



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

**Case Reference** : KA/LON/00AJ/OC9/2019/0102

**Property** : 6 Avenue Crescent, Acton,  
London W3 8EW

**Applicant** : 6 Avenue Crescent, Acton Limited

**Representative** : Ardale Brown Solicitors

**Respondent** : G & O Real Estate Limited

**Representative** : GSL Administration

**Type of Application** : Costs on extension of lease

**Tribunal** : Judge Daley  
Mr L Jarero FRICS

**Date of Decision** : 10 July 2019

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**DECISION**

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**Decision of the Tribunal**

The Tribunal has determined that the Respondents pay legal costs under section 60 of the Leasehold Reform, Housing and Urban Development Act 1993 in the sum of £900 plus VAT.

**Reasons for Decision**

1. The Applicants applied following their request for a new lease for a determination as to any costs recoverable by the Respondents in accordance with section 60 of the Leasehold Reform, Housing and Urban Development Act 1993 on 18 April 2019.

2. The Tribunal issued directions on 16 May 2019, in accordance with the Directions this matter was listed for a paper determination on 10 July 2019. The Respondent provided a Statement of Costs and details of time spent. The fees claimed were as follows:-

(1) Valuation Fees in the sum of £1,800 plus Vat.

(2) Legal Fees for advising and preparing and serving the counter notice and conveying fees in the sum of £1,750.00 plus VAT

3. The Respondent provided a description of work undertaken under the heading legal fees for advising etc. At a charging rate of £160.00 per hour plus Vat, the total time taken for advice was 11.25 hours. In his Statement of Costs, Mr O'Dell sets out that -: "...Work carried out by Christopher J. O'Dell a retired Licensed Conveyancer and also Director of G&O Real Estate Limited and G & O Securities Limited (GSL Administration..."

4. Mr O'Dell did not hold himself out as a solicitor or claim to be a practising licensed conveyancer.

5. The Applicant in its statement of case dated 17 June 2019, accepts the valuation fees which they have agreed, however it disputes in its entirety the Respondent's entitlement to legal costs. In paragraph 5 of its statement it sets out four grounds of challenge that is (1) As a matter of principle the Landlord cannot recover any of the legal costs (2) Some cost items are unreasonable in amount or unreasonably incurred. (3) There is insufficient evidence to justify the quantum of costs claimed. (4) There is no evidence on which the claimed hourly rate of £160 can be justified.

6. The Applicant challenged the entitlement to costs on the grounds that Mr O'Dell was not entitled to claim legal cost as a former licensed conveyancer as he no longer holds a licence and was in those circumstances deemed to be carrying out work as a lay person. The Applicant also claims that the activities undertaken were reserved legal activity.

7. The Applicant further considers the costs unreasonable. Mr O'Dell on behalf of the Respondent relies on his position as a director of the company and also submits that he has carried out work on its behalf using his knowledge and skills previously gained as a licensed conveyer. He also submits that the Tribunal has allowed costs to be recovered by company's using their own in house staff to undertake work.

8. He then counter's the challenge to the time undertaken by himself to undertake the work submitting that the time taken was reasonable. He also sets out that his hourly rate was appropriate as it is comparable to a grade 1 fee earners rate of £160 per hour.

## **The Tribunal's decision**

9. The Tribunal has not rehearsed in depth the arguments set out by the parties, and has also not considered it necessary to refer to the authorities cited by the parties.
10. The Tribunal has decided that the Respondent may recover costs, Section 33 of the 1993 Act states:- "...the nominee purchaser shall be liable, to the extent that they have been incurred in pursuance of the notice by the reversioner or by any other relevant landlord, for the reasonable costs of and incidental to any of the following matters, namely—
- (a) any investigation reasonably undertaken—
    - (i) of the question whether any interest in the specified premises or other property is liable to acquisition in pursuance of the initial notice, or
    - (ii) of any other question arising out of that notice..."
11. The Tribunal note that the act refers to costs incurred by "the reversioner or any other relevant landlord in respect of professional services rendered by any person" This description of persons is wide enough to include Mr O'Dell in his capacity as a director who has experience as a licensed conveyancer, although he is not holding himself out as a practitioner. It is clear however he is offering services and is expecting to be remunerated for those services. The test is whether the landlord would expect to pay for those services in circumstances were he was personally liable for the costs.
12. The Tribunal accept that the Respondent would expect to pay for the services carried out by Mr O'Dell, however the Tribunal note that Mr O'Dell is not a solicitor and as such, it finds that the respondent would not expect to pay the same rate for Mr O'Dell's services on the same basis that it would expect to pay for a solicitor who would be subject to regulation and professional indemnity insurance. Even if the work was carried out by a paralegal it would be subject to supervision and it is this rather than the complexity of the work which would attract an hourly rate of £160.00. The Tribunal has therefore sought to assess in the absence of any evidence from either party, the rate that would be paid to a director for carrying out this work, or alternatively what would be the costs to the company of a director undertaking this work?
13. The Tribunal has considered the schedule and has taken into account the Applicant's submissions and that of the Respondent, and has determined that the time taken for this work by a director was reasonable.
14. Accordingly the Tribunal finds that the costs of this matter is £900.00 Plus vat, payable at an hourly rate of £80.00 per hour.

**Name:** Judge Daley

**Date:** 10 July 2019

### **Appendix of relevant legislation**

#### **Leasehold Reform, Housing and Urban Development Act 1993**

### **S33.— Costs of enfranchisement.**

(1) Where a notice is given under section 13, then (subject to the provisions of this section and sections 28(6), 29(7) and 31(5)) the nominee purchaser shall be liable, to the extent that they have been incurred in pursuance of the notice by the reversioner or by any other relevant landlord, for the reasonable costs of and incidental to any of the following matters, namely—

(a) any investigation reasonably undertaken—

- (i) of the question whether any interest in the specified premises or other property is liable to acquisition in pursuance of the initial notice, or
- (ii) of any other question arising out of that notice;

(b) deducing, evidencing and verifying the title to any such interest;

(c) making out and furnishing such abstracts and copies as the nominee purchaser may require;

(d) any valuation of any interest in the specified premises or other property;

(e) any conveyance of any such interest;

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 the reversioner or any other relevant landlord 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.

(3) Where by virtue of any provision of this Chapter the initial notice ceases to have effect at any time, then (subject to subsection (4)) the nominee purchaser's liability under this section for costs incurred by any person shall be a liability for costs incurred by him down to that time.

(4) The nominee purchaser shall not be liable for any costs under this section if the initial notice ceases to have effect by virtue of section 23(4) or 30(4).

(5) The nominee purchaser shall not be liable under this section for any costs which a party to any proceedings under this Chapter before [the appropriate tribunal] 1 incurs in connection with the proceedings.

(6) In this section references to the nominee purchaser include references to any person whose appointment has terminated in accordance with section 15(3) or 16(1); but this section shall have effect in relation to such a person subject to section 15(7).

(7) Where by virtue of this section, or of this section and section 29(6) taken together, two or more persons are liable for any costs, they shall be jointly and severally liable for them.

### **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).