



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

Case Reference	MAN/00BR/OC6/2020/0002
Property	9 Elm Crescent, Worsley, Manchester, M28 2DD
Applicant	Ronald Thomas Davenport
Respondent	Chime Properties Ltd.
Representative	J B Leitch Ltd.
Type of Application	: Determination of reasonable costs payable under s.9(4) of the Leasehold Reform Act 1967
Tribunal Member	: Judge P Forster Mr P Mountain
Date of Determination	: 12 June 2020
Date of Decision	: 15 June 2020

DECISION

The Tribunal determines that reasonable costs of £1,440.00 not including VAT are payable by the applicant to the respondent under s.9(4) of the Leasehold Reform Act 1967.

REASONS FOR DECISION

The Application

1. The application is made under s.21(1)(ba) of the Leasehold Reform Act 1967 (“the Act”) for a determination of the reasonable costs payable by the applicant to the respondent under s.9(4) of the Act on exercising the right to acquire a freehold interest. The applicant is Ronald Thomas Davenport (“the applicant”) and the respondent is Chime Properties Ltd. (“the respondent”).

Background to the Application

2. The applicant served a notice dated 8 October 2018, exercising his right to acquire the freehold interest in 9 Elm Crescent, Worsley, Manchester, M28 2DD (“the property”) under Part 1 of the Leasehold Reform Act 1967. The respondent served a notice in reply dated 3 December 2018 admitting the claim. The parties have agreed the terms under which the property is to be transferred for an agreed premium of £300 except they have not been able to agree the respondent’s costs that are payable by the applicant.
3. The respondent seeks its costs of £2,235.60 plus VAT to be paid by the applicant under s.9(4) of the Act. The applicant does not agree the sum claimed and now seeks a determination from the Tribunal as to the reasonable costs payable.
4. The Tribunal issued Directions on 3 February 2020. The Directions stated that the application would be determined without a hearing, unless either party objected within 28 days. The parties agreed to a paper determination in the light of the current Coronavirus health emergency. Therefore, the Tribunal proceeds on the basis of the papers alone.
5. The Directions also included provision for the respondent to submit a detailed schedule of the costs sought including justification for the amounts claimed. The applicant was then to comment on the respondent’s schedule including details of the amount of costs which he considers to be reasonable.

The Law

6. S. 9(4) of the Act provides that:

Where a person gives notice of his desire to have the freehold of a house and premises under this Part of this Act, then unless the notice lapses under any provision of this Act excluding his liability, there shall be borne by him (so far as they are incurred in pursuance of the notice) the reasonable costs of or incidental to any of the following matters:—

- (a) any investigation by the landlord of that person's right to acquire the freehold;
- (b) any conveyance or assurance of the house and premises or any part thereof or of any outstanding estate or interest therein;
- (c) deducing, evidencing and verifying the title to the house and premises or any estate or interest therein;
- (d) making out and furnishing such abstracts and copies as the person giving the notice may require;

The respondent's case

6. The respondent claims a total of £2,235.60 plus VAT made up as follows: legal fees of £1,785.60 and a valuation fee of £450.00.
9. The respondent instructed solicitors J B Leitch to act on its behalf. The work was undertaken by Ms Martin-McGrath, who is described as a grade b fee-earner at an hourly rate of £192.00. The claim for legal fees of £1,785.60 represents 9.3 hours' work.
10. The respondent submits that the costs claimed are more than fair and reasonable given the protracted negotiations about matters now agreed. In an effort to reach an agreement on costs, a reduced total of £1,790.00 inclusive of VAT was offered to the applicant but his representatives did enter into correspondence about the offer save to say that they had issued the present application. The applicant has offered to pay £500.00 inclusive of VAT and that was rejected by the respondent.

The applicant's case

11. The applicant's right to acquire the freehold was accepted by the respondent but it demanded a premium of £4,100.0 plus costs. The applicant's surveyor advised a value of £215.00. The applicant offered to pay £300.00, but between March and November 2019, there was no response from the respondent's solicitors. To progress matters, the applicant applied to the First-tier Tribunal

(MAN/00BR/OAF/2019/0028) to determine the amount of the premium. On 4 November 2019, just before the application was to be heard, the respondent agreed the premium of £300.00 and terms have now been agreed to transfer the property. The application was withdrawn.

12. The applicant does not agree the respondent's claim for £2,235.60 plus VAT because those costs are not reasonable. The respondent's representative failed to respond for eight months to the applicant's offer to pay £300.00 which was eventually accepted. This caused the applicant to incur his own additional costs. Any costs claimed by the respondent in respect of this period cannot have been properly incurred because there were no negotiations or contact between the parties.
13. The claim is based on Ms Martin-McGrath's charge rate although it is clear that other people of unspecified grade were involved in the transaction. The respondent has not provided sufficient detail in a schedule of costs to enable the applicant to comment further.
14. The applicant has tried to negotiate the respondent's reasonable costs, but it has not engaged in the process and elected to stand by its original claim. The applicant has been forced to apply to the Tribunal to determine the issue.
15. The applicant believes that a reasonable amount for "*the purchase price, vendor's legal fees, and vendor's valuation fee – should together total no more than £1,000...*". In respect of the valuation fee, a reasonable fee for a valuation would be in the region of £250.00 to £450.00 inclusive of VAT.

Reasons for the decision

12. The respondent has not fully complied with the Directions. It has not provided the Tribunal with a detailed schedule of the costs sought nor has it given a detailed justification for the amounts claimed. The statement of case filed in support of the claim lacks detail.
13. The tenant is normally responsible for the costs incurred by the landlord on enfranchisement. In default of agreement between the parties, the Tribunal may determine the amount. The costs for which the tenant is responsible are those reasonably incurred in or incidental to the matters set out in s.9(4) of the Act. The Tribunal will only allow costs which have been reasonably incurred and which are reasonable in amount.
14. The claim for costs of £1,785.60 is based on an hourly charge rate of £192.00. That is in line with the 2010 published guidance rate for a grade b fee-earner, a solicitor or legal executive with over 4 years' experience. J B Leitch is situated in Liverpool which falls within national grade 1.

15. The claim represents 9.3 hours work at £192.00 per hour. The respondent has simply identified 34 letters/emails to him, 44 letters/emails to the applicant or his representative and 1.5 hours spent reviewing and drafting documents. The respondent has not provided a breakdown that reflects the four matters set out in s.94(1) of the Act.
16. The applicant has not expressly objected to the charge rate claimed by the respondent, which is based on guidance published in 2010 for costs in contentious civil cases. The guidance therefore does not have direct relevance to the current work. There is a contentious element to the enfranchisement claim but the work for which costs can be recovered, as set out in s.9(4), is essentially of a transactional nature for which a fixed fee would generally be negotiated between client and his solicitor.
17. The applicant challenges the claim that Ms Martin-McGrath did all the work. In a transaction such as this, it would be reasonable for the work to be allocated between a number of fee-earners of different status and accordingly with different charge rates. The information provided by the respondent does not address this issue.
18. Ms Martin-McGrath is claimed as a grade b fee-earner which would be appropriate for a solicitor or legal executive with over four years post qualification experience, including four years litigation experience. The respondent's statement of case does not include relevant information about Ms Martin-McGrath. She signed the statement of case but does not cite any relevant qualifications.
19. The sparse information provided by the respondent does not distinguish between the costs incurred for investigating the applicant's right to acquire the freehold, drafting the landlord's notice and dealing with the conveyance of the property. It is usual for work of this type to be carried out by different fee-earners. The acquisition and transfer of the registered freehold title is not usually a complex process. The work should be undertaken by fee-earners and support staff with appropriate experience. If there are complex factors to the transaction then they should be explained if the claim for costs is challenged, as in this case. The respondent is silent on this point. It is for the respondent to justify the costs claimed.
20. Based on the sparse evidence provided by the respondent, doing the best it can on that evidence and applying the Tribunal's professional experience and knowledge, the Tribunal allows £1,190.00 not including VAT. This is based on a composite rate for a range of fee-earners of £170.00 per hour for 7 hours work.

21. The applicant objects to the valuation fee claimed of £450.00 plus VAT. The respondent has not identified the valuer who carried out the work and has not provided an invoice from the valuer to support the claim. The calculation of the premium should have been straightforward, based on a well-established formula. The valuation fee is not for valuing the property but for valuing the freehold in line with the relevant legislation. Again, using the Tribunal's professional experience and knowledge, the Tribunal allows £250.00 not including VAT.
22. In total, the Tribunal finds that the reasonable sum to be paid by the applicant to the respondent is £1,440.00 not including VAT. The respondent may only add VAT if it is not registered for VAT.

Judge Forster
12 June 2020

RIGHT OF APPEAL

A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional Office, which has been dealing with the case.

The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

If the person wishing to appeal does not comply with the 28 day time limit, that person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.