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HM Courts & Tribunals Service

LEASEHOLD VALUATION TRIBUNAL
Case no. CAM/00KG/OC9/2012/0004

Property	:	**7 Trefoil House, Crest Avenue, Grays, Essex RM17 6RP**
Applicant	:	**Gradehurst Management Ltd.**
Respondent	:	**John Michell**
Date of Application	:	**9th October 2012**
Type of Application	:	**To determine the costs payable on lease extension (Section 60 of the Leasehold Reform and Urban Development Act 1993 ("the 1993 Act"))**
The Tribunal	:	**Mr. Bruce Edgington (lawyer chair)** **Mr. David Brown FRICS MCI Arb**

DECISION

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1. The reasonable legal costs of the Applicant payable by the Respondent pursuant to Section 60 of the 1993 Act are £749.04.

2. The reasonable cost of valuation of the Applicant payable by the Respondent pursuant to Section 60 of the 1993 Act is £656.25.

3. If the Applicant company is registered for VAT purposes then it can reclaim the VAT as an input and it is not then recoverable from the Respondent. Otherwise, VAT is recoverable at the appropriate rate on both legal fees and the valuation fee in addition to these figures.

Reasons

Introduction

4. This dispute arises from the service of two Initial Notices seeking a lease extension of the property by a qualifying tenant. In these circumstances there is a liability on the Respondent to pay the Applicant's reasonable legal and valuation costs. The first lease extension Notice was invalid. The second Notice was deemed to have been withdrawn as no application was made to this Tribunal within the allotted 6 months.

5. The Tribunal decided that this was a case which could be determined on a consideration of the papers without an oral hearing. This information was conveyed to the parties in the Directions Order issued on the 17th October 2012. In accordance with Regulation 5 of **The Leasehold Valuation Tribunals (Procedure)(Amendment)(England) Regulations 2004,** notice was given to the parties (a) that a determination would be made on the basis of a consideration of the papers including the written representations of the parties on or after 1st December 2012 and (b) that a hearing would be held if either party requested one before that date. Neither party requested a hearing. This determination could not occur on the 1st December as the bundles were late being delivered.

6. The Tribunal was provided with a bundle but it was not well prepared. Part of the directions order was that any objection must be in the form recommended by the Civil Procedure Rules 1998 which are very well known to solicitors. Both sides were represented by solicitors in this case. The purpose was to ensure that there would be one document, in the form of a sort of Scott Schedule giving the Tribunal, in tabular form, the individual items of claim for costs, the objection raised and the response of the Respondent. With modern technology and e-mail communication, this is very easy to do. This direction was ignored.

7. Further, the Applicant submitted lengthy submissions both for the claim for legal fees and the claim for a valuation fee of 80 pages and 77 pages respectively. Much of these representations consisted of copies of the same LVT decisions and court decisions. There were copies of large sections of the Civil Procedure Rules much of which was irrelevant. As the Applicant's solicitors will know, opinions expressed previous LVT decisions have no evidential value in subsequent proceedings and they are certainly not binding.

The Law

8. Save as is set out below, it is accepted by the parties that Initial Notices were served and therefore Section 60 of the 1993 Act is engaged. The Respondent therefore has to pay the Applicant's reasonable 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 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

   (Section 60(1) of the 1993 Act)

9. What is sometimes known as the 'indemnity principle' applies i.e. the Applicant is not able to recover any more than it would have to pay its own solicitors or valuer in circumstances where there was no liability on anyone else to pay (Section 60(2)). Another way of putting this is to say that any doubt is resolved in the receiving party's favour rather than the paying party.

Legal fees

10. The Applicant has used Tolhurst Fisher LLP of Southend-on-Sea as its solicitors. As the Applicant company was served with the Initial Notices at an address in Southend-on-Sea, it is clearly appropriate for those solicitors to be used. The fee earners are said to be Robert Plant (a partner with 8 years post qualification experience charging £200 per hour) and Louise Cornell (a solicitor with 5 years PQE charging £180 per hour). The hourly rates charged are reasonable for what the courts refer to as a Grade A solicitor fee earner and this Tribunal has always considered that this type of specialist work can be dealt with by a Grade A fee earner.

11. The claim is for 7 letters charged at one 6 minute unit per letter save for one where the claim is for 3 units. Then there is a claim for 3 hours 6 minutes time spent plus unchallenged disbursements of £25.04. As far as the letters are concerned, the objection is:-

> "*These can only be letters of standard administrative nature the time for preparation for which is included in the heading of "Preparation".*

12. The Respondent offers 7 letters at £10 per letter. This objection is not understood either by the Applicant's solicitors or the Tribunal. Letters, even routine ones, are charged and allowed as units of time with one unit being the minimum. It is perfectly standard for an initial letter of advice to the client – as in this case – to take longer than one unit. This part of the claim is allowed.

13. The next objection simply states:-

> "*In the event of an invalid notice no costs can be triggered pursuant to Section 60 Leasehold and Urban Development Act 1993*" (sic)

14. This is certainly a novel point but, with respect to those raising it, cannot be valid. When the Respondent served his notice, he clearly thought it was valid. Otherwise, he would not have served it. The 1993 Act simply says that when a notice is "*given under Section 42*", then the obligation to pay the recipient's costs under Section 60 is engaged. Clearly the notice was 'given' under Section 42. The Applicant could not just ignore it. If it had, no doubt there would have been a claim to the county court and if the Applicant had then tried to argue that the Initial Notice was invalid, it would have been met with the argument that it was too late to argue this.

15. The next comment is an objection stated to be as an alternative to that dealt with in the previous paragraph of these reasons:-

> *"Additionally and by way of alternative if sums are allowed under Section 1 above they should be discounted under Section 2 as being duplicated. In any event, the simple filling out of forms with the benefit of a valuation paid for by the Tenant would not justify £180/£200 per hour. Allow 1 hour 30 minutes £120 per hour"*

16. The first Initial Notice in the bundle is not dated but seems to have been served at the beginning of July 2011. The second is dated 11th August 2011. With a gap of several weeks, it is not unreasonable for a solicitor to start the process again. Such solicitor will not know whether the second notice is valid and will have to look at the leasehold and freehold titles again. Enfranchisement is a subject which entails close adherence to time limits which, if not complied with, are fatal. As the responsibility for getting the procedure right rests on the shoulders of the solicitor, it is simply not true to say that it is a simple matter of filling out forms.

17. In any event, there has been an appropriate reduction in the amount of time taken in respect of the consideration of the second Notice and the preparation of the Counter-notice. This objection is therefore entirely without merit. The times claimed seem to this Tribunal to be reasonable.

Valuer's fee

18. The valuer is Paul Holford of Messrs. Morgan Sloane. He is a chartered surveyor with some 12 years post qualification experience. He charges at £200 per hour and has set out the times he has spent which he says totals 6 hours 45 minutes. This is said to amount to £1,050 to include travel time at half that hourly rate.

19. In fact, an agreement had been reached between Mr. Holford and the Applicant that his charge for this work would be £795 plus VAT. In view of the indemnity principle, Mr. Holford therefore limits his claim to that figure. The objection reads:-

> *"Save that the Valuer's costs should be mitigated by the matters raised below the rate of charge (£100) + VAT is accepted as is the amount of work spent.*
>
> *However, in the latter part of 2009, the Landlord's Valuers carried out a valuation of the Tenant's premises for the purpose of the Lease extension. This was pursuant to correspondence between the Landlord and the Tenant. £600 was paid towards the Valuation by the Tenant. Costs of Valuation should therefore be reduced by this amount*

but to allow oneextra hour to review the previous report andadjust actuarially for diminution in theLease length and market variation" (sic).

20. The offer put forward is £795 - £600 + £100 = £295.00 plus VAT

21. Once again, the Respondent fails to understand the responsibility on the shoulders of professional people working in this field. The property market has been, and continues to go through a period of unpredictability following the financial crisis commencing in about 2008. Any surveyor will be able to recall an unprecedented, at least in recent history, level of uncertainty in the property market with some properties increasing in value and some decreasing. This is particularly so with leasehold properties where the policy of lenders has changed significantly over this time.

22. Given that background, to suggest that a competent surveyor could just look at a 2009 valuation, adjust the figures actuarially and then come to a new valuation, is simply unrealistic. Such a process would be described by any surveyor as being a dereliction of professional duty.

23. Looking at the charging rate claimed, it is rather high for a surveyor of Mr. Holford's experience from Laindon in Essex. In the Tribunal's experience, a client would expect to pay £175 per hour for someone of his experience. The Tribunal does not accept the general comments at the start of the objection that the rate should be £100 per hour which are not supported by evidence and, frankly, do not make any sense. The travel times totalling 1 hour 30 minutes are excessive. Laindon, where Morgan Sloane is based, is about 20 minutes from Grays. Taking into account any possible traffic delays, the Tribunal would allow a total of one hour in travel time at half the professional rate.

24. The Tribunal has not been shown the valuation report but for someone of Mr.Holford's experience, much of it would be copied and pasted from a template. Thus, 90 minutes is on the high side and the Tribunal would allow one hour.

25. Therefore, the fee which this Tribunal considers to be reasonable is £656.25. This is made up of 3hours 15 minutes time spent on professional work, i.e. the time claimed less 30 minutes for the preparation of the report, at £175 per hour (£568.75) plus one hour of travelling at half the hourly rate (£87.50) making a total of £656.25.

Bruce Edgington
Chair
10th December 2012