4112

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BC/OC9/2015/0394**
Properties	:	**Flat 13, Centreway, High Road, Ilford IG1 1NE**
Applicant	:	**Masihullah Patel**
Representative	:	**In person**
Respondent	:	**Millpond Properties Limited**
Representative	:	**Olswang LLP Solicitors**
Type of Application	:	**Application for the determination of reasonable costs pursuant to sections 60 of the Leasehold Reform, Housing and Urban Development Act 1993**
Tribunal Members	:	**Ms N Hawkes** **Mr R Shaw FRICS**
Date and venue of determination	:	**18.11.15 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**18.11.15**

DECISION

Decision of the Tribunal

The Tribunal determines that the costs payable by the applicant are in the sum of £2,833.50 + VAT.

Background

1. This is an application under section 91 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the 1993 Act"). The application is for the determination of the costs payable by the respondent under section 60(1) of the 1993 Act.

2. On 8th June 2012, the applicant served a notice pursuant to section 42 of the 1993 Act on the respondent ("the First Notice"). This notice was deemed withdrawn on 13th February 2013.

3. A second notice pursuant to section 42 of the 1993 Act dated 10th January 2014 ("the Second Notice") was then served on the respondent. This notice was served within the deemed withdrawal period which followed the service of the First Notice.

4. A third notice pursuant to section 42 of the 1993 Act dated 21st February 2014 ("the Third Notice") was then served on the respondent. The Tribunal has been informed that the terms of acquisition were agreed on 10th February 2015 and that the matter completed on 29th May 2015.

5. The costs payable by the applicant were not agreed and, accordingly, the applicant makes this application to the Tribunal seeking a determination of the statutory costs payable.

6. The applicant attended the hearing in person and Mr Hobson and Ms Mynett of Olswang LLP Solicitors attended the hearing on behalf of the respondent.

The law

7. Section 60 of the 1993 Act provides:

60.— Costs incurred in connection with new lease to be paid by tenant.

(1) Where a notice is given under section 42, then (subject to the provisions of this section) the tenant by whom it is given shall be liable, to the extent that they have been incurred by any relevant person in pursuance of the notice, for the reasonable costs of and incidental to any of the following matters, namely—
(a) any investigation reasonably undertaken of the tenant's right to a new lease;
(b) any valuation of the tenant's flat obtained for the purpose of fixing the premium or any other amount payable by virtue of Schedule 13 in connection with the grant of a new lease under section 56;
(c) the grant of a new lease under that section;
but 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.
(2) For the purposes of subsection (1) any costs incurred by a relevant person in respect of professional services rendered by any person shall only be regarded as reasonable if and to the extent that costs in respect of such services might reasonably be expected to have been incurred by him if the circumstances had been such that he was personally liable for all such costs.
(3) Where by virtue of any provision of this Chapter the tenant's notice ceases to have effect, or is deemed to have been withdrawn, at any time, then (subject to subsection (4)) the tenant's liability under this section for costs incurred by any person shall be a liability for costs incurred by him down to that time.
(4) A tenant shall not be liable for any costs under this section if the tenant's notice ceases to have effect by virtue of section 47(1) or 55(2).
(5) A tenant shall not be liable under this section for any costs which a party to any proceedings under this Chapter before the appropriate tribunal incurs in connection with the proceedings.
(6) In this section "relevant person", in relation to a claim by a tenant under this Chapter, means the landlord for the purposes of this Chapter, any other landlord (as defined by section 40(4)) or any third party to the tenant's lease.

8. Drax v Lawn Court Freehold Limited [2010] UKUT 81 (LC) dealt with costs under section 33 of the 1993 Act, rather than section 60, but the principles established in Drax have a direct bearing on costs under section 60.

9. In summary, costs must be reasonable and have been incurred in pursuance of the section 42 notice in connection with the purposes listed in sub-paragraphs 60(1)(a) to (c). The respondent is also protected by section 60(2), which limits recoverable costs to those that the applicant would be prepared to pay if it were using its own money rather than being paid by the respondent.

10. This introduces what was described in Drax as a "(limited) test of proportionality of a kind associated with the assessment of costs on the

standard basis". It is also the case, as confirmed by Drax, that the landlord should explain and substantiate the costs claimed.

11. The Tribunal has had regard to the first instance decisions which have been referred to by both parties.

The issues in dispute

12. After some discussion at the hearing, it was agreed that the following issues remain in dispute:
    a. whether the hourly rates charged by the respondents' solicitors are reasonable;
    b. whether the number of units claimed is reasonable;
    c. whether items 23 and 25 in the applicant's schedule which appears at pages 10 to 16 of the addendum ("the Schedule") relate to work covered by subsection 60(1) of the 1993 Act; and
    d. whether the fees of the respondent's valuer are reasonable.

The hourly rates charged by the respondent's solicitors

13. The applicant notes that the property is based in Ilford, Essex and that the respondent chose to instruct solicitors in central London, over 13 miles away from the subject property. He argues that the work was not so unusual, complex or specialist in nature that only a central London solicitor was appropriate. By way of example, he states that he instructed very competent local firms himself to deal with the matter.

14. The applicant argues that, accordingly, the appropriate rates for work of this type are those charged by firms situated where the property is based and that the 2010 Guideline Hourly rates for solicitors should be applied. On this basis, he submits that the proper and reasonable rates to apply in this matter are £267 per hour for the work undertaken by Mr Hobson and Ms Mynett, who are both solicitors with over 8 years' experience, and £165 per hour for Mr Gribbin, who qualified in 2012.

15. The applicant drew the Tribunal's attention to *18 and 18A Ravenscar Road, Tolworth, Surrey KT6 7PL (LON/00/00AX/OCE/2014/0063)* to *111 and 113 Cheston Avenue (LON/00AH/OC9/2012/0006)* and to *Flat A, 50 Eric Road, Chadwell Heath, Essex RM6 6JH (LON/0AB/OLR/2013/1119)*.

16. The applicant accepts that the respondent may have a strong working relationship with Olswang LLP but argues that, if the respondent therefore chooses to instruct Olswang LLP when a reasonable service can be provided by less expensive solicitors, the full cost of instructing Olswang LLP should not be passed on to the applicant.

17. The respondent contends that leasehold enfranchisement work is a specialist niche area; that Olswang LLP provides a specialist service; and that instructing such specialist solicitors means that a more efficient service can be obtained by the client.

18. The respondent states that Olswang LLP have acted for the respondent and other related entities in relation to leasehold enfranchisement matters for many years and that they are situated close to both the registered office of the respondent and to their asset managers from whom day to day instructions are taken. The respondent contends that this long working relationship also leads to greater efficiency.

19. The respondent draws the Tribunal's attention to the fact that the hourly rates relied upon by the applicant are simply "guidelines"; notes that the guideline rates have not been reviewed for some time; and states that the hourly rates to be applied are a matter for the Tribunal's discretion.

20. The respondent accepts that the work undertaken in relation to this particular matter was not overly complicated but argues that this is reflected in the invoice. The respondent also submits that the law in this area is potentially complex and that it is appropriate to instruct solicitors who are well placed to quickly identify any difficult issues of law, should they arise.

21. The respondent accepts that there are solicitors who are competent to deal with leasehold enfranchisement work who are located outside central London. The respondent, however, submits that the greater the level of specialism of the solicitors and the more extensive the relationship with the client, the more efficient the service that will be provided by the solicitors.

22. The respondent drew the Tribunal's attention to *3c Valebrook, 2 Park Avenue, Ilford, Essex IG1 4RT (MR/LON/00BC/0C9/2015/0045)* and *to Flat 85, Grosvenor Court, London Road SM4 5HQ (LON/00BA/0C9/2015/0175).*

23. The Tribunal accepts the applicant's submission that there are competent solicitors outside central London who can carry out this type of work but it also accepts Mr Hobson's evidence that there are likely to be efficiency savings in instructing very specialist solicitors who have a long standing relationship with the respondent and their asset managers of the type described by Mr Hobson.

24. The Tribunal finds that, in all the circumstances of this case, the appropriate hourly rate for Mr Hobson is £380 + VAT; the appropriate hourly rate for Ms Mynett is £275+ VAT; and that the appropriate hourly rate for Mr Gribbin is £200 + VAT.

The units claimed and the scope of the work undertaken

25. Both parties agreed that it would be appropriate for the Tribunal to adopt a "broad brush" approach to this issue.

The First Notice

26. In respect of the First Notice, the parties were initially one unit apart in respect of the time charged for the work undertaken by Mr Hobson and it was agreed that 13.5 units should be allowed at Mr Hobson's hourly rate.

27. In respect of the work carried out by Mr Gribbin, the applicant argued that the time spent by Mr Gribbin should be reduced by 12 units, from 25 units to 13 units.

28. The Tribunal notes that the total amount of time claimed by the respondent in respect of dealing with the first notice is 3 hours 54 minutes. Having considered both parties' written and oral submissions and doing the best in can on the basis of the limited information available, the Tribunal determines that it is appropriate to make only a modest reduction from 25 units to 20 units in respect of the work undertaken by Mr Gribbin.

The Second Notice

29. In respect of the Second Notice, the respondent has claimed 5 units (representing 30 minutes of Ms Mynett's time) for reviewing a letter and purported notice of claim; referring back to the file; noting that the Notice was invalid; sending out appropriate correspondence; and, on a subsequent date, chasing for a response in order to avoid the need to serve a Counter Notice on a without prejudice basis.

30. The Tribunal accepts the respondent's submission that it was reasonable for Ms Mynett to spend a total of 30 minutes in carrying out this work and makes no reduction.

The Third Notice

31. The applicant submitted that items 23 and 25 in the Schedule do not fall within the scope of the work covered by section 60(1) of the 1993 Act. The respondent then provided some further detail of the work which was carried out. The Tribunal is persuaded that item 23 falls within the scope of the relevant work but, on balance, is not satisfied that item 25 should be included. Accordingly, one unit falls to be deducted in respect of item 25.

32. The 6 units claimed in respect of Mr Hobson's time in dealing with the Third Notice were not disputed but the applicant claimed that the 25 units claimed in respect of Ms Mynett's time (item 25 in the Schedule having already been deducted) should be substantially reduced.

33. The Tribunal notes that the total amount of time claimed by the respondent in respect of dealing with the Third Notice is 3 hours 12 minutes. Having considered both parties' written and oral submissions and doing the best in can on the basis of the limited information

available, the Tribunal determines that it is appropriate to make only a modest reduction in the units charged in respect of Ms Mynett's work, and allows 22 units rather than 25 units.

The valuer's fees

34. The applicant argued that the three hours spent by the valuer in inspecting the subject property and the locality; finding comparable sales evidence; analysing the relevant information; and in preparing both a valuation and a report was an unreasonably long period of time. Further, the applicant was concerned that the valuer may have included a charge in respect of the time that it would have taken him to travel from Croydon to Ilford.

35. The respondent was unable to confirm whether or not travel time had been included but argued that the valuer's fees are, in any event, reasonable.

36. The Tribunal finds that, even if no allowance is made for travel, the valuer's fees are reasonable having regard to the nature of the work undertaken.

Conclusion

37. **The attached Appendix sets out the Tribunal's decision and shows the time allowed and hourly rates with calculation of total costs. A sum for disbursements is not included as the Applicant conceded that these are payable during the hearing.**

Judge N Hawkes

18th November 2015

Appendix 1

Schedule of costs

The First Notice				
	Units	Hours	Hourly rate £	Costs
Mr Hobson	13.5	1.35	380	513
Mr Gribbin	20	2	200	400
The Second Notice				
Ms Mynett	5	0.5	275	137.5
The Third Notice				
Mr Hobson	6	0.6	380	228
Ms Mynett	22	2.2	275	605
				1883.5
Valuation Fees				
	First Valuation			650
	Second Valuation			300
			Total	**2833.5**