



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

Case Reference : LON/00BK/OC9/2015/0300

Property : 39, 50 & 60 Wellesley Court, Maida Vale, London W9 1RG

Applicant : Seaglen Investments Ltd.

Representative : Wallace LLP

Respondent : Ephraim Joshua Moses

Representative : In person

Type of Application : Determination of costs payable under s.60(1) of the Leasehold Reform, Housing and Urban Development Act 1993

Tribunal : Judge Dickie
Mr W R Shaw, FRICS

Hearing date : 9 September 2015

DECISION

Decision of the tribunal

Solicitors' fees of £4,500.00 plus VAT and disbursements are payable by the Respondent to the Applicant, in addition to valuation fees of £2,600.00 plus VAT.

The application

1. The Applicant seeks a determination pursuant to section 60 of the Leasehold Reform, Housing and Urban Development Act 1993 ("The Act") of the costs to be paid by the Respondent. An oral hearing took

place on 9 September 2015 attended by Ms S Bone, Solicitor, for the Applicant and Mr E Moses, Respondent, accompanied by Mr D Wilson.

2. On 16 January 2013 the Respondent, being the owner of the leasehold interest in each of the three subject flats, served Notices of Claim in accordance with section 42 of the Act. The landlord's Counter-Notices in accordance with section 45 were dated 22 March 2013 and served without prejudice to the validity of the Notices.
3. The Respondent did not make an application to this tribunal pursuant to Section 48 of the Act and accordingly the Notice of Claim was deemed withdrawn on or about 21 June 2014.
4. The Respondent disputes the Applicant's solicitors' legal fees (but not disbursements) and valuer's fees he is liable to pay.
5. So far as is relevant, section 60(1) of the Act provides:

Where a notice is given under section 42, then (subject to the provisions of this section) the tenant by whom it is given shall be liable, to the extent that they have been incurred by any relevant person in pursuance of the notice, for the reasonable costs of and incidental to any of the following matters, namely -

- 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;*
6. Section 60(2) provides that the costs claimed under section 60(1) will be reasonable:

if and to the extent that costs in respect of such services might reasonably be expected to have been incurred by him if the circumstances had been such that he was personally liable for all such costs.

Submissions, Determination and Reasons

7. With regard to the reasonableness of the solicitors' costs incurred, the Respondent argues that the work was of a repetitive nature and the Respondent's solicitor has or should have precedents for such

- applications, and not charge for duplicating work already carried out on other lease extension applications.
8. Neither the level of fee earner carrying out the majority of the work (a partner) nor the solicitors' hourly charging rates (£375 and £400) was challenged. The Respondent made an open offer of £3,500 plus VAT for profit costs.
 9. Ms Bone described the building's unusual title structure. The freeholder is the Applicant, there is a head lease of whole, then a 125 year under lease held by the Respondent and finally residential under leases.
 10. Ms Bone submitted that the individual Claim Notices had to be considered separately as well as each 1934 lease, and the claim investigated individually for each flat. She rejected the suggestion that this was repeat work, since only 8 flats in the building of at least 157 flats had extended their leases.
 11. In respect of flat 29 Ms Bone said there had been an issue concerning the lease plan and land outside the title of the competent landlord which had required more attendance by solicitors. Mr Moses considered it inappropriate that this be used as the justification for increased costs as this issue had not been noticed since the grant of the original lease, even when he purchased the flat in 2007, and he had incurred additional solicitors' fees in respect of this issue. Notwithstanding this, however, the tribunal disagrees with Ms Moses that it is unreasonable to reflect the necessary handling of this issue in the Applicant's solicitors' costs for flat 29.
 12. Looking at the individual times recorded on the solicitors' costs schedule, it is clear to the tribunal that in general this matter was dealt with efficiently. The tribunal is also satisfied that these costs fall within Section 60(1) and (2), and therefore allows plus VAT. The tribunal notes that a number of short attendances on correspondence were indeed apportioned between the three properties. However, in spite of this the tribunal does consider that some of the longer attendances are unreasonably long given that the three applications were considered together – namely considering the notice of claim, considering the office copy entries and leases, and preparing the counter notice. Taking this into account, the tribunal determines that solicitor's costs of £1600.00 plus VAT for flat 29 and £1450.00 plus VAT for each of flats 50 and 60 are reasonable and payable by the Respondent.
 13. The Respondent considered the valuation fees excessive. He produced his own valuer's invoice of £2,000 plus VAT, and referred to an oral quotation from another valuer in a lower amount. He considered the hourly rate at £400 was excessive – being the same or more than the

hourly rate charged for legal work. Mr Moses considered the full rate for travelling time to the property could not be justified.

14. Mr Shapiro's chargeable time was not clearly identifiable from his invoices. He recorded apportioned time totalling 1 hour and 50 minutes, and total time involved of 2 hours and 10 minutes per flat. Time was not recorded against all items of work, however, and the tribunal accepts that 2 hours of 10 minutes was expended and reasonable. Furthermore, this time clearly in the tribunal's view represents allowance for repetitive work for 3 flats in the same block.
15. However, the tribunal identified that Mr Shapiro had doubled his charge of £400 for 2 hours and 10 minutes per flat (£886.67), before capping his overall bill at £1,500 per flat. The tribunal was unable to identify a clear logic for this doubling. It was not explained in the Applicant's statement of case, or in the statement from Mr Shapiro though at the hearing Ms Bone suggested that the explanation lay in the final entry in Mr Shapiro's invoice which read "Weighting to reflect the PI implications of this valuation noting that the unexpired term was on 1.68 years and consequently the premiums involved were close to the vacant possession values".
16. The tribunal does not accept such doubling was justified. If Ms Bone is right as to the reason for it, Mr Shapiro's hourly rate is sufficiently high to reflect the high value work and responsibility. Whilst Mr Shapiro's hourly rate is very high, the tribunal considers his experience is reflected in the amount of time he took efficiently to deal with these valuations. The tribunal accordingly allows £866.67 plus VAT for valuation fees per flat as reasonable - being £2,600 plus VAT.

Name: F. Dickie

Date: 9 September 2015