



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

Case Reference : BIR/00CN/OLR/2015/0016

Property : Flat 7, Paradise Court, Paradise Lane, Hall Green,
Birmingham, B28 0DT

Applicant : Ursula Catherine Smith

Representative : Mr A.W. Brunt FRICS

Respondent : Brickfield Properties Limited

Representative : Wallace LLP, Solicitors

Type of Application : Determination of the landlord's reasonable costs to grant
a lease renewal under s.91(2)(d) of The Leasehold Reform
Housing & Urban Development Act 1993

Tribunal Members : I.D. Humphries B.Sc.(Est.Man.) FRICS
Judge W.J. Martin

Determination : By written representations

Date of Decision : 22nd September 2015

DECISION

22nd May 2015 in connection with the revised Directions requiring submissions by written representation.

- 9 In the second submission, Mr Brunt explained that he was experienced in leasehold reform negotiations having acted in over 4,000 cases and appeared in over 400 Tribunal hearings since 1980. He set out the history of the application but did not agree with the Respondent's Solicitor's claimed fee of £1,926 plus VAT or £35 plus VAT for delivery of documents by courier. He challenged the basis of charge of £420 / hour for a Partner of Wallace LLP to handle part of the transaction which he said was excessive as much of the work could have been carried out by a less experienced fee earner. He said Wallace LLP were entirely professional and experienced in leasehold enfranchisement work but very expensive relative to the cost of other London firms.
- 10 He referred to another case where Wallace LLP had been involved in the new lease of a flat in Sutton Coldfield in the West Midlands in similar circumstances, where a lower fee had been charged, but did not quote the address or details of the amount charged.
- 11 With specific reference to the costing sheets supplied by Wallace LLP, Mr Brunt made the following comments:

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- 1 It was unnecessary for a Partner to deal with items listed on this page that could have been carried out by a paralegal, licensed conveyancer or junior Solicitor;
- 2 Wallace LLP had been supplied with office copy entries of the leasehold title and did not need to obtain further copies;
- 3 Wallace LLP had failed to disclose that they had acted in connection with the property less than a year before the present application where they had been involved in the creation of a new 999 year lease to their client and were by implication, already familiar with the property;
- 4 In his opinion it was excessive for Wallace LLP to charge for 0.6 hours to 'consider' a section 42 notice that could have been carried out by an experienced paralegal in 0.2 hours at a charge rate of £180 / hour;
- 5 that writing letters was excessive when emails could have sufficed;

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- 6 It was unnecessary for Wallace LLP to write to the Respondent's Valuer as the Valuer was familiar with the property having dealt with another flat in the block in the recent past.
- 7 Similarly, it was unnecessary for a Wallace LLP Partner to write to the Applicant's Solicitor to acknowledge receipt of title or charge £84 to consider the Respondent's Valuer's report.

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- 8 It was noted that an Assistant at Wallace LLP was now acting at a charge rate of £300 / hour but in Mr Brunt's opinion the time charged was excessive for an experienced conveyancer.
- 12 The second submission did not state Mr Brunt's opinion of a reasonable fee but in the earlier submission, he submitted that it ought to be £850 excluding VAT and disbursements.
- 13 Respondent's Submission
Wallace LLP for the Respondent provided a detailed breakdown of their claimed costs by Submission dated 12th May 2015 and responded to Mr Brunt's submission on 29th May 2015.

14 The breakdown was in the form of a table analysing the work carried out on each date, the party at the firm undertaking the work, the time spent in units of 6 minutes or 0.1 hour and their rate of charge. The total claimed fee was £1,926 plus VAT together with a Land Registry fee of £27 and Courier fee of £35 plus VAT.

15 They also referred to the following decisions of other Tribunals:

Daejan Properties Ltd. and Fencott Ltd. v Mr Gilligan (LON/OAH/OLR/2012/0020)

Daejan Investments Freehold LTD. v Parkside 78 Ltd. (LON/ENF/1005/03)

Daejan Properties Ltd. v S.K. Twin (LON/00BK/OC9/2007/0026)

Andrew Alexander Allen v Daejan Properties Ltd. (SB/LON/OAH/OLR/2009/0343)

Cityville Properties Ltd. v Patricia Johnson (MI/LON/0BD/OC9/2012/0083)

Stealth Developments Ltd. v Daejan Estates Ltd. (LON/0BH/OC9/2013/0036)

Brickfield Properties Ltd. v Julie Ann Price (LON/0BK/OC9/2014/0003)

City & Country Properties Ltd. v N.Turay (PJ/LON/00AJ/OC9/2014/0194)

M & H Van Straten v Brickfield Properties Ltd. (LON/00AC/OC9/2014/0159)

16 Tribunal Determination

The Tribunal accepts that the Respondent is entitled to instruct its usual firm of Solicitors which in this case is Wallace LLP.

17 The Tribunal notes the Partner's claimed charge rate of £420 / hour, Assistant Solicitor's rate of £300 / hour and Paralegal at £180 / hour but does not accept that all the time claimed falls within the definition of 'reasonable costs' in section 60 of the Act as some of the time incurred could have been carried out by an Assistant Solicitor in less time.

18 The Tribunal also notes the decisions of other differently constituted Tribunals referred to above, but is not bound by them as it is required to consider the facts of each case on its merits.

19 The Tribunal considered the parties' submissions and found that some of the claimed action and time input by the Respondent's Solicitors was unnecessary and could more easily have been covered by a single email or letter, sent by less qualified personnel.

20 For example, the schedule itemised 1 unit of Partner's time to send a letter instructing a Valuer, 1 unit of Partner's to send the Valuer a copy of the lease and 2 units of Partner's time for 'considering valuation report ... to ensure that the details and calculations relied on by the Valuer were correct', a total of £168. The first two actions could easily have been carried out by an Assistant Solicitor sending the lease to the Valuer with the instructing letter and the third action was unnecessary as the Solicitor was relying on a qualified Valuer who was paid a separate professional fee. There was no need for the Solicitor to check the calculations.

21 Similarly, part of the claimed time was for negotiating amendments to the draft lease that would have been unnecessary if the original draft had been reasonable.

22 For these reasons, the Tribunal assesses the Respondent's reasonable legal fee based on the action and time input below as follows:

Reasonable action	Party	Decision Units	Cost
Receipt of Notice and preliminary review of the same.	Partner	2	84.00
Obtaining lease and office copy entries	Paralegal	2	36.00
Considering lease and office copy entries	Partner	2	84.00

Letter to client	Partner	1	42.00
Letter of instruction to Valuer enclosing notice and lease	Assistant	2	60.00
Letter to Lessee's Solicitors	Assistant	1	30.00
Letter to Lessee's Solicitors acknowledging deposit and deduction of title	Assistant	1	30.00
Email to client with copy valuation report	Partner	1	42.00
Preparing counter notice and sending to Lessee's Solicitors	Assistant	4	120.00
Sending copy counter notice to Valuer	Assistant	1	30.00
Drafting new lease	Assistant	5	150.00
Responding to Lessee's Solicitor's comments	Assistant	2	60.00
Preparing and sending final lease	Assistant	2	60.00
Anticipated time preparing lease engrossments and completion statement	Assistant	5	150.00
Total			978.00

- 23 In summary, the Tribunal assesses the Respondent's reasonable legal fee under s.91(2)(d) of The Leasehold Reform Housing & Urban Development Act 1993, at £978.00 (Nine Hundred and Seventy Eight Pounds).
- 24 The Applicant's representative questioned the need to employ a Courier but in view of the Respondent's comments regarding the potentially 'draconian' consequences of failing to serve a counter-notice, the Tribunal finds service by Courier and the cost of £35 to be reasonable and payable in addition to the fee.

VAT

- 25 The Applicants are required to pay the Respondent's costs. If the Respondent is VAT registered and able to re-claim VAT on fees paid to its solicitor and surveyor from HMRC as an input, it has suffered no loss and the Applicants are not required to pay VAT.
- 26 If however the Respondent is not VAT registered and unable to reclaim VAT on fees as an input for VAT purposes, the Applicant is required to pay the VAT incurred on fees paid by the Respondent.

Application to the Upper Tribunal

- 27 If either party is dissatisfied with this decision an application may be made to this Tribunal for permission to appeal to the Upper Tribunal, Property Chamber (Residential Property). Any such application must be received within 28 days after the decision and accompanying reasons have been sent to the parties (Rule 52 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

I.D. Humphries B.Sc.(Est.Man.) FRICS
Chairman