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

Case Reference : **CHI/00HP/OAF/2015/0007**

Property : **4 Hive Gardens, 69-71 Chaddesley
Glen, Canford Cliffs, Poole BH13 7PP**

Applicant : **Mehson Property Company Limited**

Representative : **Laing Law**

Respondent : **Hive Gardens (Sandbanks) Limited**

Representative : **Penningtons Manches LLP**

Type of Application : **Determination of landlord's costs -
Leasehold Reform Act 1967**

Tribunal Member : **Judge E Morrison**

Date of decision : **17 August 2016**

DECISION

The application and procedural background

1. By an application dated 24 July 2015 the Applicant leaseholder asked the Tribunal to determine (i) the price payable for enfranchisement under section 9 of the Leasehold Reform Act 1967 (“the Act”) and (ii) the provisions which ought to be contained in the conveyance.
2. The parties reached a compromise on those matters prior to the hearing but advised that the amount of costs payable to the landlord remained in dispute.
3. By Directions dated 6 June 2016, the parties were given notice that the Tribunal intended to deal with the matter on the papers and without a hearing unless either side objected. Neither party having objected, the Tribunal has determined this matter on the basis of written representations without an oral hearing. The parties have made written submissions and completed a schedule detailing the points of dispute raised by the leaseholder and the landlord’s response.

The law and jurisdiction

4. The relevant provisions of the Act are:

Section 9 (4)

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;

(e) any valuation of the house and premises;

but so that 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.

(4A) Subsection (4) above does not require a person to bear the costs of another person in connection with an application to [the appropriate tribunal.

Section 21. Jurisdiction of tribunals .

(1) The following matters shall, in default of agreement, be determined by [the appropriate tribunal] 3 namely,—

...

(ba) the amount of any costs payable under section 9(4) or 14(2);

...

5. To be reasonable, costs must be reasonably incurred and reasonable in amount.
6. Pursuant to the indemnity principle, a paying party is obliged to indemnify a receiving party only for expenditure actually incurred. Accordingly a party may not recover more than it is actually obliged to pay its advisers.

The Respondent's claim for costs

7. The Respondent initially stated that it had incurred total costs of £35,115.00 of which it was said that £18,721.00 were payable by the Applicant under section 9(4) of the Act.
8. Having considered the Applicant's points of dispute the Respondent's claim has been reduced to a total of £15,171.40 comprised of:

Solicitors profit costs: £9677.00 + VAT

Disbursements: £19.00

Valuation fees: £800.00 + VAT

Counsel's fees: £2150.00 + VAT

9. The Applicant has not disputed the sums claimed for disbursements, counsel's fees or valuation fees. In respect of the solicitor's profit costs, the hourly rates of the fee-earners have not been disputed but the Applicant proposes that a sum of only £2546.00 + VAT should be allowed.

The Applicant's objections

10. The points of dispute fall into the following categories:
 - Excessive time spent by fee-earner
 - Work not within scope of section 9(4) of the Act

- Work not claimable because part of overheads
 - Letters in not recoverable
11. In a brief Addendum to its statement of costs, a document not included in the Bundle, the Applicant also contends that the Respondent's claim should in any event be limited to £9038.40. This submission is made on the basis that the Completion Statement provided by the Respondent at the time of completion of the freehold transfer required payment of this sum as "reimbursement of professional fees incurred by the landlords". The Applicant disputed the sum but gave an undertaking to pay this sum or such lesser sum as might be agreed or determined.

Chronology of work done

12. The Tribunal does not have the parties' correspondence or any of the underlying documentation. However it appears from the narrative detail set out in the invoices submitted by the Respondent's solicitors to its client that work was carried out over a period of two and a half years, from September 2013 to March 2016.
13. An initial notice of claim was served by the Applicant in September 2013, which was responded to in October 2013.
14. A revised notice was served in early 2014. A first draft of the transfer was prepared and time was then spent considering what terms should be included.
15. Only a very small amount of work was billed to the Respondent between June 2014 and July 2015.
16. On 24 July 2015 the Applicant applied to the Tribunal to determine both the price payable for enfranchisement and the provisions to be contained in the transfer.
17. Work was carried out, including instructing Counsel, between August 2015 and March 2016, by which time all matters had been agreed save costs.

Legal authority

16. Neither party has referred to any legal authorities to support its submissions.
17. In *Shina v Elghanian* [1999] 48 EG 157 the Lands Tribunal held that it is for the receiving party to justify the fees for which it contends.
18. *Haig on Leasehold Enfranchisement* 6th edition (2014) states as follows at para 6-43:

The costs for which the tenant is liable are:

(a) The landlord's valuation costs

(b) The landlord's ordinary conveyancing costs

(c) The costs of, or incidental to, "any investigation by the landlord of that person's right to acquire the freehold. This item includes the landlord's costs of investigating the claimant's title to the leasehold, and (where relevant) whether the tenant has been in occupation as his only or main residence for the relevant two year period, but not the landlord's costs of preparing and serving a Notice in Reply, serving copies on other persons interested, and taking general advice as to his rights under the Act.

In order to be recoverable under s.9(4) the costs must be reasonable. They must be incurred in pursuance of the notice ...and they must be in respect of or incidental to the matters set out above. The person seeking to recover costs must therefore show what costs have actually been incurred. Section 9(4) ... does not require a person to bear the costs of another person in connection with an application to a First-tier Tribunal ...

19. In the very recent case of *Sinclair Gardens Investments (Kensington) Ltd v Wisby* [2016] UKUT 203 (LC), the Upper Tribunal, when assessing the statutory costs payable to a landlord under section 60 of the Leasehold Reform Housing and Urban Development Act 1993 (new lease), decided that the costs of preparing a counter-notice to a tenant's notice of claim were "of and incidental to" the matters set out in section 60.
19. In assessing whether costs are reasonable the Tribunal is entitled to have regard to the approach taken by the courts when assessing costs. Under that approach costs are only recoverable for fee-earner time which progresses the matter. Administrative tasks are not recoverable fee-earner time. Photocopying, printing and fax costs will, absent special circumstances, be part of a firm's overheads which are reflected in its hourly rates. Letters in are not usually allowed as a chargeable item because the time spent reading them is covered by the charge for responding.

Determination

20. Applying the above principles, the Tribunal has made a determination on each item of solicitors profit costs remaining in dispute. The determinations, with brief reasons where appropriate, are set out on the schedule appended to this decision. The profit costs allowed are £6457.00 + VAT.
21. The Tribunal does not accept the Applicant's assertion that there is an overall cap on recoverable costs simply by virtue of this being the sum set out in the Completion Statement. This cannot circumvent the statutory provisions and the Tribunal does not consider that the Completion Statement viewed alone, and without consideration moving

from the Applicant, can be regarded as barring the Respondent from seeking to recover a greater sum.

22. In making its determinations, the Tribunal has accepted the unchallenged submission from the Respondent that the provisions of the transfer, in particular whether there should be development restrictions, were of major importance having regard to its continued ownership other properties on a prime estate in Sandbanks, Poole Harbour.
23. As regards solicitor-client communications, the Applicant's general position appears to be that the cost of these is not recoverable under section 9 (4). The approach taken by the Tribunal has been to allow such costs where they appear to be "of and incidental to" the work specified in section 9(4).
24. As neither side has produced any of the underlying documentation the Tribunal's assessment is of necessity summary in nature and a broad brush approach has been taken where appropriate and in the interests of dealing with the matter in a proportionate way.
25. As set out in schedule the amount of costs payable by the Applicant to the Respondent pursuant to section 9(4) of the Act is **£11,204.20**.

Dated: 17 August 2016

Judge E Morrison

Appeals

1. 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.
2. 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.
3. If the person wishing to appeal does not comply with the 28-day time limit, the 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.
4. 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.

ITEM	COST	APPLICANT'S COMMENTS	RESPONDENT'S COMMENTS	AMOUNT ALLOWED	REASONS
1	82	Agreed		82	
2	1025	Excessive and unnecessary time taken. Will agree one hour £410.00	It is the sum charged and we contend that it is reasonable given the complexity	1025	Sum allowed for both items 2 and 3 as a reasonable time (2.5 hours) . Additional time not shown to be justified.
3	328	Not agreed as would be included in 2 above	As 2	0	See above
4	41	Agreed		41	
5	123	Excessive time taken will agree £41.00	It is the sum charged and we contend that it is reasonable given the complexity	123	0.3 hours not unreasonable
6	82	Not agreed	Incidental to work under Section 9 (4) (a) of the 1967 Act	82	Applicant's objection not explained
7	82	Not agreed	As 6	82	Applicant's objection not explained
8	41	Agreed		41	
9	164	Not Agreed as not payable under Section 9(4) of the 1967 Act	Incidental to work under Section 9 (4) (a) of the 1967 Act	123	Allowed, adopting the reasoning in recent case of <i>Sinclair Gardens v Wisby</i>
10	123	Not Agreed as should be claimed for letter only	Incidental to the original incorrect claim by the applicant and therefore claimable under Section 9 (4) (a) of the 1967 Act	123	Applicant's objection unclear
11	123	Not agreed as in 10 above	As 10	123	Applicant's objection unclear

12	82	Agree one unit of time 41.00	It is the sum charged and we contend that it is reasonable	Letter in not recoverable 41
13	37.5	Not agreed part of overheads and not claimable	Incidental to work under Section 9 (4) (a) of the 1967 Act. Was billed as a separate item and the Act has no such restriction	Part of overheads - not fee-earner time 0
14	24	Not agreed part of overheads and not claimable	As 13	Part of overheads - not fee-earner time 0
16	410	Not allowable costs under section 9(4) of the 1967 Act	Incidental to work under Section 9 (4) (a) of the 1967 Act.	No evidence that this work is within section 9(4). It was carried out between Reply to first notice and service of second notice
17	12.5	Not allowable costs under section 9(4) of the 1967 Act	As 16	0 Same
19	52	Excessive time taken will agree 41.00	It is the sum charged and we contend that it is reasonable	0.2 hours not unreasonable for communication to client. No other objection made by Applicant. 82
20	164	Not allowable costs under section 9(4) of the 1967 Act	Incidental to work under Section 9 (4) (a) of the 1967 Act.	Allowed under section 9(4)(a) 164
21	190	Agreed		190
22	82	Agreed		82
23	41	Not agreed as a letter in. Only letters out recoverable	The Act contains no such restriction and the Applicant is put to proof of this	Letter in not recoverable 0

24	82	Not agreed memo to Martin Codd not allowable costs under section 9(4) of the 1967 Act. Letter in not recoverable	Accepted that internal memo is not allowable but other items in this are - claim half £41	Perusal of rating list can be charged
25	570	Not agreed. Excessive time and unreasonable as transfer already drafted	It is the sum charged and we contend that it is reasonable given the complexity. What was done before was a first draft only.	82 A copy of the Transfer has not been put in evidence. Accepting the Respondent's unchallenged assertion that it was a
26	114	Not agreed. No details of work done and not allowable costs under section 9(4) of the 1967 Act	Accepted - uneconomic to pursue	570 bespoke document, the time is allowed,
27	304	Not agreed. Not allowable costs under section 9(4) of the 1967 Act	Incidental to work under Section 9 (4) (b) of the 1967 Act.	0 No evidence that this work is within
28	760	Not agreed. Time dealt with in drafting transfer already claimed. Not allowable costs under section 9(4) of the 1967 Act	As 27	0 section 9(4). Drafting transfer is within section 9(4). However overall time spent on drafting transfer in April appears
29	190	Not agreed. Work not specified and not allowable costs under section 9(4) of the 1967 Act	Incidental to work under Section 9 (4) (b) of the 1967 Act. All items relate to the transfer.	380 excessive and item is therefore reduced Non recoverable items appears to have been included in this charge. 50%
30	190	Not all recoverable. Will agree £95 for drafting transfer	As 29	95 allowed as broad-brush apportionment. Same 95

31	76	Not agreed. No detail of work given. Not allowable costs under section 9(4) of the 1967 Act	Accepted - uneconomic to pursue	0
32	114	Not agreed. No description of letter and why needed consideration. Not allowable costs under section 9(4) of the 1967 Act	Accepted	0
33	228	Not agreed. No description of work given. Not allowable costs under section 9(4) of the 1967 Act	Accepted - uneconomic to pursue	0
34	190	Not agreed. Transfer already amended as above.	Work under Section 9 (4) (b) of the 1967 Act.	0 Allowed. This is first time spent revising
35	114	Not agreed. Letter in not recoverable. Consideration included in letter written. Will agree £38.00	The Act contains no such restriction. Claim in full	190 transfer for 2 motnhs 0.2 hours allowed for two outgoing
36	114	Not agreed. No details of work given. Not allowable costs under section 9(4) of the 1967 Act	Accepted - uneconomic to pursue	76 communications
37	76	Not agreed. Matter between solicitor and client only.	Accepted	0
				0

38	190	Not agreed. No details of work given. Not allowable costs under section 9(4) of the 1967 Act	Accepted - uneconomic to pursue	0
39	304	Not agreed. Not allowable costs under section 9(4) of the 1967 Act	Incidental to work under Section 9 (4) (b) of the 1967 Act.	No evidence that this was work within section 9 (4) or time reasonably spent
40	570	Not agreed. Not allowable costs under section 9(4) of the 1967 Act	"Everything" is probably too broad but over half this meeting related directly to the draft transfer - claim £285	285 allowed as broad brush
41	304	Time claimed unreasonable. Will agree £76.00	It is the sum charged and we contend that it is reasonable	285 apportionment
42	190	Time claimed unreasonable. Will agree £76.00	It is the sum charged and we contend that it is reasonable	No evidence that time unreasonable
43	76	No agreed. No details of work given. Not allowable costs under section 9(4) of the 1967 Act	Accepted - uneconomic to pursue	304
44	76	Not agreed. No details of work given. Not allowable costs under section 9(4) of the 1967 Act	Accepted - uneconomic to pursue	Within section 9 (4) and first revisions for 190 a month
				0
				0

45	76	Not agreed. No details of work given. Not allowable costs under section 9(4) of the 1967 Act	Accepted - uneconomic to pursue	0
46	76	Not agreed. No details of work given. Not allowable costs under section 9(4) of the 1967 Act	Accepted - uneconomic to pursue	0
47	304	Not agreed. No details of work given. Not allowable costs under section 9(4) of the 1967 Act	Accepted - uneconomic to pursue	0
48	190	Not agreed. No details of work given. Not allowable costs under section 9(4) of the 1967 Act	Accepted - uneconomic to pursue	0
49	114	Not agreed. Solicitor and client matter. Unreasonable to claim and not allowable costs under section 9(4) of the 1967 Act	Accepted	0
-	950	Not agreed. Solicitor and client matter. Not allowable costs under section 9(4) of the 1967 Act	Error in electronic summary - withdrawn	0
50	380	Agreed		380

51	76	Not agreed. No detail of work given. Not allowable costs under section 9(4) of the 1967 Act	Accepted - uneconomic to pursue	0
52	190	Not agreed. Solicitor and own client matter. Not allowable costs under section 9(4) of the 1967 Act	These emails directly relate to terms in the transfer and so are incidental to work under Section 9 (4) (b) of the 1967 Act	190 9(4) work Allowed as costs incidental to section
53	228	Not agreed. No details of correspondee. Excessive and unreasonable time spent. Not allowable costs under section 9(4) of the 1967 Act	As 52, email is to applicant.	One email to client allowed
54	76	Not agreed. No details of work given. Not allowable costs under section 9(4) of the 1967 Act	Accepted - uneconomic to pursue	38
55	114	Not agreed. No details of work given. Not allowable costs under section 9(4) of the 1967 Act	Accepted - uneconomic to pursue	0
56	228	Not agreed. Excessive time taken. Will agree £114.00	It is the sum charged and we contend that it is reasonable	114 50% allowed as time spent on the transfer

57	190	Not agreed. Solicitor and client matter. Not allowable costs under section 9(4) of the 1967 Act	These emails directly relate to terms in the transfer and so are incidental to work under Section 9 (4) (b) of the 1967 Act	Allowed as time of and incidental to the 190 transfer.
58	114	Will agree £76.00 not agree e-mail out to client	It is the sum charged and we contend that it is reasonable. The Act has no such restriction	Same 114
59	114	Not agreed. No details of work given. Not allowable costs under section 9(4) of the 1967 Act	The correspondence directly relates to terms in the transfer and so is incidental to work under Section 9 (4) (b) of the 1967 Act	No evidence that work within section 9(4)
60	76	Not agreed. No details of work given Not allowable costs under section 9(4) of the 1967 Act	Accepted - uneconomic to pursue	0
61	76	Not agreed. No details of work given. Not allowable costs under section 9(4) of the 1967 Act	Accepted - uneconomic to pursue	0
62	76	Not agreed. No details of work given Not allowable costs under section 9(4) of the 1967 Act	Accepted - uneconomic to pursue	0

63	64	Not agreed. No details of work given. Not allowable costs under section 9(4) of the 1967 Act	Accepted - uneconomic to pursue	0
64	114	Not agreed No details of work given Not allowable costs under section 9(4) of the 1967 Act	Accepted - uneconomic to pursue	0
65	66	Not agreed. No details of work given Not allowable costs under section 9(4) of the 1967 Act	Accepted - uneconomic to pursue	0
66	190	Excessive and unreasonable amount. Will agree £114.00	It is the sum charged and we contend that it is reasonable	0 Unclear what work relates to. Applicant's
67	570	Excessive and unreasonable in view of previous amendments. Will agree £380.00	It is the sum charged and we contend that it is reasonable	114 figure accepted In light of extensive time already spent on transfer, 1 hour allowed as reasonable
68	114	Excessive and unreasonable. Will agree £38.00	It is the sum charged and we contend that it is reasonable	380 time to redraft one clause Unclear what work relates to. Applicant's
69	114	Not agreed. No details of work given. Not allowable costs under section 9(4) of the 1967 Act	Accepted - uneconomic to pursue	38 figure accepted 0

70	152	Excessive and unreasonable time. Will agree £76.00	It is the sum charged and we contend that it is reasonable	Unclear what work relates to. Applicant's
71	152	Not agreed. Solicitor and client matter. Not allowable costs under section 9(4) of the 1967 Act	This concerns terms in the transfer and so is incidental to work under Section 9 (4) (b) of the 1967 Act	76 figure accepted Respondent's narrative on bill does not
72	114	Not agreed. No details of work given. Not allowable costs under section 9(4) of the 1967 Act	Accepted - uneconomic to pursue	0 indicate it relates to the transfer
73	190	Excessive and reasonable time taken. Will agree £114.00	It is the sum charged and we contend that it is reasonable	0 Unclear why yet further time required.
74	114	Not agreed. Too vague as to work done. Not allowable costs under section 9(4) of the 1967 Act	These emails directly relate to terms in the transfer and so are incidental to work under Section 9 (4) (b) of the 1967 Act. One of them is to the applicant.	114 Applicant's figure accepted Email to Applicant allowed
75	266	Not agreed Not allowable costs under section 9(4) of the 1967 Act	Accepted	38
76	76	Not agreed. No details of work given Not allowable costs under section 9(4) of the 1967 Act	Accepted - uneconomic to pursue	0
				0

77	152	Not agreed. Solicitor and client matter. Not allowable costs under section 9(4) of the 1967 Act	Accepted - uneconomic to pursue	
78	76	Not agreed. No details of work given. Not allowable costs under section 9(4) of the 1967 Act	Accepted - uneconomic to pursue	0
				0
				Total solicitors profit costs allowed: 6457
79	1400		Counsel's advice 50% of £2800 charged as related to TP1 terms so is incidental to work under Section 9 (4) (b) of the 1967 Act	Not challenged by Applicant
80	750		Counsel's review of final TP1 so is incidental to work under Section 9 (4) (b) of the 1967 Act	1400
				Not challenged by Applicant
				750
Penningtons				
TOTAL	16463		2546	11827
				8607
				Deduction of 86 on total of items 1-14 to satisfy indemnity principle - client was
Discount A	533.5			86 billed only 1800
Discount B	156			0 Covered by reductions made
Discount C	7			0 Covered by reductions made
Discount D	63			0 Unable to identify where this figure comes from

Limit	15703.5			8521
VAT	3140.7	509.2	2365.4	1704.2
NON-VAT	Items			

			Incidental to work under Section 9 (4) (a) of the 1967 Act. Note no comment by applicant £12	
15	12			12
18	7		As 15. £7	7

Penningtons	18863.2	3055.2	14211.4	10244.2
Corbens (81)	960	960	960	960

Total sum determined by Tribunal as

TOTAL	19823.2	4015.2	15171.4	11204.2 payable by Applicant to Respondent
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