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**LEASEHOLD VALUATION TRIBUNAL
FOR THE LONDON RENT ASSESSMENT PANEL**

**S60 LEASEHOLD REFORM
HOUSING AND URBAN DEVELOPMENT ACT 1993 ("the Act")**

<u>Premises</u>	Flat 11 St James Chambers, 2-10 Ryder Street London SW1Y 6QA
<u>Applicant</u>	The Crown Estate Commissioners
<u>Representation</u>	Pemberton Greenish LLP (Solicitors)
<u>Respondent</u>	Judith Hannah Lawson and Michael Howard Lawson
<u>Date of Hearing</u>	Papers considered by Tribunal on 6 April 2011
<u>Date of Decision</u>	21 April 2011
<u>The Tribunal</u>	Mr P M J Casey MRICS Valuer Chairman

Background

1. The Crown Estate Commissioners are the Freeholders of the premises. On 1st February 2011 they granted the Respondents a new lease of the premises under the provisions of the Act having agreed all terms save for the amount of the costs incurred in connection with the grant of the new lease which are to be paid by the Tenant under S60 of the Act.
2. They have accordingly applied to the Leasehold Valuation Tribunal through their solicitors, Pemberton Greenish LLP, for those costs to be determined.
3. The Tribunal issued directions for the conduct of the application on 16 February 2011 which provided with the consent of the parties for a paper determination.
4. Pemberton Greenish duly provided the bundle of documents as directed including the Respondent's case set out in the witness statement of Mr Lawson who also subsequently provided a second witness statement to which Pemberton Greenish replied by a letter dated 5 April 2011 and it is these documents which were considered by the Tribunal on 6 April 2011.
5. The initial notice of claim to exercise the right to the grant of a new lease required by S42 of the Act is dated 11 November 2009 and was given by Michael Arthur Graham Appleby, the person representative of Barbara Jean Carter deceased.
6. On 28 January the Applicant served a counter notice under S45(2)(a) of the Act. In it the only proposal in the Tenant's notice said not to be acceptable was the premium of £650,000. The sum of £1,840,000 was the counter proposal.
7. The existing lease and the benefit of the notice were subsequently assigned to the Respondent.

Pemberton Greenish's Costs

8. Pemberton Greenish were instructed by the Applicant through its Managing Agents, Cluttons, to investigate the Tenant's right to a new lease and to deal with the grant of the new lease.

9. The total sum they have claimed is £3,043.50 plus VAT and Land Registry fees of £16.00 giving in all £3,589.63 though the costs claimed in the completion statement total £3,575.63. In an open letter to the Respondents dated 21 December 2010 they made an offer to settle at £3,500.00 plus VAT, surely a mistake at least in relation to the VAT.
10. The breakdown of these costs given ascribes £805.00, being 2 hours 18 minutes at £350.00 per hour, to Laura Blackwell, a partner, who dealt with the investigation of the right to a new lease, including the assignment to the Respondents.
11. The balance is in relation to the lease itself handled by Ruth Hirshman, a legal property manager, charged out at £185.00 per hour, equating to 12 hours 6 minutes.
12. For the Respondents, Michael Howard Lawson, himself a solicitor with William Sturges & Co did not dispute the hourly rates per se but felt it not unreasonable that Pemberton Greenish be put on strict proof of their charging arrangements with the Applicant by producing a copy of their Letter of Engagement as he said solicitors often negotiate a lower rate with major clients both to attract the work and to reflect the large volumes of work involved.
13. He also referred to a letter from Cluttons, acting for the Applicants, advising that Pemberton Greenish were the client's solicitors. In order for them to determine validity of the notice the letter asked for among other things a cheque for £230.00 payable to Pemberton Greenish. In his submission all such work was covered by this sum.
14. So far as costs associated with the lease are concerned he said these could not under S60 include for time spent negotiating the terms of the lease. The original draft he claimed contained a substantial number of terms which bore no relation to the existing lease and once his objections had been accepted argument had continued relating to provisions affecting the negotiations between the valuers. In any event the draft lease was already on their system as they had already dealt with other lease extension in the building and it was not a tailor made lease for one flat. He was prepared to allow 4 hours in total for work in connection with the lease.

15. In their response Pemberton Greenish advised that their client would not allow disclosure of their terms of engagement or associated documents because they contain privileged information but confirmed the hourly rates claimed. They claim the £230.00 was not paid but in any event was clearly never intended to cover the full cost of investigating the claim. The new draft lease was based on the existing with modifications to update the wording and improve provisions as it was not in a modern form. The to-ing and fro-ing of amendment and counter-amendment was normal conveyancing practice. The flat was not identical to others in the block and the lease could not simply follow a precedent.
16. The further witness statement and response continued in similar vein though the Respondent admitted the requested initial payment of £230.00 was lower than he would have charged.

Decision

17. The Tribunal accepts Pemberton Greenish's confirmation that the hourly rates claimed are those charged to the client. It also accepts that the requested preliminary sum was not, nor could it be reasonably read as, intended to cover all the work involved in reasonably investigating the claim. The Landlord is required by law to enter into a transaction he most likely does not wish to enter into. It is appropriate that the claim to compel him to do so is fully and properly investigated by an appropriately qualified person. Mr Lawson does not challenge the time taken in the investigation and admits the time taken after service of the counter-notice in considering the assignment and the charging rate of the partner involved. The amount, £805.00 plus VAT, charged for investigating the Tenant's right to a new lease is allowed in full.
18. The rest of the claim, save for the £16.00 in Land Registry fees which Mr Lawson admits is recoverable from the Respondent, is said to be in respect of "the reasonable costs of and incidental to" ... "the grant of the new lease".
19. The Applicant took no issue in the counter-notice with the Tenant's proposals for the new lease so there was no dispute about them but the form of the new lease is governed by S57 of the Act and it would be surprising if the process of settling the wording of the new lease did not involve some "to-ing and fro-ing" of proposal and counter proposal.

20. Section 60 (5) only provides the “A Tenant shall not be liable ... for any costs which a party to any proceedings ... before a Leasehold Valuation Tribunal incurs in connection with the proceedings”. The cost of settling the precise wording of the new lease to take account of S57 when no issue was raised on terms proposed in the initial notice does not amount to such.
21. The fact that costs are claimed for communicating with Cluttons is explained by the fact that they had assumed the clients role; no costs are claimed for liaising with the Applicant directly until reporting after the execution of the lease, an action clearly incidental to the grant itself.
22. It may however be that some of the time was spent on matters relevant to Cluttons negotiations as the Applicant’s valuer but that is not clear from the narrative supplied. Mr Lawson’s criticisms of the time taken when the new lease was simply to be the existing as modified per S57 and precedents existed within the building has some justification. Doing the best the Tribunal can on the evidence 10 hours of Ruth Hirshman’s time at £185.00 per hour is allowed as reasonable which gives £1,850.00 plus VAT.

Cluttons’ Valuation Fee

23. Cluttons fee as claimed is £6,800.00 plus VAT based on their contract with the Applicant, though this again was not disclosed, and is said to be approximately 0.5% of the agreed premium of £1,265,000.00. However when this was disputed Cluttons supplied an hourly calculation based on the time of the partner involved of 26 hours at £300.00 per hour plus 6 hours at £80.00 per hour for a Graduate Surveyor to give a total of £8,280.00 excluding VAT. However in the letter of 21 December 2010 referred to earlier an offer to settle in the sum of £3,750.00 was made.

Decision

24. S60(1)(b) make the Tenant liable for the “reasonable costs of and incidental to “ ... “ any valuation of the Tenant’s flat obtained for the purpose of the fixing the premium “ ... but again not if they are incurred in connection with LVT proceedings. It does not however say that the valuation must be obtained for counter-notice purposes though clearly if after application to the LVT it might be difficult to justify. Nor does it say “a valuation”; separate valuations might be made of the different components of the calculation required to fix the premium. It is however generally accepted that where a Landlord obtains a valuation from a single source for counter-notice purposes that and that alone is all the Tenant can reasonably be required to pay for.

25. Mr Lawson's criticism of including a claim for time spent on a second inspection and remeasurement after service of the counter-notice in order to settle a dispute about areas with the Tenant's valuer is clearly justified as is his argument that hourly charging rates are meant to cover all administrative costs so that the three hours claimed at partner rate for this disallowed.
26. His other criticisms of the time taken for various stages of the valuation process also have some merit especially in the 4 hours claimed for reporting to client and the 5 hours for the valuation.
27. Mr Dyer, the Cluttons' partner who did the valuation, says that effectively two valuations were undertaken one for the counter-notice the other a recommendation of an acceptable settlement figure. Clearly only the first should reasonably be allowed and the second clearly extended the time meeting to report to the client.
28. It is however perfectly reasonable to use a graduate for initial research of comparables and those do require careful consideration and analysis. The deferment rate to adopt for a lease with less than 5 years unexpired also required serious thought as there is no Upper Chamber guidance. It is also reasonable when considering the exiting lease value in these circumstances to carry out a subsidiary valuation involving the capitalization of the estimated net rack rental value.
29. There is no challenge from the Respondent of the charge out rates claimed and using those and allowing for partner's time:-
- 2 hours inspection, 2 hours comparable analysis etc; 1½ hour deferment rate; 2½ hours valuation; and, 1½ hours reporting to client gives 9½ hours at £300.00 per hour, or £2,950.00, plus 2 hours graduate gathering comparables at £80.00 per hour, £160.00 for a total of £3,010.00 plus VAT.
30. The Tribunal thus determines that the Respondent is liable under S60 to pay the Applicant £2,655.00 plus VAT plus £16.00 disbursements in respect of Pemberton Greenish's costs and £3,010.00 plus VAT in respect of those of Cluttons.

P M J CASEY MRICS Chairman

Dated 21 April 2011

