

4370



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

Case Reference : **CHI/21UC/0C9/2016/0021**

Property : **1 St Brelades, Trinity Place,
Eastbourne, East Sussex, BN21 3BT**

Applicant : **Brickfields Properties Ltd**

Representative : **Howard Kennedy LLP, Solicitors**

Respondents : **(1) Christopher Mark Stepan
(2) Judith Margaret Stepan
(3) Bridget Stacey**

Representative : **Mayo Wynne Baxter LLP, Solicitors**

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

Tribunal Member : **Judge I Mohabir**

sDate of Decision : **9 January 2017**

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 by the Respondents under section 60 of the Act for the grant of a new lease in relation to the properties known as 1 St Brelades, Trinity Place, Eastbourne, East Sussex, BN21 3BT (“the property”).
2. The Applicant’s entitlement to its costs under section 60(3) of the Act arises in the following way.
3. By a Notice of Claim dated 27 April 2016, the Respondents purported to exercise their right to claim a new lease under section 41 of the Act. The date stated on the notice by which the Applicant was obliged to serve a Counter Notice was 4 July 2016.
4. On 9 May 2016, the Applicant’s solicitors wrote to the Respondents’ solicitors contending that the Notice of Claim was invalid because they were not qualifying tenants within the meaning of section 39 of the Act.
5. By a letter dated 27 May 2016, the Respondents’ solicitors conceded the point and the Applicant’s solicitors sought payment of its client’s legal costs of £1,600 plus VAT, valuer’s fees of £350 plus VAT and disbursements of £21 for land Registry fees.
6. The parties were unable to agree the Applicant’s costs and this application was made by the Applicant dated 14 September 2016 for that determination to be made by the Tribunal.
7. A breakdown of the Respondent’s legal costs has been provided by its solicitors pursuant to the Tribunal’s Directions. This sets out the level of fee earners and hourly rates claimed in respect of each of them.
8. Both parties have filed written submissions in relation to the costs claimed, which have been considered by the Tribunal. Essentially, the Respondents submit that the hourly rate for the Partner and Paralegal who carried out the work on behalf of the Applicant is excessive and all of the costs carried out after 9 May 2016, including the valuer’s fees, were not reasonably incurred because it was clear that the Notice of claim was invalid.

Relevant Statutory Provision

9. 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

10. The Tribunal's determination took place on 9 January 2017 and was based solely on the written representations filed by the parties. As will be noted above, section 60(1), firstly, sets out the scope of the statutory costs that may be recovered by a landlord and, secondly, subsection (2) sets out the statutory test of reasonableness that has satisfied in relation to any such costs claimed.

11. The Applicant's costs were incurred in what can be described as a "standard" statutory lease extension with no particular complication revealed on the papers. Indeed, the whole transaction turned on a simple issue of law, namely, whether the Respondents had held the lease for a period of not less than 2 years prior to serving the Notice of Claim.
12. In the Tribunal's judgement, the legal issue as to the Respondents' statutory entitlement to a new lease was not complex and could be determined simply when either they deduced title or, as was the case here, when the Applicant's solicitors obtained Office Copy Entries of the leasehold title.
13. It is against the above background that the Tribunal made its determination in this case.

Fee Earner & Hourly Rate

14. Leasehold enfranchisement work is a highly technical area of law mainly conducted by firms of solicitors with the requisite knowledge and experience, of which the Applicant's solicitors are one.
15. However, for the reasons set out at paragraphs 11 and 12, on any view, it cannot be said that the issue on which the validity of the Notice of Claim turned required the knowledge and expertise of a Partner and a Paralegal at hourly rates of £450 and £200 per hour respectively. The fact that these rates may have been allowed by other Tribunals does not in any way bind this Tribunal. In each instance, the costs claimed must satisfy the test of reasonableness. In reaching this conclusion, the Tribunal makes it clear that it is not making a general finding in relation to the reasonableness or otherwise of the hourly rates of the Applicant's solicitors. If, for example, this matter had involved complicated legal or valuation issues, then the Tribunal may well have reached a different conclusion about the appropriate hourly rates.
16. Therefore, in this instance, the Tribunal was satisfied that the guideline hourly rates for this area of East Sussex of £317 plus VAT for a Partner and £126 plus VAT for a Paralegal were reasonable and should apply here.

Work Reasonably Incurred

17. For different reasons, the Tribunal accepted the Respondents' submission that only the costs incurred up to 9 May 2016 were reasonably incurred. The submission is based, in hindsight, that the assertion made by the Applicant's solicitors was correct that the claim notice was invalid, which is not borne out by the facts.
18. It is clear that, although the Applicant's solicitors raised the issue of the validity of the Notice of claim in their letter dated 9 May 2016, the point was not formally conceded by the Respondents' solicitors until 27 May 2016. Until that admission was made, the Applicant's solicitors were entitled to assume

that the Respondents' position was that the claim notice was valid. That said, in the Tribunal's judgement, having raised the issue about the validity of the claim notice, it was incumbent upon the Applicant's solicitors to allow a reasonable period of time for the Respondents' solicitors to deal with the point before incurring any further costs. The claim notice did not require a counter notice to be served until 4 July 2016. There was sufficient time, therefore, for the Applicant's solicitors to delay instructing the valuer and preparing the draft counter notice.

19. It follows, the Tribunal found that the Applicant's legal costs after 9 May 2016 had not been reasonably incurred within the meaning of section 60 (2) of the Act and are disallowed.

20. The Applicant's disbursements of £21 are agreed by the Respondents.

Valuer's Fees

20. For the reasons set out at paragraph 18 above, the valuation fees of £350 plus Vat are also disallowed entirely.

21. Accordingly, the Applicant's legal costs up to and including 9 May 2016 allowed are as follows:

Partner – 114 minutes (19 units) at £317 per hour = £602.30 plus VAT @ 20% of £120.46 = £722.76.

Paralegal – 12 minutes (units) at £126 per hour = £25.20 plus VAT @ 20% = £30.24.

Plus total disbursements of £12 making a grand total of £765.

Judge I Mohabir

9 January 2017