954

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AW/OC6/2015/0006**
Property	**:**	**133 Abbotsbury Road and Garage No 36, London W14 8EP**
Applicant	**:**	**The Trustees of the Ilchester Estate**
Representative	**:**	**Pemberton Greenish LLP, solicitors**
Respondent	**:**	**Natalie Helene Futter**
Representative	**:**	**Brook Martin & Co, solicitors**
Type of application	**:**	**For a determination under section 21(1)(ba) Leasehold Reform Act 1967 of the reasonable costs payable under section 9(4) of that Act.**
Tribunal members	**:**	**(1) Judge Amran Vance** **(2) Mr C Gowman, BSc MCIEH**
Date of determination and venue	**:**	**13 January 2016 at 10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**13 January 2016**

DECISION

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Decision of the tribunal

1. The Tribunal determines that the costs payable by the Respondent under section 9(4) of the Leasehold Reform Act 1967 ("the Act") exclusive of VAT are £2,453.50.

2. The reasons for the Tribunal's decision are set out below.

Background

3. This decision relates to an application made under the provisions of section 21(1)(ba) of the Act as to the reasonable costs payable by the Respondent under section 9(4) of the Act. The application is dated 23 October 2015 and identifies the costs being claimed as £2,712.50 excluding VAT. In a letter dated 4 December 2015 the Applicant's solicitors notified the Respondent's solicitors of additional costs of £550 plus VAT being claimed comprising costs incurred by the Applicant's valuer.

4. Directions were issued on 29 October 2015. These Directions allocated the matter to be dealt with on papers unless either party requested a hearing. There was no request for a hearing and accordingly, this issue has been considered on the basis of the papers provided by the parties.

5. The Respondent is the long lessee of 133 Abbotsbury Road and Garage No 36, London W14 8EP (the Property"). She holds her leasehold interest under the terms of a lease dated 11 January 2001 entered into between: (1) Sir Simon Michael Hornby, Henry Merton Henderson and John Arthur Courtney Drake; (2) Abbotsbury House Management Company Limited; and (3) Elspeth Gaye Pirie ("the Lease").

6. By a Notice dated 26 May 2015 the Respondent's predecessor in title gave notice to Jove Properties (1) Limited that she wished to exercise the right to acquire the freehold of the Property under the terms of the Act. The benefit of that Notice was assigned to the Respondent by a Deed of Assignment dated 25 May 2015 during the course of her purchase of the Property.

7. It appears that at some point in 2015 the Applicant acquired the freehold interest in the Property from Jove Properties (1) Limited. When this took place is not indicated in the documents before us but the identity of the freeholder for the purposes of this application is not disputed by the Respondent.

8. On 21 July 2015 the solicitors for the Applicant served a Notice in Reply stating that the Respondent's right to acquire the freehold under the Act was not admitted as the Property did not meet the definition of a 'house' within the meaning of section 2 of the Act. In a covering letter they explain that this is because a material part of the house above the underground garage did not form part of the structure demised to the Respondent.

9. After service of the Notice in the Reply the Respondent initially maintained her right to acquire the freehold interest in the Property, but, by letter dated 29 September 2015, her solicitors subsequently withdrew her claim. In that letter they state that before making the claim they sought the opinion of counsel who advised that as the entirety of the basement slab of the Property was included within the Respondent's demise, with the freeholder retaining only the airspace and door to the garage, that, on balance, the Property met the definition of a house for the purposes of the Act. They go on to state that it was hoped that the Applicant would agree with that position but, as it did not, the Respondent did not wish to embark on a contested claim and for that reason the claim was being withdrawn.

The Law

10. The relevant legislation is reproduced in the Appendix to this decision.

The Respondent's Case

11. In her Statement of Case the Respondent contends that as the Applicant's solicitors are a leading firm specialising in leasehold enfranchisement that the consideration of her claim, and whether or not the Property met the definition of a house, should have been a very straightforward matter for them. All they would have needed to do was to construe the relevant provisions of the Lease, in particular clause 2.7 which excepts from the demise the airspace enclosed between the basement structural slab and the ground floor structural slab together with the structure of the house between those slabs.

12. The Respondent contends that the time spent by the Applicant's solicitors in reaching this "obvious and simple" conclusion is unjustified. She refers to correspondence from the Applicant's solicitors to her solicitors in which they refer to the Property as "clearly" not being a house and that something so evidently clear cannot justify 6 hours 12 minutes of a partner's time and 54 minutes of a Legal Property Manager's time "at a combined hourly charge of £600". The Respondent suggests that costs in the sum of £500 plus VAT would be reasonable, comprising 2.5 hours of the Legal Property Manager's time.

The Applicants' Case

13. A breakdown of the freeholder's costs has been supplied. This has been calculated at an hourly rate of £395 for work carried out by a partner, Laura Blackwell-Shaw, and £205 per hour for Christine Lyddon, a Legal Property Manager. It is unclear as to whether or not Ms Lyddon is a solicitor but this is not a point taken by the Respondent.

14. The Tribunal's directions provided for the Applicant to submit a statement in response to the Respondent's statement of case, if it so wished, by 3 December 2015. It did not do so.

Decision and Reasons for the Tribunal's Determination

15. The Tribunal does not accept the Respondent's contention that the claim should have been an obvious and simple matter for the Applicant to deal with. This suggestion does not accord with the Respondent's stated need to secure the advice of counsel before embarking upon the claim. In our view the question as to whether or not the claim was valid was not one that could have been resolved simply by construing the provisions of the Lease. It was reasonable, in our view, for the Applicant to spend time investigating the title of the Property and seeking advice from a surveyor in order to assist in determining that question.

16. We first considered the hourly rates sought by the Applicant. No specific challenge to the hourly rates has been made by the Respondent save for its contention that the costs claimed were excessive having regard to the total time spent and the "combined hourly rate of £600". In the Tribunal's view this reference to a combined hourly rate is not of assistance. The relevant questions are the whether the individual hourly rates are excessive and whether the work in question was carried out by an appropriate level of fee earner.

17. In the Tribunal's view the hourly rates charged are reasonable having regard to the location of the Applicant's solicitors in Central London and the complexities of the relevant legislation. Except as referred to below we accept that it was reasonable for the majority of this work to have been carried out by a partner given the complexities of the legislation and the potential serious consequences for the Applicant if an error was made.

18. We then considered whether or not the costs claimed fall within the ambit of section 9(4)(a) of the Act. We concluded that they do as they comprise costs of, and incidental to, the investigation by the Applicant of the Respondent's right to acquire the freehold of the Property.

19. We then went on to consider whether the costs as claimed in the breakdown were reasonable. We would have been assisted by time recording records but unfortunately these have not been provided. Nevertheless, in the absence of any suggestion to the contrary from the

Respondent we are satisfied that the breakdown is a true reflection of the work carried out between 28 May 2015 and 30 September 2015.

20. There is no suggestion by the Respondent that there has been any duplication of work between Ms Blackwell-Shaw and Ms Lyddon and we are satisfied from our perusal of the breakdown provided that there is no evidence that this is the case.

21. We consider all of the costs claimed to be reasonable except for the following:

(a) we do not accept that it was reasonable for Ms Blackwell-Shaw to spend a total of 3 hours and 18 minutes on 13 July 2015 in perusing documents from her client, continuing to investigate the validity of the claim (and whether or not the premises satisfied the definition of a house for the purposes of the Act) and then preparing a report to her client. This is because the wording of the breakdown suggests that the hour she spent on 8 June 2015 was taken up primarily in addressing the same issues. We accept that it was reasonable for her to report to her client at this stage and that given the complexities of the legislation that this report would need to be quite detailed. On balance, and without sight of the report in question or time recording records, we consider that 1 hour and 48 minutes should be allowed for such work; and

(b) we consider that most of the work carried out on 21 July 2015 such as conducting up to date Land Registry searches, preparing a Notice in Reply and sending it to the Respondent's solicitors, and making diary notes should have been carried out by a more junior fee earner. We accept, however, that it was appropriate for Ms Blackwell-Shaw to respond to her client. We consider 36 minutes at the Legal Property Manager's rate of £205 per hour and 12 minutes for Ms Blackwell-Shaw to respond to her client to be reasonable for the work carried out.

22. As for the costs of the valuer, Ms Frances Joyce, it is unsatisfactory that these costs were omitted from this application and that we have not been provided with an invoice for these costs. We are also concerned that in her email to the Applicant's solicitors of 4 December 2015 Ms Joyce states that she *"proposed"* charging two hours of time for her work. The implication is that her fees had not been agreed prior to her carrying out work.

23. However, the Respondent has been on notice of the valuer's costs since receipt of the letter of 4 December 2015. It has not made any observations in response despite having had the opportunity to do so when sending the letter of 4 December 2015, and its enclosures, to the Tribunal, on 8 December 2015. We appreciate by this point the Respondent had already submitted her Statement of Case but she could

still have objected to the inclusion of these costs within the claim or made observations about the amount being sought. In our view the Respondent has had sufficient notice of these costs and we consider it appropriate for us to proceed to determine whether or not they were reasonably incurred.

24. On balance, despite the lack of an invoice, we are satisfied that Ms Joyce carried out the work referred to in her email of 14 July 2015 and that such costs were properly incurred for the purposes of the Act, namely in the investigation of the Respondent's right to acquire the freehold of the Property. We consider her hourly rate and the time spent (two hours work at £275 per hour plus VAT) to be reasonable for the work detailed in her 14 July email.

Conclusion

25. The total amount of costs payable under section 9(4) of the Act exclusive of VAT is £2,453.50. This is broken down as follows:

Ms Blackwell-Shaw	4 hours 18m @£395ph	=	£1,698.50
Ms Lyddon	1 hour @£205ph	=	£205.00
Ms Joyce	2 hours @£275ph	=	£550.00
			£2,453.50

26. VAT will need to be added to this figure, at the appropriate rate, if applicable.

Name: Amran Vance **Date:** 12 January 2016

Appendix

Leasehold Reform Act 1967

s.21

Jurisdiction of [. . . tribunals]

(1) The following matters shall, in default of agreement, be determined by the appropriate tribunal namely-

(a) [....]

(b) [....]

(ba) the amount of any costs payable under section 9(4) or 14(2);

[....]

s.9

Purchase price and costs of enfranchisement, and tenant's right to withdraw

(1)-(3) [....]

(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.

[....]