



**First-tier Tribunal
Property Chamber
(Residential Property)**

Case reference	:	CAM/26UK/OC9/2014/0007
Property	:	20 Sheraton Mews, Gade Avenue, Watford, WD18 7PE
Applicants	:	Tulsesense Ltd.
Respondent	:	Suraj Kiran Adatia & Vishal Adatia
Date of Application	:	21st May 2014
Type of Application	:	To determine the costs payable on a lease extension (Section 60 of the Leasehold Reform and Urban Development Act 1993 ("the 1993 Act"))
The Tribunal	:	Bruce Edgington (lawyer chair) David Brown FRICS

DECISION

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1. The reasonable legal costs of the Applicant payable by the Respondents pursuant to Section 60 of the 1993 Act are £323.20.
2. The reasonable costs of valuation of the Applicant payable by the Respondents pursuant to Section 60 of the 1993 Act are £565.00
3. If the Applicant company is registered for VAT purposes then it can reclaim the VAT as an input and it is not then recoverable from the Respondents. Otherwise, VAT is recoverable at the appropriate rate on both legal fees and the valuation fee.

Reasons

Introduction

4. This dispute arises from the service of an Initial Notice seeking a lease extension of the property by qualifying tenants. In these circumstances there is a liability on the Respondents to pay the Applicant's reasonable legal and valuation costs.

5. The Tribunal issued a directions Order on the 12th June 2014 saying that the Tribunal was content to deal with this matter by considering the papers only, to include any representations from the parties, and would do so on or after 29th July 2014 unless any party requested an oral hearing which would then be arranged. No such request was received.
6. The Tribunal was provided with a bundle which contained all the information and documents requested by the directions order save for a copy of the applications itself.

The Law

7. It is accepted by the parties that the Initial Notice was served and therefore Section 60 of the 1993 Act is engaged. For the reasons set out below, the Respondents therefore have to pay the Applicant's reasonable costs of and incidental to:-
 - (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;*
(Section 60(1) of the 1993 Act)
8. What is sometimes known as the 'indemnity principle' applies i.e. the Applicant is not able to recover any more than it would have to pay its own solicitors or valuer in circumstances where there was no liability on anyone else to pay (Section 60(2)). Another way of putting this is to say that any doubt is resolved in the receiving party's favour rather than the paying party.

Legal fees

9. The Applicant has instructed SA Law LLP who are solicitors in St. Albans. There have been no less than 3 fee earners being two Grade B solicitors and one Grade D paralegal. Despite being ordered to do so the fee earners have not given details of their experience.
10. The objections to such costs are short and are set out as follows. The Tribunal thanks the solicitors for setting them out, as instructed, on a proper scheduled basis which has saved a great deal of time.

OBJECTIONS TO STATEMENT OF COSTS

<i>Applicant</i>	<i>Respondents</i>
<i>1) Hourly rates claimed at £235 & £225 for Grade B + £150 for Grade D</i>	<i>Should have been £168 (B) and £105 (D) respectively</i>

2) Solicitors claim £1,750 plus VAT when the original quote for the whole job was £2,000 plus VAT	This is unreasonable and indicates overcharging
3) Applicant's solicitors have behaved appropriately	Solicitors were obstructive
4) Consideration of original Notice and advising 1 hour	30 minutes offered
5) Legal analysis of lease by Grade D fee earner 1 hour	18 minutes offered
6) Instructions to surveyor 30 minutes	12 minutes offered
7) Considering valuation report, advising and taking instructions on Counter Notice 1 hour	30 minutes offered
8) Drafting Counter Notice and correspondence 1 hour	30 minutes offered

11. The Tribunal will deal with these various point using the same numbers as follows:-

- 1) *The Tribunal agrees that this work is quite specialised and a Grade B fee earner would be appropriate. The starting rate for Grade B solicitors in Watford according to the published figures approved by the Advisory Committee on Civil Costs under the auspices of the Master of the Rolls is £192 and £116 for Grade D. As no information has been given to argue for higher or lower rates, those are the rates adopted by the Tribunal.*
- 2) *The Applicant's solicitors say that the remainder of the work would have been undertaken by a lower grade fee earner and there has been no over-charging. The Tribunal notes the comments.*
- 3) *The Respondents allege that when it was said by the Applicant that the Notice was invalid, the solicitors refused to explain why. Now that the Tribunal has an overriding objective, solicitors need to note the case law on this subject. In **Hertsmere Primary Care v. Balasubramaniam's Estate** [2005] EWHC 320 (Ch) a locum optician had overcharged and, after his death, the Trust tried to recover these monies. A claimant's offer to settle was made. The offer was technically defective and the defendant's solicitors drew this to the attention of the claimant's solicitors. They did not understand and the defendant's solicitors refused to say why. The judgment was for less which, had the offer been correct, would have enabled the claimant to seek penalty interest and indemnity*

costs. Lightman J granted the claimant its penalty interest etc. saying:-

"The overriding objective means that solicitors have to co-operate with each other and the defendant should not benefit from the failure of the solicitors to be sensible"

It is not suggested that this has any effect on these costs because the Respondent's could have just applied to this Tribunal. If they had done, the Applicant's solicitors could well have been faced with a wasted costs order application.

- 4) *The solicitors have charged 1 hour for considering the Notice and then another hour for considering the terms of the lease and instructing the valuer. The first 2 of these tasks should have been undertaken together by a Grade B fee earner who, armed with that knowledge would have had to spend little time on instructing the valuer as all the information would have been at his fingertips. An experienced solicitor should have been able to deal with all this work within 42 minutes plus 30 minutes to advise the client.*
- 5) *See above*
- 6) *See above*
- 7) *Preparing the Counter Notice is not covered by section 60 of the 1993 Act and the Tribunal is concerned to see any claim for this item*
- 8) *The same comment applies*

12. The end result of these decisions is that the claim is reduced. Because of the change in hourly rates being allowed it is necessary to set out the complete analysis:-

<u>Date</u>	<u>Work</u>	<u>Allowed (£)</u>
12/12/2011	considering Initial Notice (see 04/01/11)	
13/12/2011	getting title and deposit	23.20
23/12/2011	dealing with deposit etc.	23.20
04/01/2012	requesting assignment	11.60
04/01/2012	considering lease and instructing Surveyor	230.40
26/01/2012	considering valuation and taking instructions on Counter-Notice	nil
01/02/2012	drafting Counter-Notice	nil
22/02/2012	correspondence (not disputed)	<u>34.80</u>
		323.20

Valuer's fee

13. The valuer's fee claimed is £750. The objection is really a general criticism of what is perceived to be a high cost. It is therefore

necessary for the Tribunal to go through the claim and determine what is reasonable. The hourly rates are not really criticised and the Tribunal agrees that they are within the bounds of reasonableness.

14. 15/01/2012 – receipt of instructions – just as solicitors cannot charge for incoming letters, surveyors should not charge either. No fee is allowed.

20/01/2012 – summarising of lease – it is difficult to see how 48 minutes can be spent on this when the solicitor has charged for giving the surveyor advice about the terms of the lease. There is very little in the lease which would affect the statutory valuation. 0.4 hours allowed i.e. £40.

23/01/2012 – inspecting the interior of the flat – once again, it is difficult to see why an experienced surveyor would want to spend 2 hours inspecting the interior of a flat. 1 hour is more than sufficient - £100 allowed.

23/01/2012 – research – the claim of 2 hours is excessive. A competent and experienced firm of surveyors will keep up to date data on sales. Logging into that plus an appropriate search on internet sites should not take more than an hour. £100 allowed.

24/01/2012 – setting up template – this is disallowed. Any competent surveyors' firm will have its own templates on its system.

25/01/2012 – amending etc. report – the instruction letter asks the firm to prepare a second valuation. The valuers have not explained whether the time claimed includes that. Checking and revising the calculation and dictating the report is on the high side but not too high at 1 hour. However, as the claim includes 0.4 hours of Howe's time for advising on the calculations, it is not reasonable to then charge 0.6 hours for amending drafts one and two. It is reasonable for the supervising valuer to check a report before it is finalised. 0.3 hours is allowed for the last 2 items i.e. £63.

15. The total allowed is therefore £565.00

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Bruce Edgington
Regional Judge
12th August 2014