



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

**Case Reference** : **LON/00AW/OC9/2020/0046  
P:Paperremote**

**Property** : **40and 16 Campbell Court 1 – 7  
Queens Gate Gardens London SW7  
4PB**

**Applicant** : **Basim Alawi Sayed Moosa Alalawi  
(Flat 40)  
Alawai S. Moosa Jaffar Alalawi;  
Najeeba Sayed Kadhem Jaafar  
Alalawi; Ahmed Alawi sayed Moosa  
Jaafar Alalawi;Amjad Alawi Sayed  
Moosa Jaafar Alalawi (Flat 16)**

**Representative** : **Streathers**

**Respondent** : **Campbell Court Property PLC**

**Representative** : **D A C Beachcroft**

**Type of Application** : **Determination of the landlord's  
recoverable costs on an application  
under section 60(1) of the  
Leasehold Reform, Housing and  
Urban Development Act 1993**

**Tribunal Member** : **Evelyn Flint FRICS**

**Date of Decision:** : **4 August 2020**

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## DECISION

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This has been a remote hearing on the papers which has been consented to by the Applicant and not objected to by the Respondent. A face to face hearing was not held because it was not practicable, no-one requested the same, and all the issues could be determined on the papers. The documents that I was referred to were emailed to the Tribunal, the contents of which I have recorded.

### **Decision of the tribunal**

The tribunal determines that pursuant to section 60(1) legal fees of £7175 plus VAT and £9.62 disbursements is payable by the Applicant of Flat 40 and legal fees of £6971.60 + VAT plus £9 disbursements is payable by the Applicant of Flat 16.

### **Introduction and background**

1. This is an application under section 60 of the Leasehold, Reform, Housing and Urban Development Act 1993 (the “Act”) to determine the amount of the landlord’s recoverable costs in connection with a claim under section 42 of the Act to exercise the tenants’ right to extend the leases of Flat 40 and Flat 16 Campbell Court 1 -7 Queens Gate Gardens London SW7 4PB (the “Property”). The Tenants are linked and the applications were made and dealt with in parallel. It has been agreed that the legal costs should be apportioned between the two applications.
2. On 2 April 2019 the Applicants, served notices of claim on the landlord, Campbell Court Property PLC under section 42 of the Act.
3. DAC Beachcroft LLP, on behalf of the Respondent, served counter notices on 4 June 2019 admitting the Applicants’ right to acquire a new lease.
4. The parties agreed the terms of acquisition and the new leases were completed on 8 April 2020.
5. On 20 April 2020 the Applicants applied for a Determination of Costs payable pursuant to Sections 60 and 91 of the Leasehold Reform Housing and Urban Development Act 1993 and confirmed that a paper determination was acceptable.

6. The valuation fees have been paid and are not referred to in the applications.
7. The Tribunal issued Directions on 5 June 2020 requiring the landlord to send the following documents to the tenant:

*The schedule shall identify the basis for charging legal and/or valuation costs. If costs are assessed by reference to hourly rates, detail shall be given of fee earners/case workers, time spent, hourly rates applied and disbursements. The schedule should identify and explain any unusual or complex features of the case.*

*Copies of the invoices substantiating the claimed costs.*

*Copies of any other documents/reports upon which reliance is placed.*

8. The tenant was required to send a statement of case and any legal submissions.

*The statement shall identify any elements of the claimed costs that are agreed and those that are disputed (with brief reasons). The statement may usefully (a) specify alternative costs that are considered to be reasonable and (b) where the tenant is represented, details of the hourly rates, or other basis for charging, applied by its solicitors, valuers or other professional advisors in the calculation of their equivalent costs.*

*Copies or details of any comparative cost estimates or accounts upon which reliance is placed.*

*Copies of any other documents/reports upon which reliance is placed.*

9. The Directions also provided for the landlord to send to the tenant by **9 July 2020** a statement in response to the tenant's statement of case and any legal submissions.
10. An initial bundle of 57 pages, plus copies of the original and counterpart of the new lease and correspondence was provided in accordance with the Directions.
11. The Respondent's solicitors responded to the Applicants' statement of case by email on 14 July. The Directions had required a response by 9 July. The Applicants' solicitor objected to the late service on the grounds that it was not in accordance with the Directions and requested that the late submissions be excluded from consideration by the Tribunal since there was insufficient time for them to respond fully and take their clients' instructions. The applicants' solicitor also requested that the Tribunal exercise its discretion on costs and make a costs award in favour of the Applicants in view of

the late service and the Applicants' proposal for a resolution by open letter dated 8 July 2020.

12. The Respondent's solicitors apologised for the late service, due to human error. They considered that the Tribunal should consider the submissions because the late service had not caused any prejudice to the Applicants because there had been no provision for the Applicant to make further submissions in the original Directions. The Directions had provided for the bundles to be sent to the Tribunal by 16 July therefore the late service had not affected the Tribunal's ability to make a determination. The Respondent's solicitor did not accept that the late service had made compilation of the digital bundle more difficult and suggested that the additional work for a secretary would not amount to more than a couple of units of time.
13. The Tribunal has reviewed the late submissions and admits them. To do otherwise would not comply with the overriding objective set out in Rule 3 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. Moreover, the Directions did not provide for the Applicants to make further submissions on receipt of the landlord's response to their statement of case.
14. The Tribunal refuses to use its discretion to award costs against the Respondent. The test under the Act has not been met.

### **The costs in issue**

15. The landlord has provided a schedule of the costs it says it has properly incurred under section 60(1) in the sum of £8,939.61 + VAT legal fees plus £9.62 disbursements for Flat 40 and £ 9,204 + VAT legal fees plus disbursements of £9 for Flat 16.
16. Both parties have submitted statements of case as to the costs recoverable under section 60.
17. The Applicant accepted some elements of the costs in the Respondent's schedule, considered some items to be excessive and others not to fall within Section 60 of the Act.

### **The Respondent's evidence**

18. On behalf of the Respondent it confirmed that the two transactions were proceeding in tandem, the tenant of Flat 16 was linked to the tenant of Flat 40 and where appropriate the costs had been divided equally between the file for each flat which resulted in a cost saving.
19. The landlord's retainer with DACB provides that work done in respect of Campbell Court is subject to a 20% discount from DACB's hourly headline rate. This is a specialised area of law, DACB have

along history of acting for the Landlord in relation not only to Campbell Court but also other matters. The solicitors with prime responsibility for the work are both experienced in high value lease extension matters and it would not have been appropriate for a lower grade fee earner to act for the landlord in this matter.

20. The fee earners with primary responsibility for the work were a Legal Director and an associate, charged at the discount rates of £408 and £296 per hour respectively. In addition, a partner was involved in a supervisory role with a charge out rate of £408 per hour.
21. The tenant intended to assign the benefit of the section 42 Notice to himself and his wife, transfer the leasehold title into joint names and complete in joint names. However, in January 2020 the tenant decided to proceed in his sole name. This resulted in a number of emails being exchanged and the draft lease being updated to reflect the changed strategy on behalf of the tenant.
22. There were several amendments to the draft lease which were agreed between the parties. In addition, the service charge provisions required updating as redevelopment works had been undertaken at Campbell Court in 2016 and 2018. Subsequently the Landlord has charged a lesser sum than the service charge percentage in the lease to reflect the redevelopment. It was appropriate for the revised service charge provisions to be formally documented in the lease extension.
23. The Landlord required an undertaking with the Tenant's solicitor to cover service charge arrears and the disputed section 60 costs. Section 56(3) allows a Landlord to refuse to complete if reasonable security for disputed service charges is not provided. Costs relating to this should be allowed under section 60(1)(c) as it is one of the steps provided for by the Act.
24. Completion was due to take place on 27 March 2020, the date on which the UK went into lockdown. The landlord company is based in Panama where lockdown was effective from 26 March 2020. This resulted in additional correspondence from 26 March to 1 April.

### **The Applicants' evidence**

25. On behalf of the Applicants it was contended that as the two lease extensions were undertaken in parallel and at the same time ought to have resulted in cost efficiency in relation to liaising with the same surveyor and solicitor for the Tenants of Flats 16 and 40; reviewing the terms of the existing leases, which are granted on similar terms; preparing and drafting the new leases for both flats,

which are granted on similar terms and in accordance with section 57 of the Act.

26. The Landlord's costs are more than double the Tenant's costs. It was noted that the hourly rates had been capped but were nevertheless considered to be very high for this type of work. Much work could have been undertaken by a fee earner with a lower hourly rate.
27. The schedule of costs was annotated with notes showing those areas where it was contended that the charge was excessive. It was stated that a number of tasks were outside the scope of section 60 and therefore non recoverable e.g. matters relating to service charge arrears, reporting to the client on key dates, dealing with undertakings relating to disputed costs and issues to do with car parking spaces.
28. There were some duplicate entries, presumably inadvertently which should be disallowed. In addition, the costs due to the disruption because of lockdown and the consequential logistical challenges and questions regarding electronic completion should also be disallowed.
29. The costs incurred by the parties in negotiating the lease terms are not recoverable costs under section 60 of the Act which it was said related only to providing the initial draft lease.
30. Any costs incurred in revising the service charge percentages should be borne by the Landlord. The costs relating to service charge arrears do not fall within the scope of Section 60 of the Act. Therefore, any costs incurred in agreeing a form of undertaking to provide reasonable security for the disputed section 20 costs should be borne by the Landlord.
31. By 2 April 2020, completion of the new lease had not occurred due to delays on the Landlord's side not having the original counterpart leases in their actual possession to effect completion. Completion of the new leases needed to take place by 3 April 2020, otherwise there would have been a deemed withdrawal of the Tenant's section 42 notices pursuant to section 53(1)(b) of the Act. The Tenants had to issue protective Court claims pursuant to section 48(3) of the Act. The costs totalling £2,061.80 inclusive of VAT, were incurred solely by the tenants. It was submitted that this should be taken into account as part of the broader equity and assessment.

#### **Flat 40**

32. It was further submitted that work regarding the proposed assignment does not fall under Section 60 of the Act. Moreover, if it

does, which is disputed, such work is minimal and the assignment did not take place. Any costs incurred by the Landlord for the Licence to Assign should have been paid by the client separately.

### **Flat 16**

33. The landlord's solicitor advised by a letter that the surveyor had not been able to get access to the flat. The client was immediately informed and the following day the Landlord's solicitor confirmed via email that access had been provided and that no further action was required. One hour to deal with this item is excessive.

### **Determination**

34. The landlord is entitled to use the solicitor of his own choosing and it is not unreasonable to use a firm with acknowledged expertise and experience in this complex field of law to ensure such claims are fully compliant with the Act. The fact that it is a central London firm with commensurate hourly rates is immaterial.
35. Having read all the representations made by both parties the tribunal determines that the work was undertaken by the appropriate Grade of fee earner assisted as appropriate by others, including secretarial members of the team. The discounted charge out rates are not unreasonable when compared with other central London firms with similar expertise.
36. As regards the supervisory role of the partner, it is not unreasonable for a partner to have oversight regarding the deadline for service of the counter notice. The amount claimed £39.60 is allowed in respect of each flat.
37. The time undertaken by the Associate in relation to the real estate litigation is excessive, 3 hours per file is awarded to reflect the saving in dealing with parallel claims: fee £888 plus VAT.
38. **Flat 40:** The work undertaken in relation to the assignment is not covered by section 60 and should be charged separately.
39. **Flat 16:** The additional time regarding the access to the flat by the surveyor is reduced to 0.5 hours in total. £148 plus VAT
40. The time undertaken by the Legal Director in respect of the real estate transaction did not fully reflect the time saving due to a saving in duplication of work.

41. The time dealing with amending the service charge proportions should have been minimal: the revised scheme was already in operation.

42. The time claimed to investigate procedures available due to the Coronavirus outbreak is disallowed as not being covered by the Act.

43. The Tribunal determines that the following amounts are payable:

**Flat 40** legal fees £7175 + VAT, plus disbursements £9.62 and

**Flat 16** legal fees £6971.60 + VAT plus disbursements £9.00

**Name:** Evelyn Flint

**Date:** 4 August 2020

**Costs recoverable under section 60 of the Act**

*Costs incurred in connection with new lease to be paid by tenant.*

*(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.*



*(3) Where by virtue of any provision of this Chapter the tenant's notice ceases to have effect, or is deemed to have been withdrawn, at any time, then (subject to subsection (4)) the tenant'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) A tenant shall not be liable for any costs under this section if the tenant's notice ceases to have effect by virtue of section 47(1) or 55(2).*

*(5) A tenant shall not be liable under this section for any costs which a party to any proceedings under this Chapter before a leasehold valuation tribunal incurs in connection with the proceedings.*

*(6) In this section "relevant person", in relation to a claim by a tenant under this Chapter, means the landlord for the purposes of this Chapter, any other landlord (as defined by section 40(4)) or any third party to the tenant's lease.*

#### **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.