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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CHI/43UM/OC9/2013/0007**
Property	:	**52 Royston Road, West Byfleet, Surrey KT14 7PD**
Applicant	:	**Maria Signorelli**
Representative	:	**Mr Matthew Hearsum, Solicitor**
Respondent	:	**Sinclair Gardens Investments (Kensington) Limited**
Representative	:	**Mr P Chevalier , Solicitor (no attendance at hearing)**
Type of Application	:	**Application for costs under section 91 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act")**
Tribunal Members	:	**Judge E Morrison (Chairman)** **Judge D Whitney (Legal Member)**
Date and venue of Hearing	:	**Alfred Place, London on 26 July 2013**
Date of Decision	:	**31 July 2013**

DECISION

The Application

1. By an application dated 5 March 2013, the Applicant lessee sought, under section 91 of the Act, a determination of the costs payable to the Respondent freeholder under section 60(1) of the Act.

2. The Applicant also applied for a costs order against the Respondent pursuant to Schedule 12 paragraph 10 of the Commonhold and Leasehold Reform Act 2002 ("CLARA") in the sum of £200.00 + VAT.

Summary of Decision

3. The reasonable costs payable by the Applicant to the Respondent pursuant to section 60(1) of the Act are £ 1350.00 + VAT legal fees and £650.00 + VAT valuation fees (total £2000.00 + VAT).

4. The Respondent is ordered to pay the Applicant costs of £200.00 + VAT pursuant to Schedule 12 paragraph 10 of CLARA.

Background

5. This application arises following service of a Notice of Claim by the Applicant under section 42 of the Act, seeking a new lease for her flat, which was subsequently granted. In these circumstances the lessee is liable to pay costs pursuant to section 60(1). The amount of the costs not being agreed, the application was made to the Tribunal.

6. By Directions dated 13 March 2013, the parties were given notice that the Tribunal intended to deal with the matter by way of written representations only, unless either side objected. The Applicant then requested an oral hearing. Pursuant to the Directions, the Respondent served its statement of case in support of its costs, the Applicant served points of dispute, and the Respondent then served a reply. The documents before the Tribunal included the original Notice of Claim and the Counter Notice.

7. The hearing was attended by Mr Hearsum on behalf of the Applicant. Mr Chevalier for the Respondent had informed the Tribunal that he would not be attending and sought to rely on his written submissions.

8. There was no inspection of the property.

The Law and Jurisdiction

9. The relevant parts of the provisions in the Act are as follows:

> ***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) – (6) ...*
>
> ***91. Jurisdiction of tribunals.***
>
> *(1) Any question arising in relation to any of the matters specified in subsection (2) shall, in default of agreement, be determined by the appropriate tribunal.*
>
> *(2) Those matters are—*
> *(a) – (c) ...*
>
> *(d) the amount of any costs payable by any person or persons by virtue of any provision of Chapter I or II and, in the case of costs to*

which section 33(1) or 60(1) applies, the liability of any person or persons by virtue of any such provision to pay any such costs; and
(e) ...

10. Pursuant to the indemnity principle (which is reflected in the introductory wording of section 60(1)), a paying party is obliged to indemnify a receiving party only for expenditure actually incurred. Accordingly a party may not recover more than it is actually obliged to pay its advisers.

11. Pursuant to paragraph 10 of Schedule 12 of CLARA a tribunal may determine that one party to proceedings should pay costs (up to a maximum of £500.00) incurred by another party to the proceedings in certain circumstances, which include where a party has, in the opinion of the tribunal, acted unreasonably in connection with the proceedings. Although this statutory provision has, as from 1 July 2013, been replaced by provisions about costs in the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the transitional provisions state that an order for costs in a case commenced before 1 July 2013 may only be made if, and to the extent that, an order could have been made before that date.

The Section 60 Determination

12. Mr Hearsum's first contention was that none of the Respondent's legal costs were recoverable because the indemnity principle was not satisfied. He submitted that due to Mr Chevalier's failure to comply with the Solicitors Regulation Authority Code of Conduct 2011, particularly Outcome 1.13, his retainer was unenforceable against his client, the Respondent. Mr Chevalier had failed to give his client the best possible or indeed any information about the likely costs at the time of engagement, as required by Outcome 1.13. He had not produced any client care letter, despite the Direction requiring this. There was no evidence that any estimate of costs at all had been provided to the Respondent. Further, Mr Chevalier's reliance on the 2007 Solicitors Code of Conduct was entirely misplaced as that code had been replaced by the 2011 Code.

13. In answer to a question by the Tribunal, Mr Hearsum accepted he could not cite any authority that breach of the Code rendered the retainer unenforceable.

14. In his original submission, which was verified by a statement of truth, Mr Chevalier had relied on the 2007 Solicitors Code of Conduct, which provided that there was no need to repeat provision of costs information in respect of a long standing client. He confirmed that the costs claimed did not exceed the amount which the Respondent was liable to pay, and he exhibited a letter from the Respondent dated 18 March 2013 which confirmed acceptance of its liability to pay the costs claimed. His reply submission took the point no further.

15. The Tribunal is satisfied that the claim for costs does not breach the indemnity principle. Although no client care letter or other evidence demonstrating provision of costs information was produced, it is clear that the Respondent is a client for whom Mr Chevalier has acted on many similar transactions, and the Respondent has clearly accepted that it is liable to pay the costs claimed. Furthermore, there is no authority that breach of the Outcome 1.13 of the 2011 Code renders a solicitors' retainer unenforceable.

16. Moving onto quantum of costs, only the legal fees were in issue (the valuation fee not being disputed). Mr Chevalier's hourly rate of £250.00 + VAT was accepted, but the time spent was challenged. Mr Hearsum had set out the Applicant's objections to the costs in a Scott Schedule, addressing each category of work and the time claimed as set out in Mr Chevalier's submission.

17. In respect of the costs of £ 1125.00 + VAT (equivalent to 4.5 hours) claimed under section 60(1) (a), Mr Hearsum contended that the time spent on certain aspects was longer than reasonably necessary, and that other aspects of work could not be claimed for as they were not matters "of and incidental to .. any investigation reasonably undertaken of the tenant's right to a new lease". From long experience, Mr Chevalier's client already understood what was involved, and Mr Chevalier knew what he needed to do, factors which should have reduced the time required on attendances, obtaining instructions and undertaking research. The Scott Schedule suggested that a total charge of £400 + VAT (1.6 hours) would be appropriate.

18. In respect of the costs of £600.00 + VAT (2.4 hours) claimed under section 60(1)(c), Mr Hearsum's objection was limited to the charge for 4 letters (0.4 hours total) which he submitted should fall under "general care and conduct" provided for in Mr Chevalier's hourly rate and should therefore not be separately charged for.

19. Mr Chevalier's original submission (22 pages plus exhibits) and his Reply (10 pages and exhibits) set out lengthy arguments seeking to justify the amount of work that was required and the time spent. He stated he is instructed by his client to scrutinise all documents with the utmost care. He goes on to quote from a very significant number of previous Tribunal decisions, to refer at length to provisions in the Civil Procedure Rules ("CPR") and to argue matters about the basis of assessment and the burden of proof, as well as other points about which he contends the Tribunal must be satisfied before a costs claim can be successfully challenged.

20. The wording of section 60 is clear: only reasonable costs can be recovered, and section 60(2) specifically provides that professional fees will only be reasonable if those costs might reasonably be expected to have been incurred if the person incurring them was personally liable to pay them. The requirements of reasonableness and reasonable

expectation bring into play an objective test. CPR concepts referred to at some length by Mr Chevalier, such as the difference between standard and indemnity bases of assessment, summary assessment, and proportionality, are not part of section 60 and are not applicable.

21. It is neither practical nor necessary for the Tribunal to undertake a detailed analysis of each item of work claimed for. The Tribunal accepts Mr Chevalier's points that he is required to take great care, and that the Respondent is not obliged to shop around for cheaper solicitors. There will also be a range of reasonable costs. However, there is no evidence to suggest this was not an entirely straightforward lease extension. Although this is a specialised area of work, an expert such as Mr Chevalier who can justify an hourly rate of £250.00 working from a suburban office will reasonably be expected to deal with the work efficiently. His experience means that he knows exactly what he has to check and look out for from the outset.

22. Having regard to all the evidence and submissions, and to section 60(1) and (2), the Tribunal accepts the Applicant's argument that the time claimed for work properly falling within section 60(1)(a) is unreasonably high and goes beyond what a person in the Respondent's position would reasonably expect to pay himself. The work required should not reasonably take more than 3 hours and so the sum of £750.00 + VAT is allowed under section 60(1)(a). As for the work under section 60(1)(c), the Tribunal finds that it is reasonable to make a separate charge for letters out and therefore allows the sum claimed of £600.00 + VAT.

The Applicant's claim for costs

23. Mr Hearsum contended that the original written 22 page submission (plus exhibits) was "in a template form no doubt seen frequently by the Tribunal" and that the majority of the submissions were repetitive, or irrelevant, or both. Its length was disproportionate and was not what the Directions required. References to Part 35, and to the costs provisions of the CPR were largely irrelevant. However, Mr Hearsum had had to spend time reading the entire submission and exhibits in order to consider it and decide what response was required. This had taken several hours, but he had billed his client only an additional £200.00 + VAT (his hourly rate being £180.00 + VAT) for the extra but ultimately unnecessary time spent. Mr Hearsum considered that the length and irrelevant content of the submission amounted to unreasonable conduct in connection with the proceedings warranting a costs order in his client's favour.

24. Although the application for costs was made in the points of dispute, Mr Chevalier's reply submission (10 pages) did not specifically address this issue.

25. The Tribunal is aware that Mr Chevalier's original submission is very similar to submissions he has made in other tribunal cases dealing with

costs. There is nothing wrong in principle in working from a template but it is unreasonable for a solicitor to rely on a template which (a) does not reasonably confine itself to the matters referred to in the Directions, (b) refers to and relies on out of date material (such as the 2007 Solicitors Code of Conduct), (c) makes overly-extensive reference to the Civil Procedure Rules, which do not apply to tribunal proceedings, (d) exhibits long and mostly irrelevant (and out of date) extracts from those Rules, (e) uses quotations without stating their source to assert a legal principle, such as in paragraph 9.1, (f) is repetitive, and (g) exhibits and relies on a witness statement which is unsigned. All these criticisms, amongst others, can fairly be made of Mr Chevalier's first submission. Some of these criticism will undoubtedly have resulted in Mr Hearsum having to spend more time, and thus incur more costs for his client to meet, than would have reasonably been required had Mr Chevalier's submission been such as to avoid attracting such criticisms. For that reason, the opinion of the Tribunal is that there has been unreasonable conduct in connection with the proceedings which merits a costs order against the Respondent in the sum of £200 + VAT, to be paid by Friday 16 August 2013.

Dated: 31 July 2013

Judge E Morrison (Chairman)

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.