



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

Case Reference : **BIR/00CN/OC9/2018/0016**

Property : **9 Derwent Court, Garrard Gardens, Sutton Coldfield, B73 6DR**

Applicant : **Halliard Property Company Limited**

Representative : **Wallace LLP Solicitors**

Respondent : **Michael Andrew Jordan**

Representative : **Kenneth Curtis & Company, Solicitors**

Type of Application : **Application for determination of reasonable costs under ss 60 and 91(2)(d) of the Leasehold Reform and Urban Development Act 1993**

Tribunal : **Tribunal Judge P. J. Ellis
Tribunal Member Mr R.P.Cammidge FRICS.**

Date of Hearing : **2 November 2018**

Date of Decision : **16 November 2018**

DECISION

The sum payable by the Respondent for the Applicant's costs is £931.00 plus VAT 186.20; valuer's fee £350.00 plus VAT £70.00 and Land Registry fees of £24.00 in total the sum of £1561.20

1. This is an application for determination of reasonable costs incurred in connection with a new lease to be paid by a tenant under s60(1) of the Leasehold Reform and Urban Development Act 1993 (the Act).
2. The Applicant is Halliard Property Company represented by its solicitors Wallace LLP of Portland Place London W1. The Respondent is Michael Andrew Jordan represented by his solicitors Kenneth Curtis & Company of Aldridge Road Perry Barr Birmingham.
3. The property the subject of the relevant notice of claim under s42 of the Act was First Floor Flat 9 Derwent Court, Garrard Gardens, Sutton Coldfield, B73 6DR. Although the parties agreed the terms of acquisition in October 2017 a new lease was not agreed. Consequently, by reason of the deeming provisions of s53(1)(b) of the Act the Respondent's notice of claim was withdrawn. The Applicant now seeks its costs incurred in connection with the claim for lease extension pursuant to ss60 and 91 of the Act.
4. The sum claimed is £1353.50 and VAT of £270.70 with disbursements of Land Registry Fees (£24.00) and valuers fee (£420.00 inclusive of VAT). The Respondent does not dispute his liability to pay the Applicant's costs but denies that the sum claimed is reasonable. The Applicant issued this application to determine the sum payable was issued on 18 July 2018. The Tribunal issued Directions on 19 July 2018. Neither side requested an oral hearing. The matter was determined by the Tribunal on 2 November 2018.
5. The Direction required each side to submit their statements of case which have been considered by the Tribunal in coming to its decision.

6. The Applicant's schedule of costs and the Tribunal's decision are set out in the Annex to this Decision.

The Issues

7. The issue between the parties is substantially in connection with the rates charged by the Applicant's solicitors although there is a challenge to some of the work done including the costs associated with the draft lease. There is no dispute over the disbursements.
8. The Respondent asserts the Applicant's claim for costs is disproportionate to the value of the leasehold interest negotiated. In summary the Respondent submits that a sum no more than double the valuation fee of £350 would be a reasonable sum for the Respondent to pay. He also challenges the hourly rate proposed by Wallace LLP.
9. The Applicant asserts that all work done is properly the subject of the claim and that the hourly rates charged are reasonable for a central London law firm undertaking specialist work. It also asserts that proportionality is not relevant to the assessment of costs payable under s60 of the Act.

The Statutory Provisions

10. Section 60 of the Act provides:

"(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.”

S91 of the Act vests the Tribunal with jurisdiction to determine:

(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.

Discussion

11. Both sides submitted previous decisions of the First-tier Tribunal which are helpful but not binding upon this Tribunal. Moreover, the principles of determining costs outlined by both sides are substantially formulated in recent decisions of the Upper Tribunal. In particular the decisions in *Sinclair Gardens v Wisbey [2016] UKUT 203 (LC)*; *Metropolitan Property Realisations Ltd v Moss [2013] UKUT 0415(LC)* and *Sidewalk Properties Limited v Twinn[2015]UKUT 0122*
12. In *Sinclair Gardens v Wisbey* HH Judge Huskinson said in connection with a lease extension case pursuant to s60 of the Leasehold Reform and Urban Development Act 1993
“In my judgment on the proper construction of section 60 there is a burden upon the landlord who is claiming costs for professional services (which therefore fall within section 60(2)) to prove that the costs are (and the extent to which the costs are) reasonable. This follows from the provision that costs “shall only be regarded as reasonable” if and to the extent provided for by the following words.”
13. The standard of proof required of the landlord described in *Metropolitan Property Realisations Ltd v Moss [2013] UKUT 0415(LC)* is the “reasonable expectation test”. Mr Martin Rodger QC the Deputy President giving the

decision of the Upper Tribunal that the band of costs recoverable under the reasonable expectation test has a ceiling of the costs which would have been paid by the landlord if paying them itself and is not restricted to the costs which the Tribunal considers to be reasonable.

14. After reciting the relevant provisions of section 60 he said:

9. *These provisions are straightforward and their purpose is readily understandable. Part I of the 1993 Act is expropriatory, in that it confers valuable rights on tenants of leasehold flats to compel their landlords to grant new interests in those premises whether they are willing to do so or not. It is a matter of basic fairness, necessary to avoid the statute from becoming penal, that the tenant exercising those statutory rights should reimburse the costs necessarily incurred by any person in receipt of such a claim in satisfying themselves that the claim is properly made, in obtaining advice on the sum payable by the tenant in consideration for the new interest and in completing the formal steps necessary to create it.*

10. *On the other hand, the statute is not intended to provide an opportunity for the professional advisers of landlords to charge excessive fees, nor are tenants expected to pay landlords' costs of resolving disputes over the terms of acquisition of new leases. Thus the sums payable by a tenant under section 60 are restricted to those incurred by the landlord within the three categories identified in section 60(1) and are further restricted by the requirement that only reasonable costs are payable. Section 60(2) provides a ceiling by reference to the reasonable expectations of a person paying the costs from their own pocket; the costs of work which would not have been incurred, or which would have been carried out more cheaply, if the landlord was personally liable to meet them are not reasonable costs which the tenant is required to pay.*

11. *Section 60 therefore provides protection for both landlords and tenants: for landlords against being out of pocket when compelled to grant new interests under the Act, and for tenants against being required to pay more than is reasonable."*

15. The decision of the Tribunal in this case is not whether the use of London solicitors is reasonable but the reasonableness of the fees claimed by the

Respondent from the Applicant. In *Sinclair Gardens v Wisbey* [2016] UKUT 0203 (LC) His Honour Judge Huskinson sitting with the Registrar as an assessor said:

“On a proper construction of Section 60 there is a burden upon the Respondents claiming costs for professional services (which therefore fall within section 60(2)) to prove that the costs are (and the extent to which the costs are) reasonable. This follows from the provision that costs “shall only be regarded as reasonable” if and to the extent provided for by the following”.

16. The Upper Tribunal further considered the meaning and effect of section 60 of the Act in another decision of Martin Rodger QC the Deputy President in *Sidewalk Properties Limited v Twinn*[2015]UKUT 0122, a case also involving, in part, the use of solicitors with higher charging rates than solicitors local to the property which was in Bury St Edmunds Suffolk. At paragraph 40 of his Decision he said:

“The question of the appropriate hourly rate to be used as a guide involves a choice between London and Bury St Edmunds rates. That choice cannot be determinative however, both because London rates are themselves a range, and because even after carrying out an arithmetical calculation based on one rate or the other it is still necessary to consider the ceiling imposed by s60(2) and to ask whether the resulting figure represents the cost which would have been incurred had the appellant been required to pay for the necessary legal services from its own pocket without the right to pass the charges to the respondents”

Decision

17. The Tribunal agrees that its role is to determine what sum is reasonable for the leaseholder to pay having regard to the work allowable and the cap on those costs described by Martin Rodger QC.
18. It is not for the Tribunal to interfere with a party's choice of solicitor. Also it is understood that a party will appoint a solicitor skilled in the relevant area of law.

However, that does not mean the fees charged are for those reasons, *a priori*, reasonable.

19. The burden is on the Applicant to satisfy the test of reasonableness. In this case the Applicant has described the work done and the rate charged but the engagement letter describing the basis of charge is not disclosed. The Applicant's case is based on the presumption that an hourly rate and time calculation is the only method of quantifying fees.
20. Wallace LLP submits that it has been acting for the Applicant for many years in connection with enfranchisement matters. The Tribunal acknowledges that it is a firm with substantial experience in these matters. In the circumstances rather than a rate per hour it should be possible to agree a fixed fee rate for the job. Moreover, although it is proper for a partner to have oversight of matters a competent solicitor under effective supervision is capable of conducting the majority of work associated with an enfranchisement matter.
21. The issue of proportionality was raised by the Respondent and rejected by the Applicant because of the reasonableness test. That submission is correct but, when seeking to balance the respective claims it is appropriate to look at the test of proportionality as the overall sum payable must be one which the Applicant would pay if paying the fees itself.
22. Part 44(3)(2)(a) Civil Procedure Rules provides that the court when making an assessment of costs will only allow costs which are proportionate to the matters in issue. Although the obligation to pay costs under section 60 is a separate basis of appraising what costs are payable, the ceiling imposed by section 60(2) and its application by the First-tier Tribunal and the Upper Tribunal means that there is no right to an indemnity for the costs which the landlord has agreed to pay its professional advisers. Therefore, just as the court guidelines are helpful in identifying hourly rates, so too the general principle of proportionality is helpful in deciding the reasonableness of costs payable by the leaseholders.

Chargeable Rate

23. The Tribunal does not decide what are the rates a chargeable by solicitors in Central London but it must decide whether the sum deduced is reasonable for the Respondent to pay. This Tribunal has frequently considered claims for costs under s60(1) and makes decisions which are appropriate for each different case. In this case the Tribunal is not satisfied the Applicant has discharged the burden of proof upon it to justify the hourly rate claimed and substitutes the hourly rate of £350.00 for a partner, £230.00 for an assistant and £125.00 for a paralegal in accordance with another case of this Tribunal such as *Turner v Brickfield Properties Limited BIR/00CN/OC9/2016/0014* adjusted for the movement in charges since that decision.

The Sum Payable

24. The work described is reasonable in the circumstances of the rather drawn out conduct of the case. However, the use of partner was greater than necessary. The decision of the Tribunal is set out in the Annex to this decision. There is no challenge over the valuer's fee or the land registry fee. The sum allowed for profit costs is £931.00 plus vat of 186.20.

25. If the Respondent is not registered for VAT then the gross sum is payable.

Appeal

26. If either party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

Tribunal Judge PJ Ellis
Chair