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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AG/OLR/2014/1349**
Property	:	**Flats 6, 43, 62, 71 and 90 St Johns Court, Finchley Road NW3 6LE**
Applicant	:	**The Owners Of Flats 3, 43, 62, 71 and 90 St John's Court, London**
Representative	:	**Alan Edwards & Co Solicitors**
Respondent	:	**St John's Court Finchley Road Management Company Limited**
Representative	:	**Angel & Co**
Type of Application	:	**Assessment of costs under section 60(1) of the Leasehold Reform Housing and Urban Development Act 1993**
Tribunal Members	:	**Judge O'Sullivan**
Date of Decision		**18 December 2014**
	:	

DECISION

The background

1. This is an application brought by the tenants against the management company for the block of flats (the "ManCo") for a determination of reasonable costs under section 60(1) of the 1993 Act.

2. The Applicants are acting jointly in relation to their lease extensions.

3. The fees in issue are £295 plus Vat per flat. There are two separate landlords both of which have been remunerated in respect of their reasonable section 60 costs.

4. Directions were made dated 9 September 2014 further to which a bundle of documents was lodged. The application was considered by way of a paper determination on 18 December 2014.

5. By letter dated 9 December 2014 solicitors for the ManCo wrote to notify the tribunal that they objected to the inclusion of a reply from the Applicants contained at tab 7 of the bundle. It was said that the directions did not provide for such a reply and that its contents are misleading. Given that the directions did not make provision for a reply and that this document was served late in the day thus preventing the Respondent from responding, the tribunal has determined that the document at tab 7 shall not be admitted into the evidence. In any event the tribunal has a full statement of case from the Respondent.

The Applicants' case

6. In summary the Applicants say that the costs are not within the remit of those permitted under section 60(1). Criticism is made of the breakdown provided which the Applicants say is inadequate, vague and accounts for only a small proportion of the work in respect of which the monies are demanded.

7. The intermediary leasehold interest is owned by Park City Ltd. The shareholders in the ManCo are the individual leaseholders in the block and the ManCo has no interest in the land under the leases. The ManCo's role is day to day management of the block in accordance with the obligations under the leases. Their interest in the new leases is confined to clause 7 which states:

   "The Management Company covenants with the Landlord, and the Tenant to comply with the Management Company's obligations in the Previous Lease".

8. The premiums were agreed with Waitrose Ltd and Park City Ltd on 11 March 2014 and 20 March 2014 respectively and the terms of the new leases were agreed with the superior landlords on 23 June 2014. The

premiums ranged between £8,736 and £5,135 taking into account sums due to both superior landlords. At no time was it suggested that there would be any change to the terms of the leases which would impact on ManCo. Both superior landlords engaged their own solicitors and the fees payable per flat were agreed at £850 and £425 respectively.

9. The costs in issue are the sum of £1,500 plus Vat representing the sum of £250 plus Vat per flat. It is the Applicants' case that the overwhelming majority of these costs fall outside of the scope of section 60. The Applicants also question whether in view of their negligible interest in the land it was necessary to instruct solicitors and whether ManCo would have done so had they been paying the costs by themselves. In addition a number of challenges are made including;

   (a) The level of fees do not correlate to fees incurred at those dates
   (b) The fees demanded are not fees which would be recoverable
   (c) Some of the work claimed by Angel in relation to correspondence with the superior landlord is not reflected in the costs claimed by the superior landlord, by way of example work is recorded on Saturday 20 September 2014 when there is no record of such correspondence with the superior landlord
   (d) The fees are wholly disproportionate and there is no economy of scale.

10. The fees were requested by Angel acting for ManCo on 23 July 2014 in the total sum of £1475 plus VAT *"for their s.60 costs"*. The Applicants are critical of the fact that Angel have not confirmed that the costs are properly recoverable from their client in any event. When asked for a breakdown Angel stated *"usual charges for matters of this nature would be £450 per flat"* which the Applicants assert shows that Angel is seeking to recover fixed fees rather than time spent. It is also said that their costs were confined to simply executing the leases.

11. As far as the breakdown of the costs is concerned the Applicants say that items 21-30 were incurred after 23 June 2014 meaning that actual costs said to be incurred before 23 June 2014 were £199.79 per flat. The costs falling after that date appear to relate to the issue of costs themselves which are said to not be recoverable under section 60. Individual items were said to be excessive, such as 36 minutes for "receiving draft lease" and 1 hour for the receipt and review of engrossment leases.

12. It is also said that the recoverable valuation costs should be based on an hourly rate and time spent rather than a fixed fee (*Fitzgerald v Safiane Ltd [201] UKUT 37 (LC) [2010] PLSCS 109 applying Blendcrown Ltd v The Church Commissioners for England [2004] 1EGLR 143*).

13. The Applicants' overarching point is that ManCo are not entitled to recover separate legal fees.

14. The Applicants say at best the only recoverable costs are those of the arranging and executing of the new leases. There was no necessity to engage solicitors to do so as a competent Company Secretary could have carried out this exercise.

The Respondent's case

15. Angel & Co solicitors filed a statement in response.

16. The Respondent's case is that it was *"perfectly reasonable for ManCo to engage solicitors"*. It goes on to say that "it has been specifically confirmed to Angel & Co that in the event that the relevant costs were not payable by the Applicant then they would have been paid by ManCo itself.

17. The form of the statement in reply is a response to each submission made by the Applicants. Most of these are said to be "*not accepted*" or "*not agreed*". In a section entitled the "Relevant Law" the Respondent makes no comment on the provisions and submissions made by the Applicants.

18. However in concluding the Respondent simply says that the costs do not fall outside the scope of section 60, that the level of the costs are perfectly reasonable and that ManCo are a party to the lease and are liable for ongoing obligations.

The tribunal's decision

19. The provisions of section 60 are well known to the parties and the tribunal does not propose to set the legislation out in full. However costs under that section are limited to the recovery of reasonable costs incurred by a relevant person of and incidental to any of the following matters, namely:-

    i. Any investigation reasonably undertaken of the tenant's right to a new lease;
    ii. Any valuation of the tenant's flat obtained for the purpose of fixing the premium or amount payable by virtue of Schedule 13 in connection with the grant of a new lease under section 56
    iii. The grant of a new lease under that section.

20. Subsection 2 of section 60 provides *that "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".

21. Subsection 6 of section 60 provides that the *"relevant person, in relation to a claim under this Chapter means the landlord ..or any third party to the tenant's lease".*

22. The tribunal had some difficulty in the form in which the Respondent had set out its case. Rather than advance a positive case on the basis upon which the costs are claimed under section 60(!) the statement of case consisted of brief rebuttals to the Applicants' submissions. The tribunal remains unaware of the basis upon which the costs are claimed.

23. Further although the tribunal has had sight of the summary of work it has not been provided with a sufficient narrative to explain what work was actually carried out. It accepts in principle that the applicant tenants are liable for the reasonable s.60 costs of ManCo as a party to the lease pursuant to section 60(6). The difficulty the tribunal faces however is that it simply has insufficient evidence before it to establish whether the costs are reasonable. Having viewed the correspondence it is also of the view that the Respondent appeared to consider that it could charge a fixed fee rather than costs incurred and has subsequently sought to justify that initial quotation of costs. The tribunal also agrees that much of the time on the narrative relates to matters which do not fall within the remit of section 60, there are numerous emails and discussions claimed in relation to the costs themselves and ongoing issues after the leases had been agreed. Of the costs which may be recoverable in principle such as investigating title the time claimed for many items is highly excessive, by way of example 30 minutes charged at £62.50 per flat is billed for receiving copy title deeds, a further 30 minutes is claimed for receiving a draft lease on the same day. No economies of scale appear to have been taken into account.

24. The tribunal finds itself at somewhat of a disadvantage as the Respondent has not provided a full narrative of the work done or advanced any positive case on its claim for costs. At no point has the Respondent set out why it instructed solicitors and what their instructions were. The tribunal is unable to establish on what basis some items are claimed to be recoverable. It accepts that the Respondent is at the very least entitled to its costs of arranging for and subsequently executing the leases. Thus doing the best of can on the limited evidence before it the tribunal allows the sum of £100 plus Vat per flat.

Name: Sonya O'Sullivan **Date:** 18 December 2014