



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

Case reference : CAM/00AN/LSC/2014/0113

Property : 66 Mayfield Road,
London W12 9LU

Applicant : Frazine Elaine Johnson (as executrix
of Jan Middleton dec'd)

Respondent : Wood Trustees Ltd. and Jonathan
Roberts

Date of Application : 24th February 2015

Type of Application : to determine the costs payable by the
first named Respondent, Wood Trustees
Ltd. to the Applicant pursuant to an
agreement attached to the order of this
Tribunal dated 28th January 2015
following a service charge dispute

Tribunal : Bruce Edgington (solicitor, chair)
David Brown FRICS

DECISION

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1. The reasonable legal costs of the Applicant relating to the service charge proceedings under the above case number and the failure to grant a licence to assign the property are more than £6,000.00 plus VAT and accordingly the amount of £7,200.00 is payable by Wood Trustees Ltd. to the Applicant forthwith.

Reasons

Introduction

2. Ms. Jan Middleton was a tenant under a long lease of the property and was the Respondent in earlier Tribunal proceedings brought by Wood Trustees Ltd. in 2010 when services charges and administration charges were disputed.
3. That application was made to the Tribunal's London office but had to be transferred to the Cambridge office because of a potential conflict of interests because, it is understood, a London Tribunal member may have been involved as an advisor to Wood Trustees Ltd. The precise details or the individual involved are not known to this Tribunal.

4. Ms. Middleton had been seriously ill for some time. Eventually, those earlier proceedings came to an end when they were adjourned, because of her ill health, on the basis that if an application was not made to restore by 28th May 2013, the main application would be deemed to have been withdrawn. No such application to restore was made and, sadly, Ms. Middleton died on the 23rd February 2014. The Applicant was appointed executrix on the 4th July 2014.
5. As part of her duties as executrix, the Applicant was told that there were outstanding service charges. She discovered that legal costs of some £20,399 were being claimed for the costs of representation of Wood Trustees Ltd. in those earlier proceedings. This application was therefore made on 21st November 2014 to challenge the reasonableness and payability of those costs. A hearing date for the 15th February was fixed.
6. The issues raised in the application were compromised and the application was, again, deemed to have been withdrawn subject to an agreement in writing which was lodged and attached to the Tribunal's order dated 28th January 2015.
7. One of the terms of the agreement was that Wood Trustees Ltd. would pay the costs of Ms. Middleton's estate "*relating to these proceedings and failure to grant the Licence to assign on the sale of the property (such sum not to exceed £6000 plus VAT) within 14 days of being provided with a final account of those costs, such costs to be assessed if not otherwise agreed*".
8. The costs could not be agreed and a further application was made on the 24th February 2015 for an assessment of those costs.
9. A directions order was issued on the 25th February 2015. This ordered the Applicant to serve full details of the solicitors' costs and the First Respondent was then ordered to serve any objections in the form recommended by Part 47 PD (precedent G) of the Civil Procedure Rules 1998. The Tribunal said that it was content for the matter to be dealt with on a consideration of the papers to include the parties' submissions and it would do so on or after 24th April 2015. The parties were told that if they wanted an oral hearing, they could apply for one and it would be arranged. No such request was received.
10. Regrettably, neither party appears to have done as they were ordered to do which has caused the delay in the making of this decision. It has also caused a considerable amount of extra work for the Tribunal:-
 - The Applicant was ordered to give details of the fee earner so that the Tribunal could assess the hourly rate to be allowed. None have been given. It is inferred, from looking at all the documents, that an hourly rate of £225 has been charged and is agreed.
 - The objections form is not in the form as ordered. This is not a 'secret' legal form. It can be readily accessed on the internet. If an item is objected to, it is given a number, the objection is raised, the reply is given and there is then a space for the Tribunal to put its decision. It is transferred electronically so that the Tribunal has flexibility in case a

lengthy decision is required. The parties then have the document back so that they can see what the decision is, with reasons, for each objection raised.

- The fact that the objections are not even numbered or given specific dates means that the Tribunal cannot even refer to a particular objection by number or date.
- The overriding objective says that parties, and particularly the legal profession, must help and co-operate with the Tribunal. Both parties involved in this assessment – but more particularly Wood Trustees Ltd. – have signally failed to comply with the overriding objective. They have been asked again to comply without a positive response and the Tribunal does not consider that this decision should be delayed any further.

The Law

11. Sub-section 29(1) of the **Tribunals, Courts and Enforcement Act 2007** states that *“the costs of and incidental to...all proceedings in the First-tier Tribunal...shall be in the discretion of the Tribunal in which the proceedings take place”*. Sub-section 29(2) then says *“The relevant tribunal shall have full power to determine by whom and to what extent the costs are to be paid”*.
12. Although the assessment process has been undertaken on the basis that the relevant costs were incurred by a firm of solicitors, the Applicant is, of course, acting in her personal capacity as personal representative of the late Jan Middleton. The case of **London & Scottish Benefit Society v Chorley** [1884] 13 QBD 872 (CA) established the principle that a solicitor who is personally involved in litigation can claim what he or she would be entitled to as if instructed as an independent solicitor.
13. The result of this is that such solicitor cannot charge for taking instructions which saves money for the paying party. On the other hand, the fact that such solicitor may not be an expert in the particular legal field involved, may mean extra cost, such as counsel’s fees. This becomes particularly relevant in view of some of the objections raised.

Conclusions

14. For obvious reasons, in particular the way this case has been presented to the Tribunal, a broad brush approach has to be adopted. The first item is decided in favour of the Applicant. Even from the knowledge of the Tribunal itself, the papers in the 2 Tribunal applications were voluminous and go back over several years. 2 hours 24 minutes is reasonable.
15. Part of the costs to be included relate to the failure to grant the licence to assign. One would therefore expect to see correspondence with the landlord and estate agents. Also the pre-application correspondence with the Tribunal clearly ‘relates to’ the application.
16. 4 hours 30 minutes is then claimed for e-mails, letters and telephone calls to and with the Respondents’ representatives. Of this 2 hours 24 minutes relates to 10 e-mails and the Tribunal agrees with the objection relating to this item and the time offered of 1 hour. The remainder of the time is allowed

as it seems reasonable. The remaining items relating to communication with the Tribunal are allowed.

17. The next 3 items relate to the preparation of the application, the statement of case and witness statement in the total time of 10 hours 48 minutes. The Tribunal agrees with the objections relating to the application and the statement of case, particularly as counsel's assistance seems to have been obtained. The application form really required very little information and should have been completed in 48 minutes. The statement of case is 3 pages long and is simply a record of the facts. 1 hour would be sufficient for this as offered.
18. As far as the witness statement is concerned, the Tribunal does not understand the objection. It seems to be suggested that a possible settlement is a reason for just stopping preparation of the case. Directions orders are there to be complied with until a settlement is actually reached. Having said that, 4 hours to prepare a 7 page witness statement seems to the Tribunal to be excessive. 2 hours is allowed.
19. For the reasons explained above, it was reasonable for this solicitor to instruct counsel at an early stage. Such instructions had to deal with a number of issues relating to what is, by any standards, a complex history and a current situation where the Respondents, or either of them, were holding up the administration of the estate. The time spent on the instructions is reasonable although the 4 hours 18 minutes on subsequent e-mails and telephone calls seems excessive. 2 hours is allowed.
20. As will be seen, a total of 19 hours 30 minutes has been allowed i.e. £4,387.50 plus VAT of £877.50 making a total for solicitors costs of £5,265.00.
21. For the reasons indicated above, the Tribunal considers that the involvement of counsel at an early stage was justified and the criticism of the Applicant for not being a 'competent and appropriately experienced solicitor' clearly is not justified and fails to understand the facts i.e. that she was acting as a personal representative and therefore had no choice but to be involved.
22. Counsel's fees of £2,200 including VAT seem reasonable and compare favourably with counsel instructed by the Respondents according to copy counsel's fee notes in the bundle. This makes a total allowed of £7,465.00 plus the application fee which are capped, in accordance with the agreement, at £7,200.00.



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Bruce Edgington
Regional Judge
1st June 2015