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First-tier Tribunal
Property Chamber
(Residential Property)

Case Reference	:	**CAM/00KF/OLR/2014/0042**
Property	:	**9a Avon Way, Shoeburyness, Essex SS3 9DZ**
Applicants	:	**Geoffrey Charles Mole and Brenda Marjorie Marron (formerly Sarney) Represented by Mr. Robert Plant (solicitor)**
Respondent	:	**Baddow Properties Ltd. Represented by Mr. G N Benson (solicitor)**
Date of Application	:	**17th February 2014**
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 Neil Martindale FRICS**
Date and place of Hearing	:	**1st May 2014 at Southend Magistrates' Court, Victoria Avenue, Southend-on-Sea SS0 7NG**

DECISION

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1. The reasonable legal costs of the Respondent in dealing with the matters set out in section 60 of the **Leasehold Reform, Housing and Urban Development Act 1993** ("the Act") are £500.00 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 Applicants.

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. The Tribunal had been

told just before the day of the hearing that the premium for the lease extension had been agreed which meant that an inspection of the property was not necessary. The Tribunal was told at the outset of the hearing that the valuation fee had also been agreed which just left the terms of the lease extension and legal costs in dispute.

The Law

3. 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 Applicants therefore have 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)

4. 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 Hearing

5. Mr. Plant sought to open the Applicants' case for a variation in the terms of the lease to cure what he saw as a defect in the original lease in the insurance provisions. Whilst he was speaking, Mr. Benson interposed and said that if the costs were agreed, then he would concede the amendment. As the costs were not agreed, the application continued.

6. When Mr. Plant had put his case, the Tribunal looked to Mr. Benson to put his case and he said that he was prepared to give way on the point which meant that the variation was agreed and the Tribunal therefore had no further jurisdiction to deal with that issue.

7. This just left the legal costs and it is important to set out what Mr. Benson's firm had set out as its claim for costs.

   Mr. Benson said that he had been a solicitor for many years specialising in land law. He was claiming £220 per hour and his estimated costs were as follows:-

"8½ times spent or anticipated at £220 per hour	£ 1,870.00
17 letters sent or anticipated at £22 each	£ 374.00
15 letters received or anticipated at £11 each	£ 165.00
14 telephone calls made or anticipated at £22	£ 308.00
	£ 2,717.00
VAT at 20%	543.40
	£ 3,260.40"

8. The Tribunal's directions order had said that he was to provide details including a breakdown of the number of hours spent or estimated to be spent plus details of letters sent, telephone calls and those anticipated. The purpose, as must have been perfectly clear, was so that any objections to the costs could be specifically identified and addressed. As it was, Mr. Plant complained that as the claim was so vague, his objections, similarly, had to be vague and dealt with only general issues.

9. One of the general points made was that no comment could be made about the hourly rate as Mr. Benson had not given details of his qualification and experience. That was, perhaps, a little disingenuous as Mr. Benson did say that he was "*a solicitor for many years, specialising in land law*". As it was, and armed with this information, Mr. Plant did not challenge the hourly rate. £220 per hour is a little high for a Grade A fee earner but it is within the range of reasonableness which Mr. Plant clearly accepted.

10. The Tribunal chair asked Mr. Benson specifically what he considered his time should be costed for in dealing with 'investigating the tenants' right to a new lease'. He said he thought about 2 hours time. He was then asked what he considered his time should be for completing the new lease and again he said about 2 hours. He then started talking about the costs claimed including breaches of the terms of the lease and other matters which obviously had nothing to do with section 60 of the 1993 Act.

11. The Tribunal was concerned to note that whilst M. Benson said that he had years of experience dealing with lease extension cases and enfranchisement, he had obviously included within his costs calculation matters which he was clearly not entitled to include within a section 60 claim. He also included incoming letters which have not been allowed in the county court in detailed assessments for many years unless the time spent on a particular incoming letter was so significant that a separate attendance note is prepared.

12. For a solicitor with a great deal of experience, 2 hours just to see whether there was a good claim for a lease extension is grossly excessive. Furthermore, the time had already been spent and the Tribunal was at a loss to understand why Mr. Benson could not say exactly how long that exercise had taken.

13. Further, a full 2 hours to complete the lease which was in statutory form save for some relatively minor amendments also seems on the high side.

14. The Tribunal considers that for these 2 tasks, including accompanying correspondence, a sum of £500.00 is reasonable. Although this did not affect this decision, it should be understood that Mr. Benson had run a severe risk of having his costs assessed at 'nil' in view of the lack of detail and the failure to provide a copy of any client care letter, as requested, to ensure that the indemnity principle had not been breached. In other words the mandatory letter which solicitors have to

write to their clients setting out their hourly rate and an estimate of the likely costs.

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Bruce Edgington
Regional Judge
6th May 2014