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

Case reference : **MR LON/00AN/OC9/2015/0312**

Property : **Upper Maisonette, 15 St Peter Square, London W6 9AB**

Applicant : **Hayriye Tulay Burford**

Representative : **Child & Child Solicitors**

Respondent : **Simon Crow (1)
Lucinda Anne Chambers**

Representative : **Pemberton Greenish LLP Solicitors**

Type of application : **Application for determination of reasonable costs**

Tribunal member(s) : **Mr Jeremy Donegan (Tribunal Judge)**

Date and venue of paper hearing : **18 January 2016
10 Alfred Place, London WC1E 7LR**

Date of decision : **18 January 2016**

DECISION

Decisions of the tribunal

The tribunal determines that the costs payable by the Applicant to the Respondents, pursuant to section 60(1)(c) of the Leasehold Reform, Housing and Urban Development Act 1993 ('the 1993 Act'), are £3,325 (three thousand, three hundred and twenty five pounds) plus VAT.

The application

1. The Applicant seek a determination of the amount of costs payable to the Respondent pursuant to section 60(1)(c) of the 1993 Act. The application concerns a new lease claim for the Upper Maisonette, 15 St Peter's Square, London W6 9AB('the Flat').
2. The tribunal issued costs directions on 04 November 2015. The directions included provision that the case be allocated to the paper track, to be determined upon the basis of written representations. None of the parties has objected to this allocation or requested an oral hearing. The paper determination took place on 18 January 2016.
3. The Applicant's solicitors filed a bundle of documents on 15 December 2015, in accordance with paragraphs 5 of the directions. This included the Respondents' schedule of costs, the Applicant's statement of case and submissions, the travelling draft lease and documents evidencing the Applicant's legal costs. The Respondents' solicitors subsequently filed a statement in response to the Applicant's statement of case and submissions, on 21 December 2015. This was dated 10 December 2015 but it is unclear when this was served on the Applicant's solicitors.
4. When determining the costs, the tribunal took account of all of the documents contained in the Applicant's bundle of documents and the Respondent's statement.
5. The relevant legal provisions are set out in the Appendix to this decision.

The background

6. The background to the application is:
 - 6.1 The Applicant served a section 42 notice of claim on the Respondents on 21 November 2014, proposing a premium for a new lease of £95,000. The Applicant has been represented by Child & Child Solicitors ('C&C') throughout.

- 6.2 The Respondents served a section 45 counter-notice on the Applicant on 20 January 2015, proposing a higher premium of £191,154. At that time the Respondents were represented by Oliver Fisher Solicitors ("OF").
- 6.3 The Applicant submitted an application to the tribunal under section 20 of the 1993 Act, on 16 July 2015. On 04 August 2015, the tribunal received a letter from Pemberton Greenish LLP ("PGL") stating that they were instructed by the Respondents in place of OF.
- 6.4 On 26 October 2015, the tribunal received letters from C&C and PGL stating that the premium for the new lease had been agreed. The sum agreed was £168,600.
- 6.5 The parties have been unable to agree the legal costs payable to the Respondents under section 60(1)(c) of the 1993 Act. There is no dispute over the costs payable under section 60(1)(a) and (b). The tribunal is solely determining the costs payable under section 60(1)(c), on the grant of the new lease.

Evidence and submissions

7. PGL are claiming legal costs totalling £6,000 plus VAT (total £7,200), for dealing with the grant of the new lease. This is less than their time recorded costs, which come to £7,347 plus VAT and Land Registry fees of £15 (total £8,831.40).
8. C&C have challenged these costs on numerous grounds, as set out in their statement of case and submissions. The challenges can be summarised as follows:
- 8.1 The initial work undertaken by PGL on 26 July and 03 August 2015, totalling 2 hours 48 minutes, arose from the change of solicitor from OF and these costs are not payable by the Applicant.
- 8.2 The charging rate for the Respondents' solicitor of £396 is too high. The work was undertaken by Ms Katherine Simpson, who is a partner. The hourly rate exceeds the HMCTS guideline rate for a Grade A fee earner in London Grade 3 of £229-267. Further some of the work should have been delegated to a more junior fee earner and the negotiations over the terms of the new lease should have been dealt with by a Grade C fee earner, for whom the guideline rate is £172-229.
- 8.3 PGL's approach to the lease negotiations was unreasonable, which resulted in protracted negotiations and increased costs.

Over 10 hours has been recorded for reviewing the draft lease and corresponding with the Respondents, most of which time was unnecessary. C&C also made specific challenges to the time breakdown provided by PGL.

- 8.5 PGL's costs are excessive and unreasonable, having regard to the location of the Flat (outside Prime Central London), the total time spent by PGL during their limited period of involvement (16 hours 36 minutes) relative to the time spent by C&C during the same period (6 hours 12 minutes) and the amount of the C&C's (£3,785 plus VAT).
9. C&C proposed a total figure of £1,869 plus VAT (£2,242.80) for PGL's costs, representing 7 hours @ £267 per hour.
10. PGL responded to C&C's challenges in their statement in response, which is summarised below:
 - 10.1 The costs for the initial work are recoverable. The Respondents changed solicitors, as they were dissatisfied with OF. They are not professional landlords, had no previous experience of leasehold enfranchisement and required guidance on the terms of the new lease. There is no duplication, as OF only dealt with the investigation of the new lease claim and did not advise on the terms of the new lease.
 - 10.2 Ms Simpson's charging rate should be allowed in full. She has many years experience in leasehold enfranchisement and her rate is comparable with those charged by other central London solicitors that specialise in this work. The guideline rates are not appropriate for this type of work. Further the guideline rates have not been updated since 2010. PGL's offices are located in SW3, adjacent to Sloane Square, rather than outer London.
 - 10.3 C&C have not identified which work should have been delegated to a more junior fee earner. Delegation would not have been possible and/or would not have saved costs.
 - 10.4 The work undertaken by Ms Simpson in preparing the new lease benefited both parties and was necessary and appropriate.
 - 10.5 The criticisms of Ms Simpson's approach to the negotiations are not justified. Both parties suggested amendments to the existing lease and both made concessions before terms were finally agreed. An updated lease plan was required to comply with Land Registry's requirements. PGL responded to the various specific challenges made by C&C.

10.6 The fact that C&C spent less time on the transaction than PGL does not mean that PGL's costs are unreasonable or excessive.

11. PGL contend that their costs should be allowed in full and make the point that had they charged for all of their time then their costs would come to £8,831.40 (including VAT and disbursements). The costs being claimed have been reduced by 3 hours 24 minutes, which is ample allowance for any time that might be considered excessive.

The tribunal's decision

12. The tribunal determines that the costs payable by the Applicant are £x plus VAT.

Reasons for the tribunal's decision

13. The tribunal accepts that some of the initial work undertaken on 26 July and 03 August 2015 arose from the change of solicitors and involved some duplication, whilst Ms Simpson acquainted herself with the case. It reduces the total time claimed for these two attendances to 1 hour 30 minutes.
14. The tribunal allows a charging rate of £350 per hour. Given the amount of the premium and the specialist nature of leasehold enfranchisement work, it was reasonable for the work to be undertaken by a Grade A fee earner throughout. The guideline rates provide a useful starting point when determining the hourly rate but need not be slavishly followed. Further the tribunal accepts that the rates are somewhat out of date, having been published over 5 years ago. Having regard to the location of P&G's offices, the tribunal determined that the charging rate should be that for a Grade A fee earner in London Grade 2 (£317) with an uplift of 10%. This gives a rate of £348.70, which the tribunal rounded up to £350 per hour.
15. The tribunal is unable to accept C&C's assertion that Ms Simpson's approach to the negotiations was unreasonable, without sight of the relevant correspondence. However it does accept that the time claimed is unreasonable. The total time claimed by PGL for the period after 03 August 2015 is 15 hours and 48 minutes. This includes 2 hours of anticipated time, not yet undertaken. The total time claimed is excessive, having regard to the nature of the transaction and Ms Simpson's expertise. Given her considerable experience, the transaction should have been relatively straightforward. Having regard to the parties' submissions and the tribunal judge's experience of dealing with lease extension claims, the transaction should have taken no more than 8 hours after the initial work.

16. The tribunal allows total time of 9 hours 30 minutes, being 1 hour and 30 minutes for the initial work (paragraph 13) and 8 hours for the subsequent work (paragraph 15). Applying a charging rate of £350 per hour gives a costs figure of £3,325 plus VAT.
17. The tribunal has allowed the VAT charged on the Respondents' costs upon the assumption that the Respondents are not VAT registered. If this assumption is incorrect and the Respondents are able to recover the VAT charged then sum due should be adjusted accordingly.

Name: Tribunal Judge
Donegan

Date: 18 January 2016

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix of relevant legislation

Leasehold Reform, Housing and Urban Development Act

Section 60

(1) 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;

but this subsection shall not apply to any costs if on a sale made voluntarily a stipulation that they were to be borne by the purchaser would be void.

(2) For the purposes of subsection (1) any costs incurred by a relevant person in respect of professional services rendered by any person shall only be regarded as 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.

(3) Where by virtue of any provision of this Chapter the tenant's notice ceases to have effect, or is deemed to have been withdrawn, at any time, then (subject to subsection (4)) the tenant's liability under this section for costs incurred by any person shall be a liability for costs incurred by him down to that time.

(4) A tenant shall not be liable for any costs under this section if the tenant's notice ceases to have effect by virtue of section 47(1) or 55(2).

(5) A tenant shall not be liable under this section for any costs which a party to any proceedings under this Chapter before the appropriate tribunal incurs in connection with the proceedings.

(6) In this section "relevant person", in relation to a claim by a tenant under this Chapter, means the landlord for the purposes of this Chapter, any other landlord (as defined by section 40(4)) or any third party to the tenant's lease