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

Case Reference : LON/00AG/OLR/2012/0037

Property : 55 Winter Garden House, 2
Macklin Street, London WC2B 5ND

Applicants : Margin Finance Corporation Ltd
(Competent Landlord)
London Borough of Camden
(Intermediate Landlord)

Representative : GSC Solicitors LLP for Margin
Finance
Paris Smith LLP for LB Camden

Respondent : Liz B Limited (tenant)

Representative : Assisted by Mr Armstrong of
Counsel

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
Judge Wayte

**Date and venue of
Hearing** : 10 Alfred Place, London WC1E 7LR

Date of Decision : 24 November 2013

DECISION

Decisions of the tribunal

The tribunal makes the determinations as set out under the various headings in this Decision

The background

1. The Respondent is the long leaseholder of the flat known as 55 Winter Garden House.
2. The First Applicant is the freeholder of the building and the competent landlord for the purposes of the Leasehold Reform, Housing and Urban Development Act 1992 (the "1993 Act") and the Second Applicant was the Respondent's immediate landlord.
3. The Respondent served a section 42 notice seeking to exercise its right to a lease extension under S48 of the 1993 Act on 27 April 2012. A Counter notice was served on 27 April 2012 which admitted the right but did not agree the proposed premium. It also proposed a new lease in accordance with a draft provided.
4. On 26 October 2012 the Respondent issued an application under section 48 of the 1993 Act as the terms of the new lease had not been agreed. The terms of the new lease were agreed in February 2013 and the new lease was executed in June 2013.

The application

5. The Applicants have now applied for an assessment of their costs under section 60(1) of the 1993 Act.
6. Directions were made dated 17 July 2013 further to which statements of costs were provided to the Respondent. The Respondent has served a statement in reply. The Applicants have not served any further statement in reply despite having permission to do so by 22 August 2013 in accordance with the directions.
7. The application was considered by way of a paper determination on 17 October 2013. Before it the tribunal had bundles filed by the Respondent. The Applicants failed to supply the bundles in accordance with the directions. By letter dated 15 October 2013 the Respondent confirmed that it had served bundles of documents on both Applicants on 19 August 2013.
8. In support the Respondent provided copies of the following;
 - The Respondent's statement of case
 - A breakdown of the time/costs claimed by the Applicants (an appendix to the statement of case)

- The LVT decision in *Huff Trustees of the Sloane Stanley Estate (1997) LON/NL/117*
- The LVT decision in *National Holdings Ltd v The Crown Estate and Darfield Investment Holdings Ltd (2023) LON/OOBK/OC9/2012/0076*
- Bundle of documents described as Bundle No 1
- Bundle No 2 described as Bundle No 2

9. The costs before the tribunal were as follows:-

- (a) The First Applicant's costs in the sum of £4,148 plus Vat
- (b) The Second Applicant's costs in the sum of £2,180.50 plus Vat, £4 for office copy entries and £22.60 plus vat for photocopying charges.

10. Written submissions were provided by Stuart Armstrong of Arden Chambers for the Respondent. No submissions were made by either Applicant.

First Applicant's costs

- 11. The total costs are £4148 plus Vat.
- 12. The costs are itemised in the application. The total time spent was 12 hours and 12 minutes at a rate of £340 per hour.
- 13. The costs claimed fall within 3 periods, from 21.2.12 to 15.10.12, 16.10.12 to 7.2.12 and from 8.2.12 to 5.3.13.

Rate

- 14. The Respondent says that it was unnecessary to instruct a partner bearing in mind the case was not contested and the draft deed was not prepared by them. The role of the First Applicant's solicitors was merely passing over correspondence to the Second Applicant and a more junior fee earner would have been appropriate.
- 15. The Applicant says that the fee earner responsible is a partner said to have considerable experience of lease extension matters, during the course of this matter he moved from Howard Kennedy FSI to GSC Solicitors LLP. Both firms are central London. It is said that the hourly rate is reasonable for a partner in a central London firm.

Time spent

16. The costs are itemised in the application.
17. The total time spent was 12 hours and 12 minutes at a rate of £340 per hour. Of this the Respondent challenges the following periods.
18. The Respondents say that costs claimed in connection with the leasehold valuation tribunal proceedings are not recoverable. From 16.10.12 to 7.3.13 the First Applicant claims 4 hours and 24 minutes. Reliance is placed on the leasehold valuation tribunal decision in *Huff Trustees of the Sloane Stanley Estate (1997) LON/NL/117* and comments of Nigel Hague QC in Leasehold Enfranchisement in relation to a similar provision in the Leasehold Reform Act 1967 in which he says “*the tenant is not liable to pay the landlord’s costs of negotiation of the rent or other terms of the extended lease*”.
19. The Applicant did not make any submissions in response.
20. For 21.2.12 to 15.10.12 the time spent is 4 hours and 48 minutes. From 8.2.13 to 5.3.13 the time spent is 2 hours 48 minutes. In relation to both of these periods the Respondent says that the costs are recoverable in principle but that the time spent is excessive and the majority of the costs should be disallowed. The specific complaints include the following;
 - The First Applicant did no more than act as a go-between and exacerbated the time spent due to their insistence on amending the existing lease. It is said time spent negotiating was due to unsatisfactory nature of the draft
 - The Applicants unreasonably withheld agreement even though they regarded the changes as minor until the final draft
 - The Applicants say that negotiations were lengthy and unnecessary due to the tenant being unrepresented, the Respondent says this is not true
21. The Applicant says that as the Respondent was not legally represented an additional responsibility lay on the Applicant’s solicitors to ensure that no unfair advantage was taken of the Respondent’s lack of legal knowledge.
22. In addition it is said that the Respondent failed to engage a conveyancing solicitor and that as a result unnecessary time was spent negotiating the terms of the lease when a specialist solicitor would have been able to reach informed agreement much quicker.

The Second Applicant

23. The Second Applicant's total costs are £2180.50 plus Vat plus disbursements, this reflects the time spent of 11 hours 30 minutes. The rates vary from £280 plus Vat for a partner, £160 plus Vat for a solicitor and £85 plus Vat for a legal assistant.
24. The costs claimed fall within 3 periods, from 21.2.12 to 15.10.12, 16.10.12 to 7.2.12 and from 8.2.12 to 5.3.13.

Time spent

25. A challenge is made to recoverability for the same period of 16.10.12 to 7.3.13 on the same basis as above, ie that these costs are irrecoverable as they are incurred in arguing and negotiating terms. The time in issue is a total of 5 hours and 18 minutes.
26. For the period 21.12.12 to 15.10.12 the Respondent says that the costs are recoverable in principle but that the time spent and rates charged are excessive.
27. For the period 8.2.12 to 5.3.13 the Respondent says that only the costs which are incidental to the grant of the lease are recoverable. Other costs, including costs relating to justifying and claiming those costs are not recoverable.
28. The Respondent challenges the use of a partner on the basis that this is unreasonable in relation to an uncontested application and an existing draft was provided. The Second Applicant says that the partner only dealt with complex aspects of the application and that all email correspondence was dealt with by a legal assistant and the client partner was only involved if instructions were needed in relation to complex points.
29. The Respondent challenges the time spent. She adopts similar points in relation to those raised in respect of the First Applicant. In particular she submits that the costs were increased by the Second Applicant's insistence on an unsatisfactory draft and the failure to agree amendments.
30. Specific challenges are made to time spent drafting a deed at 48 minutes which it is said was standard requiring minimal input. In addition considerable work had been included after the agreement was reached including work costing the file which is outside section 60(1).
31. The Second Applicant also says that time spent was increased by the fact that the Respondent is a litigant in person but this is denied.

The tribunal's decision

32. 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 of an 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.
33. 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"*.
34. The tribunal agrees that in principle the landlord is not entitled to recover the costs of argument or negotiation in connection with the terms of the extended lease. We considered the correspondence provided and reached the conclusion that the majority of this correspondence was concerned with the negotiation of the terms of the lease. We therefore allow only 1 hour in respect of the period 16.10.12 to 7.3.13 in respect of both the First and Second Applicant.
35. The tribunal considers that the rates charged by the various fee earners fall within the range generally adopted by the tribunal in cases of this kind for both the First and Second Applicant.
36. Criticisms are also made of what the Respondent says is excessive use of a partner. The tribunal considers that there are many tasks itemised which could have been carried out by more junior members of staff. The tribunal considers however that it is reasonable for a partner to conduct this type of work but would reflect his or her expertise to be reflected in the time spent.
37. The Respondent also argues generally that the time spent is excessive. The view of the tribunal having taken all the matters set out in the parties' statements into account and having regard to the breakdown provided is that the time spent appears to be excessive.
38. The tribunal does however having reviewed the correspondence consider that the time spent by both Applicants' solicitors has been increased by the fact that the Respondent was a litigant in person.

39. The tribunal finds itself at somewhat of a disadvantage as the Applicants chose not to make a statement in reply as envisaged by the directions. It therefore has no reply to the detailed submissions made by the Respondent. However doing the best it can on the information available and accepting the bulk of the submissions made by the Respondent it allows the recoverable fees as follows;

The First Applicant

40. Fees are allowed at 10 hours at the rate of £340 per hour plus Vat.

The Second Applicant

41. Fees are allowed at one hour at partner's rate of £280 plus Vat and 5 hours at the rate of £180 plus Vat. Disbursements of £4 and £22.40 plus Vat are allowed.

CHAIRMAN.....Sonya O'Sullivan.....