

**SOUTHERN LEASEHOLD VALUATION TRIBUNAL**

**In the matter of section 60 of the Leasehold Reform Housing and Urban  
Development Act 1993 and of Schedule 11 of the  
Commonhold & Leasehold Reform Act 2002 (as amended)**

**and in the matter of 41 Feltham Crescent, East Molesey, Surrey**

**Case Number: CH/43UB/OLR/2008/0109**

**Between**

**Mr & Mrs S P van Essen** ("the Applicants")

**and**

**Mr A J and Mr P H Davies** ("the Respondents")

**The matter was determined in the light of written representations  
without a hearing on 13<sup>th</sup> March 2009**

**Decision of the Tribunal**

**Issued: 31<sup>st</sup> March 2009**

**Tribunal**

**Mr R P Long LLB (Chairman)**

1. This is an application by Mr & Mrs S P van Essen to the Tribunal to determine the amount of the costs properly payable by Mr & Mrs A J Davies pursuant to section 60 of the Leasehold Reform Housing & Urban Development Act 1993 (as amended) ("the Act") following the grant to Messrs. Davies of an extended lease of premises at 41 Feltham Crescent East Molesey ("the premises") pursuant to a notice given by them under section 42 of the Act. Mr & Mrs van Essen have been represented during almost all of the dealings between the parties that are relevant to the issues now before the Tribunal by Messrs Keppe & Partners ("Keppe") and Messrs. Davies have been represented throughout by Messrs Lucas Solicitors LLP ("Lucas"), both of Twickenham.
2. On 29<sup>th</sup> October 2007 Messrs. Davies, through their solicitors, gave notice to Mr & Mrs van Essen of their claim to exercise the right to the grant of an extended lease of the premises. The notice required a response by 7<sup>th</sup> January 2008. Although that notice was copied to solicitors other than Keppe, it appears from a copy client care letter before the Tribunal that Keppe were instructed to deal with it on or shortly before 21<sup>st</sup> November 2007 or possibly on or shortly before 3<sup>rd</sup> January 2008 (dates on the copy letter provided vary). Keppe responded to the notice on behalf of their clients by counter notice on 4<sup>th</sup> January 2008. The only issue identified in the counter notice was that of price, and a price was subsequently agreed between the parties in correspondence. Thereafter the matter proceeded eventually to completion on or about 2<sup>nd</sup> July 2008.
3. Lucas have provided a statement of case on behalf of their clients from which it appears that there have been other issues between the parties that seem to have related to unspecified maintenance obligations. The Tribunal has not been assisted by the fact that whilst Keppe have provided a bundle of papers on behalf of their client they have provided no statement of case in accordance with the directions given in the matter, despite having been reminded by the Tribunal that these were required.
4. Section 60(1) of the Act states that a tenant is liable for the costs of and incidental to:
  - 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 under Schedule 13 of the Act in connection with the grant of a new lease under section 56, and
  - c. the grant of a new lease under that section.

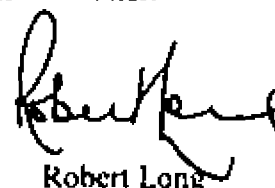
Section 60(2) provides (within the present context) that such costs shall be recoverable from the tenant only to the extent that they might reasonably have been expected to have been incurred if the landlord had been responsible for paying them personally, and the Tribunal's jurisdiction to deal with the question of the costs the subject of the application derives from section 91 (2) (d) of the Act.

5. The hourly charge for Mr Firdose of Keppe, who dealt with the question of the notices, was stated in the client care letter mentioned above to be £200 per hour. A letter from Keppe to Lucas dated 10<sup>th</sup> March (following some previous discussions) indicated that their charges would be £200 for Mr Firdose for dealing with the notice aspects, and £800 for Mr Keppe of the same firm for dealing with the conveyancing. A bill for £1000, VAT and disbursements was presented by Keppe with the completion statement that referred to "professional charges on connection with the lease extension". It appears to have been discharged (although the point is not relevant for the purposes of this determination) upon completion although a letter from Keppe to Lucas dated 26<sup>th</sup> June 2008 mentioned that the bill was for the conveyancing aspects and not for work done by Mr Firdose in connection with her areas of dispute between the parties.
6. In addition to the foregoing, Messrs Melville & Co, Surveyors, ("Melville") presented a bill dated 13<sup>th</sup> December 2007 for £250 plus VAT for "preparing a formal valuation in respect of the lease extension".
7. Correspondence following the date of completion shows that Keppe then sought further costs from Messrs Davies. These appear to be for the sum of £2040 plus Vat and Melville's fees of £250 plus VAT in each case as appears from a statement of costs that appears under Tab 6 of Keppe's bundle. A further invoice from Melville dated 19<sup>th</sup> November 2007 for £212-77 plus VAT (a total of £250-00) refers to "undertaking an inspection and reporting on breaches of leases covenant (sic) in resepct (sic) of 41 Feltham Avenue". I have assumed in the absence of any explanation that this relates to the other issues between the parties, or some of them and is not the charge for £250-00 plus VAT mentioned in the statement of costs.
8. The notice of claim was straightforward. It proposed that the new lease be on the same terms as the existing one except that in future the rent be one peppercorn. The counter notice was equally straightforward. There were already issues between the parties so that there is unlikely to have been any problem about the identity of the person entitled to exercise the right under section 42.
9. In the absence of any further explanation I do not know if it is suggested that any of the other issues between the parties may have had the effect of inhibiting the exercise of the right to an extended lease in any way. If Mr & Mrs van Essen only instructed Keppe on 3<sup>rd</sup> January 2008 and the counter notice was given on 4<sup>th</sup> January 2008 there would have been little time in which Keppe may have made any enquiries. I am not told, and do not speculate, whether the previous solicitors may have incurred any costs included in Keppe's claim for £2040 in making investigations of any sort.
10. Upon the information that has been put before me I am driven to the conclusion that this was a simple claim to exercise the section 42 right that required a simple counter notice. I am quite unable to see how it would have required the expenditure of time and effort by Mr. Firdose described in the statement of costs to enable him to prepare the counter notice. There is no

evidence before me to suggest that any part of the time that he spent was directed to the matter of "any other amount payable under Schedule 13 of the Act in connection with the grant of a new lease under section 56".

11. If that had been the case, and such amounts were in issue as a result of the other matters in dispute between the parties, I might have expected that Keppe would have provided evidence to support such a contention, but they appear to have chosen not to do so. For practical purposes all that I have on behalf of their clients is their unsupported assertion that they spent much longer on the work referred to respectively in subsections 60(1) (a) and (b) of the Act. I am left to conclude, in the absence of evidence to the contrary, that much of the work that Mr Firdose did must have been in respect of other elements of the disputes between the parties. If that is so then it is not recoverable as part of the present proceedings for it lies outside of the Tribunal's jurisdiction. It is not for me to consider whether or not it may be recoverable, whether in whole or in part, in any other way.
12. I accept that some work must have been done by Mr Firdose in connection with the matters that fall to be remunerated in the terms of section 60(1). Lucas seem to have accepted that his originally indicated charge of £200 plus VAT was reasonable. That represents an hour's work for taking the relevant instructions, and drafting and serving the counter notice. In the context of what is before me that appears to be reasonable remuneration for that work. Similarly Lucas appear to have accepted the charge of £800 plus VAT for the conveyancing work, although they suggest that they did more of that work than might have been expected.
13. I tested their view in this respect by considering that that would represent four hours work at the charging rate of £200 per hour mentioned by Mr Firdose (though another partner dealt with the matter). Within my own general knowledge and experience that may not have been an unreasonable amount of time for the work involved, and accordingly I consider that the fee of £800 plus VAT for the conveyancing was not unreasonable. I add that there seems to have been no indication by Keppe until 26<sup>th</sup> June that their fees may be higher than they had previously suggested, and no attempt by them even then to quantify the increase, though they would presumably have been in a position very largely to do so at a time so close to completion.
14. It has not been suggested to me that Melville's fee of £250 plus VAT for the valuation is unreasonable, and I see no reason to find that it is other than reasonable. Nothing has been put before me to suggest that their other invoice relating to possible breach of covenant falls within the Tribunal's jurisdiction in the terms of this application, and I make no finding about it.
15. Accordingly I determine that the amount of Keppe's reasonable fees and disbursements payable by Messrs Davies is £1187-00, being £800 for the conveyancing fees, £200 for dealing with the notice, £175 for VAT and £12 for office copy entries. I further determine that Melville's fee of £250 plus VAT of £43-75 for valuation is reasonable and is also payable by Messrs Davies.

16. Lucas seek an order for their costs of this application exceeding £500. Paragraph 10 of Schedule 12 to the Commonhold & Leasehold Reform Act 2002 ("the 2002 Act") limits the tribunal's costs jurisdiction to a sum of £500 only. It is exercisable where an application has been dismissed or where a party has acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings. In their statement of case Lucas plead that the application for further costs made by Keppe is frivolous.
17. Albeit with slight hesitation, I am unable to find that that is the case. It may be that there are issues unexplained that would justify the application, at least in part, but I simply do not know because Keppe have failed to supply any explanation. However, I do find that Keppe have in some measure acted unreasonably. They have failed to reply to the Respondents' points of issue as required by the directions (although they did supply a bundle of documents), and in so doing have failed in any way to seek to support their own application, despite the reminders from the Tribunal mentioned earlier. The bundle is not of itself explanatory to the independent observer of the issues that they raised in the application. I bear in mind, to such extent as it may be of any relevance, that Lucas have incurred no further material costs of which I am aware since that failure occurred.
18. The application has failed (there is no power in this context to dismiss it even had that otherwise been thought an appropriate course). If it had a justification that has not been communicated to the Tribunal for the reasons that I have indicated, although I am aware that there is a background of other issues between the parties of whose detail I am not aware. Doing the best that I can with all of that I am satisfied that justice will best be served if I make an order under paragraph 10 of Schedule 12 of the 2002 Act that Keppe are to contribute a sum of £250 towards Lucas's costs in the matter.



Robert Long  
31<sup>st</sup> March 2009