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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BA/OC9/2016/0501**
Property	:	**64B Martin Way, Morden SM4 4AJ**
Applicant	:	**Anthony Maloney**
Representative	:	**Wilson Barca LLP**
Respondent	:	**Fairline Estates Ltd**
Representative	:	**Bude Nathan Iwanier solicitors**
Type of Application	:	**Costs on extension of lease**
Tribunal	:	**Judge Nicol**
Date of Decision	:	**6th March 2017**

DECISION

The Tribunal has determined that no costs are payable by the Applicant to the Respondent under section 60 of the Leasehold Reform, Housing and Urban Development Act 1993.

Reasons for Decision

1. The Applicant applied for a determination as to the costs recoverable by the Respondent in accordance with section 60 of the Leasehold Reform, Housing and Urban Development Act 1993 which is set out in the Appendix to this decision.

2. The Tribunal issued directions on 22nd December 2016 for a determination on the papers, without a hearing. The Respondent's solicitors say they received the directions late but, in due course, each of the parties provided a bundle of documents and the Tribunal has proceeded to make its determination on the basis of the material in those bundles.

3. On 16th May 2016 KWW Solicitors, the solicitors acting for the Applicant's predecessor-in-title, George Frederick Taylor, purported to serve a notice claiming a new lease under section 42 of the Act. It turns out that service was invalid because the covering letter purported to serve the Respondent's agents at their registered office rather than the Respondent itself or the agents at their correspondence address.

4. By a deed dated 17th May 2016, Mr Taylor purported to assign the benefit of the notice to the Applicant. However, since the notice had not been validly served, there was no benefit to assign and the assignment was ineffective.

5. The Respondent has, at all material times, correctly asserted this to be the case, namely that the notice was not validly served and the assignment was ineffective. The Applicant initially asserted otherwise in correspondence between the parties' solicitors. However, by letter dated 14th July 2016, the Applicant's solicitors stated,

> Whilst we do not accept your position in respect of the assignment, our instructions are not to contest your client's position and on that basis we can only repeat that our client having stated that the assignment of the Section 42 Notice to our client was invalid then you had no right to have requested a deposit from our client and have no right to continue to retain that deposit in circumstances where we have asked for its return in full.

6. In a second letter of the same date, the Applicant's solicitors further asserted,

> Our letter is clear. We are not seeking to assert that the assignment is valid.

7. In paragraph 22 of his witness statement Samual Raphael Pariente, the consultant solicitor working on this case for the Respondent's solicitors, has asserted that these statements were equivocal and,

> Were our client to have sought to rely on that to return the deposit and ignore the claim, there would have been nothing stopping the Applicant from instructing his solicitors to now assert the validity or indeed change solicitors and instruct them to progress the claim.

8. The Tribunal struggles to understand Mr Pariente's point. The Applicant's solicitors' statements quoted above are sufficiently clear and unequivocal. If the Respondent had relied on those statements to their detriment, for example by returning the deposit, the Applicant would have been prevented by their own statements and, if necessary, by any competent court or tribunal, from trying to re-assert a right to such a lease.

9. In paragraph 23 of his witness statement, Mr Pariente has tried to suggest that the second statement might be regarded as that only of the Applicant's solicitors and not of the Applicant. The Tribunal disagrees. The solicitors stated that they were acting on instructions and the Applicant would be bound by their ostensible authority.

10. Nevertheless, in the light of the alleged equivocation and despite the Applicant's solicitors' assertions that they should not do so, the Respondent felt it appropriate to incur the cost of a desktop valuation of the property and of serving a counter-notice under section 45 of the Act. Consistent with their view as to the invalidity of the service of the claim notice, they served it on Mr Taylor, not the Applicant.

11. In paragraph 34 of his witness statement, Mr Pariente has said that his client agreed to charge only £680 plus VAT out of £2,300 plus VAT incurred in this process and that the valuation fee was £650 plus VAT. The Respondent has returned the Applicant's deposit minus these sums.

12. For the reasons already set out above, the Tribunal is satisfied that these costs are not justifiable, and so not payable by the Applicant on any basis. However, there is a more fundamental problem.

13. The Respondent has sought their costs from the Applicant in accordance with section 60 of the Act. However, the person liable under section 60 is "the tenant by whom [the notice] is given." The Applicant did not give the notice and never stepped into the shoes of the tenant who did because the assignment was ineffective.

14. The Respondent has referred to Hague on Leasehold Enfranchisement (Sixth Edition) paragraphs 28-32 and 32-24 and the cases relied on therein. However, those passages refer to the position where the tenant has served an invalid claim notice, on the basis of which they are estopped from denying the landlord's right to recover costs under section 60. They do not apply to a putative assignee who never received a valid assignment of the claim notice.

15. It is true that, for a period of time, the Applicant wrongly asserted the validity of the service of the claim notice and, therefore, of the assignment, so that the Respondent incurred legal costs in responding.

It might be arguable that this should have costs consequences under some other provision but not under section 60 of the Act.

Name: NK Nicol **Date:** 6th March 2017

Appendix of relevant legislation

Leasehold Reform, Housing and Urban Development Act 1993

Section 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 a leasehold valuation 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.