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

Case Reference	:	LON/OOAG/OLR/2015/1533
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Property	:	16 Knollys House, Tavistock Place, London WC1H 9SA
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Applicant	:	Angela Vegliante Capella (leaseholder)
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Representative	:	Comptons Solicitors LLP
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Respondents	:	Savile Estates Limited
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Representative	:	Wallace LLP (solicitors)
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Type of Application	:	Application under section 91(2)(d) of the Leasehold Reform, Housing and Urban Development Act 1993 ('the Act') to determine the costs payable under section 60 of the Act
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Tribunal Members	:	Patrick M J Casey MRICS
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Date and venue of Hearing	:	The tribunal considered the application on the basis of the papers filed and without an oral hearing on 12 April 2016
Date of Decision	:	25 April 2016

DECISIONS

Summary of the decisions

1. It is determined that the landlord is entitled to recover the following costs which are payable by the leaseholder under section 60 of the Act. These are solicitors' fees in the sum of £2,319 excluding VAT, valuer's fees of £925 excluding VAT, and a Land Registry fee of £30. The total fees should be paid by 13 May 2016.

Introduction

2. This is an application for a determination of costs. It is made under section 91(2)(d) of the Act. Under section 60 a claimant leaseholder is required to pay the reasonable costs incurred by the landlord in connection with a claim for a new lease. Copies of these two statutory provisions are contained in the appendix to this decision.
3. In this matter the claimant is the leaseholder of the subject premises who has exercised her right to seek a new lease under the provisions in Chapter 2, Part I of the Act. The respondent is landlord under the lease. The claimant is represented by Comptons Solicitors LLP; the landlords are represented by Wallace LLP, a firm of solicitors.
4. Her claim was made in a notice dated 13 May 2015. In response the landlords gave a counter-notice dated 15 July 2015. Their counter-notice admitted the claim but made counter-proposals on the premium and on the proposed terms of the new lease.
5. As the parties failed to reach agreement on the premium to be paid and the terms of the new lease an application was made by the leaseholder to the tribunal for a determination of these disputes.
6. On or about 8 February 2016 terms of acquisition of the new lease were agreed between the parties and the tribunal were advised that the terms had been agreed. As the question of the landlords costs under section 60 had not been agreed directions were given dated 18 February 2016 for the

determination of these costs. These directions required the leaseholder to respond to the landlord's claim for costs and for the leaseholder to prepare a bundle of documents.

7. The directions also stated that the matter should be dealt with without an oral hearing. However, each party was given the option of seeking a hearing. Neither party having sought a hearing, the tribunal considered the application on the basis of the papers filed on 12 April 2016.

The decisions

8. The directed bundles of documents were duly filed with the tribunal and I considered all of the documents in the bundle as part of my consideration of the costs claims on 12 April 2016. The bundle included the notices, the application, the directions, the landlord's schedule of costs and supporting invoices, a witness statement from Tim Wild of Comptons in response to the Respondents Statement of Costs, the landlord's written submissions on costs and correspondence between the parties. Also included were copies of previous decisions on costs made by this tribunal. The bundle ran to 151 pages.
9. The landlord claims the sum of £2,658.00 in relation to the costs of their solicitors, a valuation fee of £925, (all exclusive of VAT) and land registry fee of £30.00.
10. I considered first, the submissions on section 60 costs. Mr Tim Wild for the leaseholder disputes the landlord's solicitors' costs on two broad grounds. Firstly he says the time claimed for a straightforward lease extension is excessive and secondly that the work could have been carried out by a lower grade fee earner and the hourly rates charged are excessive. He says that the time spent investigating the claim, instructing a valuer and preparing the counter-notice including correspondence should be no more than 2 hours as against the claimed time of 2.4 hours plus 8 letters/emails at 0.1 hours each. As to work associated with drafting off the new lease and completion of the transaction this should he claims have taken no more than 3 hours against the claimed time of 4 hours. He allows nothing for the claimed 0.2 hours for a paralegal.
11. So far as the grades of fee earner and the charge out rates are concerned he argues that the work did not justify the need for a senior partner with a charge out rate of £420.00 per hour as against the Guideline Hourly Rates of £317.00. He is similarly critical of the assistant rate charged of £300.00 per hour rising to £330.00 per hour when he says the recommendation for Grade B fee earner is £242.00 whilst for a paralegal it is £126.00 against the £180.00 charges

12. A full explanation of their charges was given by Wallace LLP the applicant's solicitors who also address the challenges to these charges. I considered the items of work that they covered, checked that they are all covered by section 60 of the Act and that they are not excessive. I also relied on my professional knowledge and experience to inform my consideration of the fees claimed. In addition I also considered the previous tribunal decisions which were included in the bundle all of which are determinations of costs claimed by Wallace LLP.
13. I note that under section 60 the claimant leaseholder must pay the landlord's costs of (a) investigating the leaseholder's right to a new lease, (b) any valuation of the leaseholder's flat and (c) the grant of the new lease.
14. I agree with the landlord's submission that the area of enfranchisement and new leases is a complex one and that the landlord is entitled to chose a specialist solicitor to represent its interests. The work was undertaken by a partner at Wallace LLP who charged £420 per hour. The partner was assisted by an assistant solicitor who charged the time at £300 per hour rising to £330 per hour from August 2015 and by a paralegal whose charge out rate was £180. In my opinion these rates are in line with the charge out rates for solicitors working in central London.
15. The work included considering the claim notice, considering Land Registry entries, preparing a draft lease and preparing a counter-notice. The work also consisted of correspondence and emails with the leaseholder's solicitor and the respondent's valuer. I am satisfied that the scope of this work was in general reasonable and the time taken was not excessive but the 15 July 2015 letter to the valuer enclosing copy of the counter-notice said to be necessary so the valuer is noted of the important step and in preparation for later negotiations and to note 6 months' time frame to agree terms" cannot be said to be part of the costs of obtaining a valuation – it is clearly in anticipation of negotiation and is disallowed as is the letter of 4 February 2016 which was sent when negotiations prior to a tribunal listing date were obviously ongoing.
16. The other aspect of the solicitors costs that I was unhappy with are claims for 'anticipated time to deal with completion' (£165.00) and 'anticipated further correspondence' (£99.00). I do not consider it appropriate to seek an assessment of costs that have not already been incurred. I also consider that the assessed solicitor's costs of £2,319.00 is a reasonable amount given that there were no apparent complexities in this case one where the solicitors involved had to prepare and serve a counter-notice, draft a new lease and deal with valuation.
17. Otherwise all of this work was justified including the Land Registry fees of £30.00 for copies of the freehold head leasehold and occupational leasehold titles and the para legal charge for dealing with the same and I

determine that this element of the charges was reasonably incurred. I determine that the allowable solicitor's costs is the sum of £2,319.00 (exclusive of VAT).

18. There was no challenge to the valuer's fee of £925.00 (exclusive of VAT) but in my view this was reasonably incurred and in line with valuer's charges for new lease claims in Greater London.

Patrick M J Casey, 25 April 2016

Appendix

Section 91

Jurisdiction of leasehold valuation tribunals.

(1)

Any jurisdiction expressed to be conferred on a leasehold valuation tribunal by the provisions of this Part (except section 75 or 88) shall be exercised by a rent assessment committee constituted for the purposes of this section; and any question arising in relation to any of the matters specified in subsection (2) shall, in default of agreement, be determined by such a rent assessment committee.

(2)

Those matters are—

(a)

the terms of acquisition relating to—

(i)

any interest which is to be acquired by a nominee purchaser in pursuance of Chapter I, or

(ii)

any new lease which is to be granted to a tenant in pursuance of Chapter II, including in particular any matter which needs to be determined for the purposes of any provision of Schedule 6 or 13;

(b)

the terms of any lease which is to be granted in accordance with section 36 and Schedule 9;

(c)

the amount of any payment falling to be made by virtue of section 18(2);

[F1(ca)

the amount of any compensation payable under section 37A;]

[F2(cb)

the amount of any compensation payable under section 61A;]

(d)

the amount of any costs payable by any person or persons by virtue of any provision of Chapter I or II and, in the case of costs to which section 33(1) or 60(1) applies, the liability of any person or persons by virtue of any such provision to pay any such costs; and

(e)

the apportionment between two or more persons of any amount (whether of costs or otherwise) payable by virtue of any such provision.

(3)

A rent assessment committee shall, when constituted for the purposes of this section, be known as a leasehold valuation tribunal; and in the following provisions of this section references to a leasehold valuation tribunal are (unless the context otherwise requires) references to such a committee.

(4)

Where in any proceedings before a court there falls for determination any question falling within the jurisdiction of a leasehold valuation tribunal by virtue of Chapter I or II or this section, the court—

(a) shall by order transfer to such a tribunal so much of the proceedings as relate to the determination of that question; and

(b) may then dispose of all or any remaining proceedings, or adjourn the disposal of all or any such proceedings pending the determination of that question by the tribunal, as it thinks fit;

and accordingly once that question has been so determined the court shall, if it is a question relating to any matter falling to be determined by the court, give effect to the determination in an order of the court.

(5)

Without prejudice to the generality of any other statutory provision—

(a)

the power to make regulations under section 74(1)(b) of the Rent Act 1977 (procedure of rent assessment committees) shall extend to prescribing the procedure to be followed consequent on a transfer under subsection (4) above; and

(b)

rules of court may prescribe the procedure to be followed in connection with such a transfer.

(6)

Any application made to a leasehold valuation tribunal under or by virtue of this Part must comply with such requirements (if any) as to the form of, or the particulars to be contained in, any such application as the Secretary of State may by regulations prescribe.

(7)

In any proceedings before a leasehold valuation tribunal which relate to any claim made under Chapter I, the interests of the participating tenants shall be represented by the nominee purchaser, and accordingly the parties to any such proceedings shall not include those tenants.

(8)

No costs which a party to any proceedings under or by virtue of this Part before a leasehold valuation tribunal incurs in connection with the proceedings shall be recoverable by order of any court (whether in consequence of a transfer under subsection (4) or otherwise).

(9)

A leasehold valuation tribunal may, when determining the property in which any interest is to be acquired in pursuance of a notice under section 13 or 42, specify in its determination property which is less extensive than that specified in that notice.

(10)

Paragraphs 1 to 3 and 7 of Schedule 22 to the Housing Act 1980 (provisions relating to leasehold valuation tribunals constituted for the purposes of Part I of the Leasehold Reform Act 1967) shall apply to a leasehold valuation tribunal constituted for the purposes of this section; but—

(a)

in relation to any proceedings which relate to a claim made under Chapter I of this Part of this Act, paragraph 7 of that Schedule shall apply as if the nominee purchaser were included among the persons on whom a notice is authorised to be served under that paragraph; and

(b)
in relation to any proceedings on an application for a scheme to be approved by a tribunal under section 70, paragraph 2(a) of that Schedule shall apply as if any person appearing before the tribunal in accordance with subsection (6) of that section were a party to the proceedings.

(11)

In this section—

“the nominee purchaser” and “the participating tenants” have the same meaning as in Chapter I;

“the terms of acquisition” shall be construed in accordance with section 24(8) or section 48(7), as appropriate;

and the reference in subsection (10) to a leasehold valuation tribunal constituted for the purposes of Part I of the Leasehold Reform Act 1967 shall be construed in accordance with section 88(7) above.