



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

Case reference	:	CAM/26UD/OLR/2015/0128
Properties	:	Flats 8, 21 & 40 Braziers Quay, South Street, Bishops Stortford, CM23 3YN
Applicants	:	Thomas Edward Stuart (8) Terence Anthony & Caroline Madeline Wood (21) Andrew & Kathryn Chisnall (40)
Respondents	:	Wallwood Investments Ltd. and Braziers Quay Management Ltd.
Date of Applications	:	12th June 2015
Type of Applications	:	To determine the terms of acquisition and costs of the lease extensions of the properties
The Tribunal	:	Bruce Edgington (lawyer chair) David Brown FRICS

DECISION

Crown Copyright ©

1. The reasonable legal costs of the Respondents payable by the Applicants pursuant to Section 60 of the 1993 Act are £2,050.00.
2. The reasonable valuation fee incurred by the Respondents payable by the Applicants is £1,050.00.
3. The services being paid for are to the Respondents and if they are able to recover VAT as an input, such VAT on the fees claimed is not recoverable from the Applicants. If they not able to so recover, then VAT is to be added to the fees and is payable by the Applicants.

Reasons

Introduction

4. This dispute arises from the service of Initial Notices seeking lease extensions of the properties by qualifying tenants. The lease terms have been agreed and the only remaining issue between the parties is the reasonableness and payability of the Respondents' legal and valuation

costs. The parties have agreed that this determination should be on the basis that the Tribunal will only consider the papers filed and the written submissions of the parties.

The Law

5. It is accepted by the parties that the Initial Notices were served and therefore Section 60 of the **Leasehold Reform, Housing and Urban Development Act 1993** ("the 1993 Act") is engaged. For the reasons set out below, the Applicants therefore have to pay the Respondent's reasonable legal 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 Respondents are not able to recover any more than they would have to pay their 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 Respondents instructed Mrs. Ann Singleton of Singletons Austin Rider, solicitors, of Enfield in Middlesex. She is an experienced solicitor, having qualified in 1981. She claims £250 per hour which is not disputed by the Applicants. This is the rate payable to a Grade A fee earner and, as the Applicants' solicitors have said, the expectation of a client is that a Grade A fee earner will conduct matters efficiently and with the highest level of expertise.

 10. The objections to such costs seem to fall into 2 categories i.e. whether the costs claimed are covered by section 60 of the 1993 Act and, if so, whether they are reasonable.

 11. 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.

 12. What is also significant is the pointed omission in section 60 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.

13. 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 words "*and incidental to*" in section 60(1) are, of course, extremely significant. However, they do not change or expand the wording of the section.
14. 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 perfectly able to send a copy of the lease and office copies of the 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 if it feels the need, but it knows that it will have to pay for that.
15. The Tribunal notes, for example that the Respondents' solicitors seem to feel that they have some input into the valuation process. There is no explanation as to what a solicitor can add to the valuation exercise. The valuer has claimed 1.25 hours for looking at the leases. How can it take such a long time to just look at the salient points which affect valuation? Suggesting that the solicitor draws the attention of the valuer to the factual matters which he should take into account, when he has been in practice for 40 years could hardly be described as reasonable. It rather hints at a lack of confidence in the ability of such an experienced expert on valuation which a client simply would not pay for.
16. Suggesting that the valuer would be assisted in help from the solicitor in assessing 'the factors to be taken into account in making the valuation' comes to the same point. There would have to be discussion about the content of a report to be placed before a Tribunal but that certainly does not come within section 60.
17. Turning to the question of the new leases, this really is a straightforward matter because the terms of the deeds of surrender and new leases are dictated by the 1993 Act. The Tribunal notes that the Applicants' solicitors do not challenge the work being undertaken by a Grade A fee earner. That is obviously a matter for them and the Tribunal will not comment further on that issue. On the open market, someone such as the Respondents, who had to pay for this out of their own pockets, would expect a solicitor to quote in advance and do the work on a fixed price basis.
18. Matters have been a little confused because the Respondents' solicitors have kept a 'master' file with reduced figures for the other 2 files. That is not intended as an adverse criticism. The Applicants' solicitors have

attempted to average out the figures so that each set of Applicants pays the same amount.

19. Taking into account these general principles, the Tribunal's decision is as follows. It is acknowledged that one or two of the items disallowed were not actually challenged by the Applicants. This is always a problem in adversarial litigation. The Tribunal has taken the view that costs not covered by the Statute are not allowable. If the Applicants wish to pay something for these items on a voluntary basis, that is obviously a matter for them. As the analysis of the total claim in the objections form has not been criticised by the Respondents, the Tribunal will follow that format:

Item	Time	Claim £	Decision
1. Receiving initial notices and instructing the solicitor to act	36 mins	150.00	2 units allowed i.e. £50 to check that the notices are in time. Remainder not covered by section 60
2. Drafting preliminary notices requiring deduction of title and deposit, contact details for access and correspondence with management company	1 hr 12 mins	300.00	6 units allowed i.e. £150 being a letter on each file asking for title deeds and to management company. Remainder not within section 60
3. Receiving and considering lease and leasehold titles, deposits and correspondence with management company	42 mins	175.00	Nil. Considering the title is included in the assessment of the validity of the Initial Notices. The remainder is not within section 60
4. Considering validity of Initial Notices	1 hr 36 mins	400.00	£250. The Tribunal endorses the objection
5. Instructing the valuer	18 mins	75.00	Not within section 60
6. No claim	Nil	Nil	Nil
7. Receiving checking and considering valuations	48 mins	200.00	Nil - not within section 60
8. Drafting counter-notices	1 hr	250.00	Nil - not within section 60
9. Letters and e-mails to freeholder and valuer	1 hr	250.00	£125 allowed for correspondence with freeholder - letters to valuer not within section 60
10. Letters and e-mails to Applicants' solicitors	54 mins	225.00	£225 allowed
11. Recorded telephone conversations	48 mins	200.00	£200 allowed
12. Completing the leases		1,350.00	As has been said, a

			client would expect a fixed fee to be agreed. These appear to be 3 leases in more or less identical terms which are set out in the 1993 Act. A reasonable fee per lease would be £350 i.e. £1,050 in total.
--	--	--	---

20. The total amount payable, taking these reductions into account, is £2,050.00.

Valuation fee

21. The Applicants’ solicitors comment is that *“the overall time spent by the valuer appears excessive, given that these are three flats within the same development and of a similar nature, but we make no challenge of the individual items within the list, save in respect of travel time. The Landlord has decided to instruct a valuer whose office is 50 kilometres away from the property”*.

22. The Tribunal accepts these comments. Reading the leases and notices to see the parts which affect valuation should take no more than 15 minutes per flat as opposed to the 2 charges relating to this item which are claimed at a total of 1.50 hours. The visits to local agencies and the time spent on the internet seem excessive and presumably reflect the fact the valuer is out of area and has little local knowledge. A client paying the fee personally would instruct a valuer closer to the properties and would expect them to charge half the professional rate for travel. He would also expect correspondence to be included in the valuation fee.

23. Taking all these matters into account, and taking account of the fact that these 3 valuations were all undertaken on the same day and involved exactly the same comparable evidence, the Tribunal determines that a reasonable fee would be £350 per unit i.e. a total of £1,050.

.....
Bruce Edgington
Regional Judge
25th September 2015