



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

Case reference : **LON/00AQ/LLD/2018/0002**

Property : **Flat 2 Stonegrove House,
Stonegrove, Edgware HA8 7TG**

Applicant : **Contract Hire Company (UK)
Limited**

Representative : **Mr Charles Coleman (Director)**

Respondent : **Stonegrove House Limited**

Representative : **N R Russell & Co Solicitors**

Type of application : **Application for costs order under
Rule 13 of the Tribunal Procedure
(First-tier Tribunal) (Property
Chamber) Rules 2013**

Tribunal members : **Mr Jeremy Donegan (Tribunal
Judge)**

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

Date of decision : **22 May 2019**

DECISION

Decision of the Tribunal

The Tribunal summarily assesses the costs payable by the respondent in the sum of £6,480 (Six Thousand, Four Hundred and Eighty Pounds), including VAT. This sum must be paid to the applicant by 19 June 2019.

Background

1. This decision supplements the Tribunal's decisions dated 16 May 2018 ('the 2018 Decision') and 15 March 2019 ('the Costs Decision') and should be read in conjunction with those decisions.
2. In the Costs Decision, the Tribunal determined that the respondent must pay the applicant's costs from 13 to 20 April 2018, pursuant to rule 13(1)(b)(ii) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. Paragraph 55 provided that the costs were to be assessed on the standard basis. Paragraph 56 provided that the costs would be summarily assessed, on paper, unless agreed.
3. Unfortunately, the parties failed to agree quantum and the Tribunal issued further directions on 03 April 2019. The parties each served short statements of case/submissions, in accordance with those directions.
4. The only issue in dispute is the amount of counsel's brief fee for the substantive hearing on 20 April 2018. The applicant was represented by Miss Myriam Stacey of Landmark Chambers (1998 call). The amount of her brief fee was £7,500 plus VAT. The hearing was listed for one-day but concluded at approximately 12.45 pm, with the Tribunal finding for the applicant on the preliminary issue.

The parties' submissions

5. The respondent, whose submissions were settled by counsel (Mr Graeme Kirk), proposed a maximum brief fee of £2,800. This was based on rates in 2005 edition of the SCCO Guide to the Summary Assessment of Costs ('the Guide'), as included in the 2019 White Book. The table at appendix 2 sets out figures based on SCCO statistics for "*run of the mill proceedings*". The rates for a half day hearing for junior counsel of more than 10 years call are:

Queen's Bench	£1,164
Chancery Division	£1,397
Administrative Court	£1,746

6. The figure of £2,800 represents double the Chancery Division rate. Mr McPherson pointed out that the hearing only lasted half a day and Miss Stacey's preparation would have been limited, as she had previously settled a statement in response for the applicant and was very familiar with the case. Mr McPherson submitted that the applicant could recover the VAT charged on Miss Stacey's fees, if it is registered for VAT. In that event, it should not be able to recover the VAT from the applicant.
7. The applicant submitted that the brief fee was reasonable and should be allowed in full. Its total costs of pursuing the 2018 Proceedings, including Miss Stacey's brief fee, amounted to £19,354.20. These were proportionate to the sum in dispute (approximately £24,000) and the importance of the case. If the applicant succeeded then the respondent faced yet more administration charges. The involvement of Miss Stacey was appropriate, given the respondent had instructed very experienced counsel, Mr Edward Denehan (1981 call) who is ranked as a Band 1 Junior in Chambers & Partners. The brief fee included the preparation of oral submission and a skeleton argument for the hearing, as well as representation at the hearing.
8. As to VAT, the applicant explained it is registered but cannot recover VAT as input tax on its legal costs of this dispute. This is because the dispute relates to property where VAT is not charged on the rent paid by the tenant. At the request of the Tribunal, the applicant provided further information in an email 10 May 2019. In particular, it referred to guidance from HMRC at paragraph 4.1 of VAT Notice 700.

Reasons for the Tribunal's decision

9. The applicant's decision to brief Miss Stacey was entirely justified and reasonable, given the sum in dispute, the importance of the case to the applicant and the respondent's choice of counsel (Mr Denehan). However, Miss Stacey's brief fee was very high given her earlier involvement in the case. She had already charged £5,000 plus VAT for settling the statement in response. It appears from her fee note that this work was undertaken on 07 and 08 March 2018; only 6 weeks before the hearing. This means she would have been very familiar with the case when the brief was delivered.
10. The Tribunal derived no assistance from the rates at appendix 2 to the SCCO Guide for two reasons:
 - (a) These rates date back to 2005, 14 years before the hearing in this case and are substantially out of date. It is notable that appendix 2 has been removed from the latest, 2010 edition of the Guide.
 - (b) The 2018 Proceedings were not "*run of the mill*". They involved complex legal issues that were the subject of lengthy submissions from both counsel. There were also potential

arguments over the amount of the respondent's administration charges, which fell away once the Tribunal decided the preliminary issue. The hearing bundle ran to 304 pages

11. The Tribunal has not been supplied with any breakdown of Miss Stacey's brief fee or details of her charging rate. Based on the Judge's knowledge and experience, gained from hearing similar cases and many years as a solicitor in private practice, the amount of the fee is unreasonable for the work involved and should be reduced.
12. The hearing on 20 April 2018 lasted approximately 2 hours 45 minutes. However, it was listed for one-day and the brief fee would have been calculated on this basis. The Tribunal has allowed 6 hours for Miss Stacey's preparation time and a further 6 hours for the anticipated duration of the hearing, making a total of 12 hours. The preparation figure includes drafting the skeleton argument and reflects Miss Stacey's familiarity with the case.
13. The Tribunal has allowed an hourly rate of £450, which multiplied by 12 gives a total of £5,400. This is based on the latest guideline charging rates for summary assessments. The rate for Band A solicitors in the City of London is £409 per hour, which the Tribunal increased by 10 per cent to reflect the impact of inflation since the rates were last reviewed (in 2010). Of course, Miss Stacey is a barrister rather than a solicitor. However, the Tribunal had no other information to go on and adopts the adjusted Band A rate as a reasonable hourly rate for a barrister of her seniority and expertise.
14. Having considered paragraph 4.1 of VAT Notice 700, the Tribunal is satisfied that the applicant is unable to reclaim the VAT charged on Miss Stacey's brief fee. This means the respondent must also pay VAT of £1,080. The total sum due is £6,480 (including VAT), which is to be paid within 28 days.

Name: Tribunal Judge Donegan **Date:** 22 May 2019

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.

Appendix of relevant legislation

The Tribunals, Courts and Enforcement Act 2007

Section 29 Costs or expenses

- (1) The costs of and incidental to—
 - (a) all proceedings in the First-tier Tribunal, and
 - (b) all proceedings in the Upper Tribunal,shall be in the discretion of the Tribunal in which the proceedings take place.
- (2) The relevant Tribunal shall have full power to determine by whom and to what extent the costs are to be paid.
- (3) Subsections (1) and (2) have effect subject to Tribunal Procedure Rules.
- (4) In any proceedings mentioned in subsection (1), the relevant Tribunal may—
 - (a) disallow, or
 - (b) (as the case may be) order the legal or other representative concerned to meet,the whole of any wasted costs or such part of them as may be determined in accordance with Tribunal Procedure Rules.
- (5) In subsection (4) “wasted costs” means any costs incurred by a party—
 - (a) as a result of any improper, unreasonable or negligent act or omission on the part of any legal or other representative or any employee of such a representative, or
 - (b) which, in the light of any such act or omission occurring after they were incurred, the relevant Tribunal considers it is unreasonable to expect that party to pay.
- (6) In this section “legal or other representative”, in relation to a party to proceedings, means any person exercising a right of audience or right to conduct the proceedings on his behalf.
- (7) In the application of this section in relation to Scotland, any reference in this section to costs is to be read as a reference to expenses.

The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

Overriding objective and parties’ obligations to co-operate with the Tribunal

Rule 3

3. - (1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.
- (2) Dealing with a case fairly and justly includes –

- (a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal;
 - (b) avoiding unnecessary formality and seeking flexibility in the proceedings;
 - (c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
 - (d) using any special expertise of the Tribunal effectively; and
 - (e) avoiding delay, so far as compatible with proper consideration of the issues.
- (3) The Tribunal must seek to give effect to the overriding objective when it –
- (a) exercises any power under these Rules; or
 - (b) interprets any rule or practice direction.
- (4) Parties must –
- (a) help the Tribunal to further the overriding objective; and
 - (b) co-operate with the Tribunal generally.

Orders for costs, reimbursement of fees and interest on costs

Rule 13

- 13.-** (1) The Tribunal may make an order in respect of costs only –
- (a) under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;
 - (b) if a person has acted unreasonably in bringing, defending or conducting proceedings in –
 - (i) an agricultural and land drainage case,
 - (ii) a residential property case, or
 - (iii) a leasehold case; or
 - (c) in a land registration case.
- (2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.

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