Est.Man.) FRICS
P.J. Hawksworth (Lawyer)

Determination : By written representation

Date of Decision : 19 September 2016

DECISION

Introduction

- 1 This application is made under section 21(1)(ba) of the Leasehold Reform Act 1967 ('the Act') to determine the amount of the freeholder's and head leaseholder's legal costs and surveyor's fees to purchase the freehold interest of a house in Birmingham.
- 2 The Applicant holds a lease for 99 years less three days from 25th March 1958. The Applicant served Notice to acquire the freehold dated 21st October 2015 on the Respondent, WEL no.1 Ltd., which was admitted by counter notice dated 14th December 2015.
- 3 On 11th July 2016, the Applicant applied to the First-tier Tribunal for the price and costs to be determined by the Tribunal.
- 4 On 8th August 2016 the Applicant's agent Mr Brunt advised the Tribunal that the parties had provisionally agreed the price of the freehold and head leasehold interests and asked for the cost determination to proceed. Subsequently, both parties' representatives advised that the Respondent's surveyors fees had been agreed at £545 plus VAT.
- 5 The Respondent's legal fees remain in issue and are the subject of this decision although the conveyance has yet to be completed.

The Law

- 6 Section 21(1)(ba) of the Act requires the Tribunal to determine the amount of any costs incurred under section 9.
- 7 Section 9(4) requires the lessee to pay any costs incurred by the freeholder for the following:
 - (a) any investigation by the landlord of the tenant's right to acquire the freehold;
 - (b) any conveyance of the house;
 - (c) deducing, evidencing and verifying the title to the house;
 - (d) providing any abstracts required by the tenant and
 - (e) any valuation of the house.

Issue In Dispute

- 8 The only issue in the costs application is the extent of the Respondent's legal costs.

Legal Fees

9 Applicants' Submission

Mr Brunt for the Applicant sent a written submission dated September 2016 in which he commented on the Respondent's Solicitors' fee analysis. His principal submissions were:

- 1 that a reasonable hourly charge rate for the Respondent's Solicitors would be £177;
- 2 that the claim for emails to and from the client were not agreed;
- 3 that it should have taken no longer than 6 minutes to instruct a Valuer;
- 4 that time taken to draft a counter-notice was not chargeable;

- 5 that sundry correspondence was not chargeable;
- 6 that drafting and checking the transfer should take no more than 12 minutes;
- 7 that the estimated time to complete the transfer should take no longer than 60 minutes.

Mr Brunt did not offer a specific total sum for legal costs.

10 Respondent's Submission

Messrs Stevensons for the Respondent provided a detailed breakdown of the firm's claimed costs which totalled £846.91 plus VAT and minor disbursements.

The itemised account was based on a charge rate of £195 / hour for the Licenced Conveyancer assigned to the case, Andrea Haynes, and £265 / hour for the Solicitor responsible for reviewing the file, Glenn Stevenson, although his time was only charged for 10 minutes on 13th December 2015. The Tribunal notes that this was a Sunday when Miss Haynes was also apparently in the office. The firm also claimed VAT.

11 Tribunal Determination

The Tribunal considers the transaction would normally be undertaken by either an Assistant Solicitor or Licenced Conveyancer and a reasonable charge out rate would be £200 per hour in this case where the Respondent's Solicitors are based in Norfolk.

- 12 The Tribunal considered Stevensons' request for the cost of preparing a counter-notice to be included but the precedent offered in support of the claim, *Sinclair Gardens Investments (Kensington) Limited v Wisbey* [2016] UKUT 0203 (LC), related to a lease extension under the Leasehold Reform Housing & Urban Development Act 1993 where different considerations applied. Under the 1993 Act, if a landlord fails to serve a counter-notice, the price offered by the tenant becomes the price of the extension but there is no parallel default provision in the 1967 Act as in this case, and no formal requirement to serve a counter notice. Furthermore, there is no express clause in s.9(4) of the Act reserving the right to charge for a counter notice. Accordingly, the Tribunal rejects this part of the Claim.

- 13 In respect of time input, the Tribunal has carefully considered each head of claim and determines the reasonable amounts as follows:

Date	Detail	Claim mins.	Decision mins.	Reason
29.10.15	Receiving letter from client enclosing notice of claim and perusing same.	15	12	Excessive time input.
"	Obtaining and perusing copy sub-lease	6	6	Reasonable.
2.11.15	Draft Notice of Request for deposit.	6	6	Reasonable.
"	Letter to A.Brunt enclosing Notice.	6	6	Reasonable
"	Emails to and from client.	6	6	Reasonable.
"	Preparing and sending report to Valuer and copying documentation to send to him.	10	6	Excessive time input.

4.11.15	Emails to and from Valuer.	9	6	Excessive time input.
6.11.15	Correspondence with Valuer and A.Brunts.	15	12	Excessive time input.
5.12.15	Considering letter from A.Brunts.	10	6	Excessive time input.
19.1.16	Correspondence re Valuer's report.	21	18	Excessive time input.
20.1.16	Email from client.	3	6	Minimum 1 Unit.
TBC	Draft and check transfer.	20	18	Excessive time input.
TBC	Estimated time to completion.	90	60	Excessive time input.
Other				All items other than disbursements are disallowed.
Total			168	

- 14 168 minutes at £200 per hour equates to £560.
- 15 No VAT is payable as the landlord is able to reclaim VAT.
- 16 In addition, the Tribunal agrees the cost of disbursements at £1.73 for recorded delivery mail and £3.00 for a copy lease.

Summary

- 17 The Tribunal determines the Respondent's reasonable legal costs at £560 (Five Hundred and Sixty Pounds) and disbursements at £4.73.

I.D. Humphries B.Sc.(Est.Man.) FRICS
Chairman

Appeal

If either party is dissatisfied with this decision an application may be made to this Tribunal for permission to appeal to the Upper Tribunal, Property Chamber (Residential Property) on a point of law only. Any such application must be received within 28 days after these reasons have been sent to the parties under Rule 52 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.