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First-tier Tribunal
Property Chamber
(Residential Property)

Case reference	:	**CAM/26UD/OC9/2014/0010**
Property	:	**24 Lygean Avenue, Ware, Herts. SG12 7AR**
Applicants	:	**Shaun Stephen & Susan Joanne McKeever**
Respondent	:	**Sinclair Gardens Investments (Kensington) Ltd.**
Date of Application	:	**18th November 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 Respondent payable by the Applicants pursuant to Section 60 of the 1993 Act are £845.00.

2. The Respondent company states that it is unable to reclaim the VAT as an input which means that VAT is recoverable at the appropriate rate on both legal fees and the agreed valuation fee.

Reasons

Introduction

3. 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 Applicants to pay the Respondent's reasonable legal and valuation costs.

4. The Tribunal issued a directions Order on the 20th November 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 26th January 2015 unless any party

requested an oral hearing which would then be arranged. No such request was received.

5. The Tribunal was provided with a bundle which contained all the information and documents requested by the directions order save for one matter mentioned below.

The Law

6. 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 Applicants therefore have to pay the Respondent'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 Respondent 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 Respondent has instructed W H Matthews & Co. who are solicitors in Kingston-upon Thames, Surrey who are known to deal with this type of work. The fee earner dealing with the matter throughout has been Mr. Richard Lawrence who, based on the information supplied, is clearly a Grade A fee earner which is a term used in county court costs assessments for the most senior fee earners. He claims an hourly rate of £250 and this does not seem to be contested by the Applicants.

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

	Respondent	*Applicants*
1)	*Instructing valuer (3 units)*	*not within section 60*
2)	*Preliminary Notices (5 units)*	*time excessive – 2 units offered*
3)	*Considering validity of Tenant's Notice and research*	*duplication of item 2 in claim - 1 unit offered*

(7 units)

4) *Drafting Counter-Notice (3 units)* — *not within section 60*

5) *Considering valuation and Discussing (2 units)* — *not within section 60*
Service of Counter-Notice (2 units) — *not within section 60*

6) *Conveyancing costs (£600)* — *excessive - £100 offered*

11. The Respondent's solicitors have filed a 13 page submission about their costs much of which is entirely irrelevant to the issues in this case. A number of previous LVT cases have been quoted which are not, of course, binding on this Tribunal. Much reliance is placed on the case involving Hampden Court where Professor Julian Farrand was in the chair. For some reason, the Respondent's solicitors do not include a copy case report in the bundle but just say that if a copy is required it will be supplied which is singularly unhelpful.

12. In any event, the Tribunal is aware of that case and it is extremely significant that the costs involved in that case were much lower than those claimed in this case, even taking into account the considerable passage of time.

13. As one of the most significant issues is whether some of the costs are included within the ambit of section 60 of the 1993 Act, the Tribunal will deal with that matter first. What must be understood is the considerable difference in wording between section 33 (collective enfranchisement) and section 60. Section 33 anticipates that there will be much more involvement of the landlord's solicitors, particularly in matters relating to title.

14. What is also significant is the pointed omission of anything relating to what happens in the event of a dispute. This is clearly designed, it is considered, to encourage agreement because in the event of dispute, neither party will be entitled to recover costs in relation thereto. Thus there is no mention of the service of a counter-notice, or any application to this Tribunal or its predecessor for a determination of any point in dispute. All of these matters are clearly anticipated in the 1993 Act but they are not mentioned in section 60. If the legislators had intended to include them, it is this Tribunal's view that they would have been specifically mentioned.

15. Thus, as far as legal costs are concerned, the landlord is entitled to recover the legal costs in obtaining advice on the tenant's entitlement to a new lease and then the work involved in the granting of the new lease. The Respondent's solicitors say that the words "*and incidental to*" are extremely significant. They are, but they do not change or expand the wording of the section.

16. To suggest that the words "*and incidental to*" extend to include the solicitor instructing a valuer, advising on the valuation report and dealing with the counter-notice is wrong. The Respondent in this case is a well known company with a large portfolio of property. It is perfectly able to send a copy of the lease and office copies of the freehold title to a valuer and ask for a valuation within the period allowed before a counter-notice is to be served. If it appears that proposals in the Initial Notice need to be challenged, then there is no agreement and the landlord has a choice. It can instruct lawyers to deal with the counter-notice and give advice on other matters such as the valuation, but it knows that it will have to pay for that.

17. Turning to the question of the new lease, this really is a straightforward matter because the terms of the deed of surrender and new lease are dictated by the 1993 Act. There is no need for a Grade A fee earner to deal with this. On the open market, a company such as the Respondent, who had to pay for this out of its own pocket, would expect a solicitor to quote in advance and do the work on a fixed price basis. To suggest that such a company would pay £600 to complete such a transaction is simply not realistic. Equally, £100, as offered by the Applicants is also not realistic.

18. The Tribunal will deal with these various points using the same numbering as follows:-

    1) *The Tribunal agrees that this work is not of or incidental to the valuation in section 60(1)(b). It was the Respondent's choice to instruct the solicitor to get involved. This does not mean that the Applicants have to pay for it.* ***Reduce by 3 units.***

    2) *and*

    3) *The costs schedule is not clear on this matter. In item 2 of the schedule, it says that on the 28.05.14 and 19.06.14, the solicitors spent 3 units considering the lease and office copy entries. Then, under item 4, 5 more units were spent on preliminary notices on the 28.05.14 and then on the 19.06.14 and 07.07.14 (item 5), 7 more units were spent on considering the validity of the Initial Notice and researching. Thus a total of 1½ hours has been spent on section 60(1)(a) matters i.e. investigating the tenant's right to a new lease by a very experienced solicitor charging Grade A rates. This is excessive. The Applicants have, in effect, said that this should be reduced by 54 minutes, leaving 6 units or 36 minutes. By the time title documents have been obtained, considered and advised upon, the Tribunal would agree that an experienced solicitor should be able to do this within 36 minutes including checking whether the management company had been served.* ***Reduce by 9 units.***

    4) *The Tribunal agrees that section 60 makes no mention of preparing a counter-notice and this cannot said to be* "incidental to" *the work in subsections 60(1)(a) or (c). This also deals with the 2nd part of the following item.* ***Reduce by 3 + 2 units.***

5) *The Tribunal agrees that section 60 makes no mention of the solicitors being involved in or needing to be involved in the valuation. The solicitors reference to collating documentation and drawing the valuer's attention to any factual matter is not understood. The valuer needs the existing lease and details of any covenants in the freehold title which may affect value which a company such as this Respondent is perfectly able to supply. It is then for the valuer to ascertain the facts.* ***Reduce by 2 units***

6) *For the reasons stated above, the Tribunal does consider that £600 is excessive. A copy of the deed has been included in the bundle and it clearly relies upon template clauses which the Respondent's solicitors no doubt have to hand in every case. On the basis that the time charged is excessive and a Grade A fee earner is not needed for this work, the Tribunal's conclusion is that a company of this Respondent's experience in the property market would not expect to pay its solicitor more than £300 for preparing and completing the lease.* ***Reduce by 30 units.***

19. The end result of these decisions is that the claim is reduced by 49 units @ £25 per unit i.e. £1,225.00. The total costs are therefore assessed at £2,070 - £1,225 = £845 plus VAT.

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Bruce Edgington
Regional Judge
28th January 2015