



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

Case Reference : **CHI/29UH/OC9/2019/0004**

Property : **Flat 7, 38 Tonbridge Road,
Maidstone, Kent, ME16 8SH**

Applicant : **Ms Mary Odion Eniolu**

Representative : **Daniel Francis, Solicitors**

Respondent : **Judeglen Limited**

Representative : **Marlborough Holdings**

Type of Application : **Section 91 of the Leasehold
Reform, Housing and Urban
Development Act 1993**

Tribunal Member : **Tribunal Judge I Mohabir**

Date of Decision : **1 May 2019**

DECISION

Introduction

1. This is an application made by the Applicant under section 91 of the Leasehold Reform, Housing and Urban and Development Act 1993 (as amended) (“the Act”) for a determination of the statutory costs payable to the Respondent under section 60 of the Act for the grant of a new lease in relation to the property known as Flat 7, 38 Tonbridge Road, Maidstone, Kent, ME16 8SH (“the property”).
2. The Respondent’s entitlement to its costs under section 60(3) of the Act arises in the following way. On 5 October 2017, the Applicant served a Notice of Claim under section 42 of the Act on the Applicant to extend the lease of the property. The Respondent instructed Marlborough Holdings Limited (“Marlborough”) to deal with this matter on its behalf. On 19 October 2017, it served a counter notice admitting the Applicant’s right to extend the lease. However, the Applicant failed to make an application to the Land Registry to register the notice pursuant to the Act.
3. Apparently, the freehold of the building had been severed some years ago so that the Respondent company owned the upper part of the building. An associated company, Latchguard Limited owned the freehold of the lower part under two separate freehold titles.
4. It was decided to transfer the upper freehold from the Respondent to Latchguard Limited, which was completed on 2 August 2018. The effect of this was to overreach the Applicant’s Notice of Claim thereby rendering it void.
5. As a consequence, the Respondent now seeks to recover its statutory costs under section 60 of the Act. The total legal costs claimed by the Respondent are the costs incurred by Marlborough in the sum of £1,685 plus VAT, valuer’s fees of £645 plus VAT, legal fees of TWM Solicitors in the sum of £177.70 plus VAT and postage costs of £2.08.
6. A breakdown of the Respondent’s legal costs has been provided. This sets out the level of fee earner and hourly rate claimed.
7. Both parties have filed written submissions including a Scott Schedule in relation to the Respondent’s costs, which have been considered by the Tribunal.

Relevant Statutory Provision

8. Section 60 of the Act provides:

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.

Decision

9. The Tribunal's determination took place on 1 May 2019 and was based solely on the written representations filed by the parties. The Tribunal's approach was to conduct what effectively amounts to a summary assessment of the costs.
10. This matter relates to the Applicant's costs incurred in what can be described as a "standard" statutory lease extension with no particular complication revealed on the papers.

Entitlement to Costs - Marlborough

11. The Tribunal did not accept the Applicant's primary submission that the Respondent was not entitled to claim the costs incurred by Marlborough because the person who undertook the work is a Director of the landlord company and, therefore, it had not incurred costs in respect of professional services.
12. Section 60(2) of the Act does not draw a distinction in relation to the costs incurred in obtaining professional services in relation to the grant of a new lease. Professional services can be legal or otherwise. Marlborough provided professional estate management services to the Respondent. They are separate legal entities. The fact that they may have a common Director is irrelevant. Marlborough served an invoice on the Respondent dated 20 February 2019 in respect of its fees regarding this matter. On its face, this created a *prima facie* liability on the part of the Respondent to pay these cost and the Tribunal was not prepared to go behind the invoice. To accede to the Applicant's submission would in effect suggest that the Respondent and Marlborough had conspired to commit a fraud on her and there is no evidence of this.

Fee Earner & Hourly Rate

13. The works carried out by Marlborough was done by a Mr Bazin, who is a property professional with some 25 years experience. He has charged an hourly rate of £225 plus VAT for his services. The Tribunal did not consider this hourly rate to be reasonable and allowed a rate of £150 per hour instead. The rate charged by Mr Bazin is comparable to some firms of solicitors in or about London who work in this field of law with the attendant overheads, including the cost of professional indemnity insurance. These costs are invariably reflected in the hourly rate charged by these firms.
14. Marlborough was not providing legal services to the Respondent, only estate management services. It is located near Guildford in Surrey. The Tribunal, therefore, considered it unlikely that Marlborough would have incurred similar costs in providing professional services to the Respondent. In any event, the Tribunal was satisfied that £150 per hour was a reasonable rate for the provision of lay services by Marlborough.
15. Having carefully considered the nature of the transaction, the nexus between the Respondent and Marlborough, the work involved and the costs claimed, the Tribunal allowed the following costs to be reasonable. The references are to the items of work numbered in the Scott Schedule.

Item 1: 42 minutes allowed as reasonable - £105.00

Item 2: 24 minutes allowed as reasonable - £60.00

Item 3: 36 minutes allowed as reasonable - £90.00

Item 4: 18 minutes allowed as reasonable - £45.00

Item 5: 18 minutes allowed as reasonable - £45.00

Item 6: 18 minutes allowed as reasonable - £45.00

Item 7: 24 minutes allowed as reasonable - £60.00

Item 8: 120 minutes allowed as reasonable - £300.00

Item 9: disallowed because it not recoverable under section 60(1) of the Act.

16. The disbursement of £2.08 is disallowed because this cost forms part of the overhead costs of Marlborough and is ultimately reflected in the hourly rate allowed in this matter.
17. Therefore, the Tribunal allowed the costs of Marlborough in the sum of £750 plus VAT (£900) as being reasonable.

Valuer's Fees

18. These are agreed in the sum of £774 including VAT by the Applicant.

Fees of TWM, Solicitors

19. These costs appear to relate to advice provided to the Respondent in relation to the validity of the Applicant's notice of claim. They did not strike the Tribunal as being unreasonable and are allowed as claimed together with the disbursement of £3, making a total of £213 including VAT.
20. Accordingly, the total costs payable by the Applicant are £1,887 including VAT and disbursements.

Tribunal Judge I Mohabir