



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

Case reference : **LON/00BA/0C9/2021/0090**

HMCTS code (paper, video, audio) : **P: PAPERREMOTE**

Property : **93 Grosvenor Court, London Road, Morden, Surrey SM4 5HQ**

Applicant : **Ahmtrad Limited**

Representative : **Analise Broomhall, Solicitor**

Respondent : **Daejan Investments Limited (1)
Tripomen Limited (2)**

Representative : **Wallace LLP, Solicitors**

Type of application : **A determination of reasonable costs under Section 60(1) of the Leasehold Reform, Housing and Urban Development Act 1993**

Tribunal members : **Judge D Brandler
Marina Krisko BSc (Est Man) FRICS**

Venue : **10 Alfred Place, London WC1E 7LR**

Date and venue of paper determination : **12th October 2021**

DECISION

Decision of the tribunal

The Tribunal determines that pursuant to section 60(1) of the Leasehold Reform, Housing and Urban Development Act 1993 the following statutory costs are payable to the tenant:

- (1) R1 is entitled to legal costs in the sum of £2500 plus VAT
- (2) R2 is entitled to legal costs in the sum of £300 plus VAT
- (3) R1 is entitled to payment for disbursements of £27.75 plus VAT (Land Registry £9 and £18.75 courier fees)

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers which has not been objected to by the parties. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because it was not practicable and no-one requested the same. The documents that we were referred to are in various documents produced, the contents of which we have noted. The order made is described at the end of these reasons.

Introduction

1. This is an application by the tenant under sections 60(1) of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”) for R1’s statutory costs incurred in relation to the new lease.
2. The statutory costs were not agreed.

The Background

3. The Applicant, Ahmtrad Limited, holds a long lease of Flat 93 Grosvenor Court, London Road, Morden, Surrey SM4 5HQ (The Flat) for term of 189 years from 29/09/1957 (previously 99 years from 29/09/1957). The term of the lease was extended further to negotiation between the parties.
4. Daejan Investments Limited (“R1”) is the freehold owner of the premises known as 1-60 Grosvenor Court, London Road, Morden, Surrey SM4 5HG of which the Flat forms a part.
5. The freehold title is subject to a headlease dated 18/11/1957 for a period of 150 years granted to Tipomen Limited (R2). R2 is the intermediate landlord.
6. On or about 29/07/2019 the Applicant’s predecessor in title made an application for the grant of a new Lease by way of Notice of Claim pursuant to the provisions of Chapter II of the Act.

7. On or about 3/10/2019 R1 served a Counter Notice pursuant to section 45 of the Act admitting entitlement to the grant of a new lease for the Flat to the Applicant's predecessors in title.
8. The terms of acquisition of a new lease of the Flat were agreed between the parties on 25/01/2021 and a new lease subsequently completed on 18/05/2021
9. The statutory costs payable to R1 and R2 have not been agreed and accordingly on or about 25/05/2021 the Applicant made an application to the Tribunal seeking a determination pursuant to section 60 of the Act.

The Landlords' legal fees

10. R1 claims total legal fees of £4058 plus VAT. The work was carried out by Samantha Bone who is a partner with Wallace LLP, assisted by various assistant solicitors and a paralegal. The hourly charging rates applied are £495 for a partner, £385 for an assistant solicitor and £210 for a paralegal.
11. R2 claims £300 plus VAT
12. The landlord's submissions state that costs are reasonable for both R1 and R2.
13. The schedule of costs records work carried out from 01/08/2019 to 02/06/2021. The majority of the charged amounts are timed at 0.1 of an hour at the partner rate with only two larger amounts of 0.5 hour for considering the tenant's notice and 0.9 hour preparing a draft counter notice, emails and letters.
14. The majority of the charged amounts at the assistant solicitor rate are similarly timed at 0.1 hour. Larger charges are: 0.2 hour for reviewing amendments to the Lease (15.10.2020), 0.2 hour amending the lease (26.10.2020), 0.3 hour amend lease and submissions (02/11/2020), 0.2 hour amending travelling lease (11/1/21), 0.2 hour preparing updated travelling draft lease (15.1.2021, 0.2 hour preparing email to opposing solicitors SLC solicitors (19.1.2021, 0.7 hour prepare lease engrossments and draft completion statement (27.1.2021), 0.2 hour preparing emails to opposing solicitor SLC (14.5.2021), 0.2 hour preparing emails to opposing solicitors SLC (18/05/2021), 0.2 hour preparing email to client (26.5.21). The charge for the paralegal is very limited.
15. Also included is 0.3 hour at assistant rate for anticipated further work/correspondence to account for statutory costs.

The Applicant's points of dispute

16. The Applicant states that R1's costs are too high to reflect this straightforward lease extension. They state that no discount has been given to reflect the previous s.60 costs paid in full in the sum of £4482.90 just a few months previously, and that much of the work carried out there was transferrable. The Applicant says that had R1 been responsible for his own costs, he would not accept that all work needed to be duplicated upon service of a fresh notice.
17. In relation to correspondence with the valuer, the Applicant notes 12 instances of correspondence with the landlords' valuer, the leaseholder's valuer and the client about the valuation, which they say is not permitted under s.60.
18. In terms of correspondence between R1 and R2, the Applicant says there is a significant difference in the correspondence claimed by R2 and R1.
19. In relation to negotiations on the terms of the lease that R1 sought to include, these additional clauses were outside of the Act and it is not in keeping that the landlord should be entitled to propose additional clauses outside the Act and still claim costs for the preparation, negotiation and amendments of those clauses. Had the landlord not attempted to include additional clauses then the lease would have been agreed without any negotiation and it was only the inclusion of various alterations to the existing terms and the proposed inclusion of new clauses that prolonged the negotiation on the form of the lease.
20. The application proposed the correct level of fees incurred by R1 to be £1000 plus VAT. In terms of R2, £300 plus VAT was accepted.

The Statutory Provisions

21. The tenant's liability for payment of the Landlords' costs is governed by Section 60(1), the relevant provisions of which are as follows:

“(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. “

Reasons for the Tribunal’s Determination

22. The Tribunal has fully considered the legal costs claimed by R1 and before turning to these in more detail, it should be noted that this is not a detailed assessment under the Civil Procedure Rules rather an assessment of R1’s fees in the round.
23. The Tribunal notes that Wallace LLP has a reputation as a niche practice in the field of enfranchisement. A landlord is entitled to choose to instruct such a firm, although the rates may be higher than other firms. The Tribunal is satisfied that a privately paying landlord would accept the claimed hourly rates and that they are consequently recoverable.
24. However, we have more difficulty reconciling the level of fee earner deployed. In particular the frequently charged 0.1 hour by a partner. Not only does the partner frequently carry out these small individual lots, the assistant solicitor does the same. Having split the work into such small lots, it makes it difficult for anyone looking at this from the outside to establish whether these charges are reasonably incurred, and leaves the Tribunal with a doubt in this regard. Taking an overall view of this large number of small charges, the Tribunal disallows £500 plus VAT.
25. In addition to the above unreasonable charges, the Tribunal noted seven valuer emails, which was in our view excessive. Three are allowed.
26. The Tribunal further considered thirteen correspondences with the client and sixteen with R2 to be excessive. Five are permitted for each.
27. Taking an overall view of the number of charges, the Tribunal determined the section 60 statutory costs in the sums sought by R1 are excessive and limit their legal costs to £2500 plus VAT.
28. The costs claimed by R2 were not disputed in the application form, the Applicant confirming £300 plus VAT. While this was later disputed in the applicant’s points of dispute, the Tribunal find that the Applicant approved this sum in the application and R2 is entitled to £300 plus VAT

29. The disbursements claimed are permitted. Proof of payment has been provided. The Tribunal approve the sum of £9 plus VAT for the Land Registry and £18.75 plus VAT for a courier.

30. The Tribunal noted that the valuer's fees were not disputed.

Name: Judge D Brandler

Date: 12th October 2021

ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.