



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

Case Reference : **CAM/12UB/LDC/2021/0018**

HMCTS : **Paper**

Property : **117-131 (Odds) The Cherry Building and 133-171 (Odds), Great East Court, Addenbrookes Road, Cambridge CB2 9BA**

Applicants (Landlord) : **RMB 102 Limited**
Representative : **JB Leitch, Solicitors**

Respondent (Leaseholders): **The Long Leaseholders identified in the Schedule to the Application**
Representative : **Dr Frank Gommer**

Type of Application : **Leaseholders' costs in relation to an application to dispense with the consultation requirements referred to in Section 20 of the Landlord and Tenant Act 1985 pursuant to Section 20ZA of the Landlord and Tenant Act 1985**

Tribunal : **Judge J R Morris**

Date of Application : **17th January 2023**
Date of Directions : **19th January 2023**
Date of Decision : **24th February 2023**

DECISION

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Decision

1. The Tribunal determines that the reasonable costs payable by the Landlord to the Leaseholders in respect of the Dispensation Application are £1,820.00 incurred for legal advice given by Lazarev Cleaver LLP prior to the hearing of £1,440 (£1,200.00 plus VAT of £240.00) and for costs incurred as Litigants in Person of £380.00 to be paid within 28 days of receipt of this decision.

Reasons

Application

2. This is an Application regarding costs following an Application by the Landlord on 14th April 2022 for a determination pursuant to section 20ZA of the Landlord and Tenant Act 1985 that the requirement to comply with all the consultation requirements in relation to qualifying works as set out in the Service Charges (Consultation Requirements) (England) Regulations (81 2003/1987) at Part 2 of Schedule 4 (Consultation Requirements for Qualifying Works for which public notice is not required) should be dispensed with (the Dispensation Application), which was heard on 13th September 2022 and the decision issued on 24th October 2022.
3. The Qualifying Works fell into two groups referred to as Further Works and Additional Works. The Tribunal determined that with regard to the Further Works it was not reasonable to dispense with the consultation requirements but with regard to the Additional Works it was reasonable to dispense with the consultation requirements. The Tribunal made it a condition of granting the dispensation that the Landlord shall be responsible for the costs it had incurred in respect of the Dispensation Application and also that those costs shall not be considered as relevant costs to be taken into account in determining the amount of any Service Charge payable by the Tenants. In addition, the Tribunal made it a condition that the Landlord should pay the reasonable costs of the Leaseholders. If such costs cannot be agreed within 28 days of the determination the Tribunal gave leave for either party to make application to the Tribunal whereupon it will give Directions for written submissions prior to a determination of such costs.
4. Unfortunately, the parties could not agree the amount of the Leaseholders' costs and on 17th January 2023 an application was made to the Tribunal for a Costs Order. Directions were issued on 19th January 2023. Neither party requested an oral hearing, therefore, the matter was dealt with on the basis of the written Statements of Case of each party.

Leaseholders' Case

5. The Leaseholders provided an account which indicated that they had obtained legal advice prior to the hearing, the costs of which were said to be as follows:

Description of fee earner

Greg Lazarev, Lazarev Cleaver LLP, (Grade A) - hourly rate £300

Attendances on Leaseholders

	<i>Amount</i>
Letters out/emails – 0.8 hours at £300	£240
Telephone – 0.5 hours at £300	£150

Work done on documents

Leaseholders' Statement of Case – 2 hours at £300	£600
Leaseholders' Reply – 0.7 hours at £300	£210

Sub Total	4 hours @ £300.00	£1,200
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VAT £240

6. The Leaseholders also submitted an account of costs incurred by Composite Designers Ltd. It appeared that this was submitted on the basis that Dr Gommer who acted as the Leaseholder's Representative in preparing and presenting the Leaseholder's Statement of Case at the hearing of the Dispensation Application did so under the auspices of this company. The account submitted was as follows:

Description of fee earners

Composite Designers Ltd – reduced hourly rate £50

<i>Attendances on Leaseholders</i>	<i>Amount</i>
Letters out/emails – 6 hours at £50	£300
Telephone – 2.5 hours at £50	£125
Preparation for Hearing 3 hours at £50	£150
Attendance at Hearing – 6 hours at £50	£300
 <i>Work done on documents</i>	
Review Landlord's Statement of Case 6 hours at £50	£300
Leaseholders' Statement of Case – 12 hours at £50	£600
Leaseholders' Reply – 2.5 hours at £50	£125
 Sub Total 38 hours at £50.00 per hour	 £1,900
VAT	£620
 Grand Total	 £3,720

7. The Leaseholders stated that the costs claimed did not exceed the costs which they are liable to pay in respect of the work which the statement covers.

Landlord's Case

Costs of Lazarev Cleaver LLP

8. The Landlord's Solicitors said that they were not aware of the involvement of Mr Greg Lazarev of Lazarev Cleaver LLP, whose costs the Leaseholders now seek. The Landlord's Solicitors had not been provided with details of the retainer or engagement of Mr Lazarev and no evidence had been provided that the costs sought were properly invoiced and paid by the Leaseholders.
9. Upon the provision of the above information and on the basis that the Tribunal is content that a primary liability for this element of the claim exists, then the Landlord's Solicitors submitted the following specific objections:
- a) The hourly rate of £300 per hour is excessive and unreasonable. The subject property was located in Cambridge and therefore the appropriate hourly rate would be Guideline Hourly Rates (GLHR) Band 1. This matter was not with such complexity or novelty that it required a Grade A fee-earner and accordingly the rate of GLHR is proposed of a Grade B fee earner of £218 per hour.

- b) It would appear that the Statement of Response was substantially drafted by Dr Frank Gommer who seeks 6 hours for drafting this document. 2 hours of time to perfect this document by a solicitor is excessive and 1 hour was proposed. Subject to this a total of £654.00 plus VAT was proposed.

Composite Designer Limited

10. Referring to the Statement of Costs said to be incurred by Composite Designer Limited the Landlord's Solicitors stated as follows:

- a) The company was not a party to the matter or a Law Firm and is not an entity that can recover costs. The Tribunal is entitled to understand how it is said otherwise, and where any payments made in respect of costs under this heading are to be paid. Concern was also expressed as to the basis for VAT being claimed without a VAT invoice. Subject to properly satisfying the Tribunal that costs under this head are recoverable the Tribunal is invited to treat whoever it is seeking these costs as a Litigant in Person.
- b) The correct rate for Litigants in Person in accordance with the Civil Procedure Rules Practice Direction 46 is £19 per hour. This rate should only be exceeded where there exists an actual loss of earnings that is properly evidenced. Neither exist in the present case and all costs under this heading should be limited to an hourly rate of £19 per hour.
- c) It is clear from the times claimed for communications that these are estimated or are at least have not been properly recorded or itemised. The party seeks 6 hours, 2.5 hours, 3 hours and 6 hours suggesting that this party records time in no less than 30 minute units as opposed to the standard 10 minute units adopted by solicitors. In addition, it was noted that the Leaseholders claimed 6 hours for the hearing time and yet the Landlord's Solicitors stated that the hearing lasted 4.5 hours.

11. The Landlord's Solicitors submitted that the time taken was excessive and provided a Statement of Costs for similar proceedings as an example of the time they considered reasonable as follows:

Thomas Melville Grade A £261.00

Various persons Grade D £126.00

Attendances on Clients

Letters/emails	1.30 hours @ £261.00	£339.30
	0.90 hours @ £126.00	£75.60

Attendances on Opponents

Letters/emails	0.90 hours @ £261.00	£234.90
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Attendances on Others

Letters/emails	1.20 hours @ 261.00	<u>£313.20</u>
Letters/emails Total		£963.00

Attendances on Clients

Telephone	3.00 hours @261.00	£783.00
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Attendances on Others

Telephone	0.10hours @261.00	<u>£26.10</u>
Telephone Total		£809.10

Work on Documents

Review of Application	0.20 hours @ £261.00	£52.20
Review of Statement of Case	1.00 hours @ £261.00	£261.00
	0.10 @ £126.00	£12.60
Witness Statement	1.50 hours @ £261.00	£261.00
Scott Schedule	1.00 hours @ £261.00	£261.00
Statement of Costs	0.20 hours @ £261.00	£25.20
	1.00 hours @ £126.00	£261.00
Preparing Bundle	0.20 hours @ £261.00	<u>£25.20</u>
Documents Work Total		£1,296.90

Hearing

Attendance at hearing	4.00 hours @ 126.00	£504.00
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Total	15.7 hours	£3,573.00
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The Statement also included Counsel's fees and VAT.

12. The Landlord's Solicitors submitted that, based upon this Statement, a reasonable time to be spent would be 16.5 hours allocated according to the itemisation in the Leaseholders Statement as follows:
 - i. Letters/emails – 2 hours
 - ii. Telephone – 1 hour
 - iii. Preparation for hearing – 2 hours
 - iv. Attendance at hearing – 4.5 hours
 - v. Reviewing Landlord's Statement of Case – 2 hours
 - vi. Preparation of Leaseholders' Statement – 4 hours
 - vii. Leaseholders' Reply – 1 hour
13. It was stated that the Leaseholders' Representative signed a certificate of accuracy which is not to be taken lightly. However, the Landlord's Solicitors submitted that sufficient concerns existed for the Tribunal to go behind the signature and make reasonable enquiries of the Leaseholders based on the questions raised above.

Leaseholders' Reply

Costs of Lazarev Cleaver LLP

14. The Leaseholders stated that the costs were incurred as described and that Mr Lazarev's services were used to prepare statements. They said they did represent themselves during the proceedings in order to have cost efficient support. They conceded that the Landlord was not made aware of the aid sought by Leaseholders from Lazarev Cleaver LLP. Full engagement of Mr Lazarev would have come at an estimated cost of £8,000.
15. It was said that the fee of £300 per hour is set and the Leaseholders have no influence over this. It was submitted that the fee is in line with the Landlord's

Solicitor fees of £261 per hour as recently submitted in their Statement of Costs for CAM/12/UB/LDC/2022/0049 from 5th February 2023.

Costs Composite Designers Ltd

16. Composite Designers Ltd is the entity owned and operated by Dr Frank Gommer. Dr Gommer is also acting as expert witness in litigation proceedings. The bundle preparation has therefore been instructed to be done by him through his company accounts.
17. It was said that the time spent was as stated and submitted that the cost of the attendance at the hearing, compared to that of the Landlord's Solicitors, was very reasonable. It was said that the Landlord's Solicitors charged a flat fee of £2,600 for attendance at a hearing including preparation time.

Decision

Costs of Lazarev Cleaver LLP

18. The Tribunal recalled that the Leaseholder's Statement of Case for the Dispensation Application and at the hearing had mentioned that they had obtained legal advice in preparing their submissions. However, the Tribunal did not find any correspondence or other documentation from Lazarev Cleaver LLP in the Bundle. Nevertheless, notwithstanding that there was no formal statement from Lazarev Cleaver LLP regarding the advice given, the Tribunal is prepared to accept that on the balance of probabilities and based on the statement of truth Lazarev Cleaver LLP were instructed and their fees were as stated by the Leaseholders.
19. With regard to the level of fees and the length of time spent on the matter the Tribunal accepted the instruction of a Grade A fee earner at an hourly rate of £300.00 but in doing so the Tribunal expected the work to be carried out expeditiously. Having read the Bundle for the Dispensation Application the Tribunal finds that, in this instance, for perusing the documentation which would have been provided by the Leaseholders and examining and advising on the Statement of Case the time of 4 hours appeared reasonable.
20. The Tribunal therefore allows the fees of Lazarev Cleaver LLP of £1,200 plus VAT.

Costs of Composite Designers Ltd

21. The Leaseholders were Litigants in Person appointing Dr Gommer, who is one of their number and a leading member of the Residents' Association, as indicated by the correspondence in the Bundle, as their representative to prepare their case and speak on their behalf. It is not appropriate for Dr Gommer to claim the costs he says he incurred through a company with which he is associated. No notice of representation was served on the Landlord or the Tribunal stating that Composite Designers Ltd were representing the Leaseholders.
22. Dr Gommer was not acting as an expert witness but as an advocate; different rules apply to each. Under Civil Procedure Rules (CPR) 46.5(5), if he were receiving a fee as a witness, he could not claim costs as well.

23. The claim as presented runs the risk of being struck out. However, the Tribunal is aware of the actual conduct of the proceedings and therefore determines to treat the Leaseholders costs claim as being for Litigants in Person.
24. The fee rate for Litigants in Person in accordance with the Civil Procedure Rules Practice Direction 46 is £19 per hour. This rate should only be exceeded where there exists an actual loss of earnings that is properly evidenced. No evidence has been adduced of loss of earnings and therefore the appropriate rate is determined to be £19 per hour. It follows that VAT is not chargeable.
25. With regard to the number of hours spent, the Landlord's Solicitors have provided a Statement of Costs which is of assistance as regards the time taken for a legal professional. The hourly charges, Counsel's fees and VAT were included although these are not relevant here in that the rate for Litigants in Person is specified in the Civil Procedure Rules Practice Direction 46 as £19 per hour. In determining what would be a reasonable time for Litigants in Person to prepare and present their case the Tribunal would give some latitude, however, in this case the Leaseholders have had legal assistance which is included in their costs claim which must be taken into account.
26. The Leaseholders as Litigants in Person may have spent 38 hours mulling over and reviewing their case; however, the Tribunal has to consider what period of time is reasonable taking into account the issues raised. Irrespective of the success or otherwise of their contentions, it is likely that Mr Lazarev was able to guide the Leaseholders to *Daeian investments Ltd v Benson* [2013] UKSC 14 which was referred to in the Statement of Case, enabling them to formulate their five-point argument for prejudice and make a submission with regard to an expert report. Thus, the time needed to be spent by them in their own preparation would be reduced, notwithstanding that they are not legally qualified.
27. On examining the time attributed to each item by the Leaseholders and the Landlord's Solicitors the Tribunal was of the opinion that the Tribunal could make an overall adjustment of hours which would reflect the apportionment which both parties attributed to the items. The Tribunal determined that taking into account the assistance of Mr Lazarev a total time of 20 hours was reasonable which at £19 per hour gave a figure of £380.00.
28. The Tribunal therefore determines that the reasonable costs payable by the Landlord to the Leaseholders in respect of the Dispensation Application are £1,820.00 incurred for legal advice given by Lazarev Cleaver LLP prior to the hearing of £1,440 (£12,00 plus VAT of £240.00) and for costs incurred as Litigants in Person of £380.00 to be paid within 28 days of receipt of this decision.

Judge JR Morris

APPENDIX - RIGHTS OF APPEAL

1. If a party wishes to appeal the 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.