



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

Case reference : **LON/00AE/OC9/2023/0024**

HMCTS code : **P: PAPERREMOTE**

Property : **169 Empire Court North End Road
Wembley HA9 0AJ**

Applicant : **LKB Investments Limited**

Representative : **Bude Nathan Iwanier LLP**

Respondent : **Mr M Miah**

Representative : **Bloomsbury Law**

Type of application : **Costs – payable by the applicant under
s.60(1) Leasehold Reform, Housing and
Urban Development Act 1993 (the ‘1993
Act’)**

Tribunal members : **Judge Pittaway
Mr R Waterhouse LLM FRICS**

Date of decision : **14 June 2023**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers, the form of the hearing being P:PAPERREMOTE. The Applicant's solicitor initially requested a hearing, but on 12 May 2023 confirmed that the matter could be dealt with on the papers provided. The e mail was copied to the Respondent's solicitors who have not objected to the matter being dealt with on paper.

The documents to which the Tribunal was referred in a bundle of 631 pages which included a witness statement by Mr S Pariente of Bude Nathan Iwanier LLP containing a detailed breakdown of that firm's costs, its invoice dated 21 October 2022 addressed to the Applicant reflecting the legal costs of £4,530 exclusive of VAT and disbursements of £19. The bundle also contained an invoice from Chestertons, the Applicant's valuers, in the sum of £1,500 plus VAT.

While not in the bundle the Tribunal also had before it the original application from the Applicant and the Tribunal Directions of 24 February 2023.

The Tribunal has had regard to the documents before it in reaching its decision set out below.

Decisions of the tribunal

The tribunal determines that the amount of costs payable by the Respondent are

- Legal fees under section 60 (1) of the 1993 Act of £4,530 plus VAT if the same is not recoverable by the Applicant and disbursements of £19.
- Valuer's fees under section 60 (1) (b) of the 1993 Act of £1,500 plus VAT if the same is not recoverable by the Applicant.

Background

(1) The Applicant landlord seeks an order under section 60(1) of the Leasehold Reform, Housing and Urban Development Act 1993 (the "**1993 Act**") as to the amount of costs payable in connection with negotiations for the grant to the Respondent tenant of a lease of 169 Empire Court North End Road Wembley HA9 0AJ (the '**property**').

(2) Section 60 of the 1993 Act provides that

"(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.

(5)A tenant shall not be liable under this section for any costs which a party to any proceedings under this Chapter before the appropriate 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.”

- (3) By Directions dated 24 February 2023, the Applicant landlord was directed to provide the Respondent by 17 March 2023 a schedule of costs sufficient for summary assessment, invoices substantiating the costs and any other documents relied on.
- (4) The Directions directed the Respondent to provide the Applicant by 31 March 2023 a statement of case, details of comparative cost estimates and any other documents he wished to rely on and giving the Applicant the right to respond to the Respondent’s case by 14 April.
- (5) The Directions required the Applicant to prepare the bundle and email it to the Respondent and the Tribunal by 28 April 2023.
- (6) On 12 May 2023 the Applicant’s solicitors provided its bundle for the hearing. Their letter, which was copied to the Respondent’s solicitor, stated that they had not heard from the Respondent’s solicitor since serving their client’s statement of case and the witness statement of Mr Pariente on them.

Statement of case, evidence and submissions

1. Mr Pariente’s witness statement states that he is a consultant solicitor working for Bude Nathan Iwanier LLP, the Applicant’s retained solicitor, that he is a Grade A fee earner, specializing in Leasehold Enfranchisement

since 2005 and that he is the only fee earner instructed by the Applicant on such matters and that his charge out rate is £300 per hour. The bundle included a breakdown of Mr Pariente's costs attributing each charge to one of the three subsections of section 60(1).

2. Mr Pariente's statement explained that the matter was complicated and long-drawn by reason of two assignments of the lease following the service of the section 42 Notice. He had to deal with three separate firms of solicitors and the matter was not straightforward, issues arose in connection with the completeness of the Section 42 notice (the last page being missing and the identity of the serving solicitor not being that named in the notice). Mr Pariente also referred to having to be involved in arranging for his client's surveyor to obtain access to the flat. Lack of information resulted in his having to issue a protective application to the Tribunal. While the premium of £159,500 and form of lease were agreed on 11 April 2022 the lease was not completed by the Respondent and the claim was deemed withdrawn on 11 August 2022.
3. Mr Pariente referred the Tribunal to various previous Tribunal decisions to clarify that the cost of correspondence and obtaining instructions falls within Section 60(1) and as evidence that the sum for legal costs claimed was not unreasonable. Mr Pariente also referred the Tribunal to the decision in *Drax v Lawn Court Freehold Limited* as authority for the proposition that the costs of the counter notice fall within Section 60(1) as do other costs 'of and incidental' to any of the sub-sections of Section 60(1). Without giving details of the cases he states that there are a number of Tribunal decisions approving a charge out rate of £300 per hour.
4. There was no evidence or submissions from the Respondent.

Reasons for the tribunal's decision

5. In the absence of any evidence from the Respondent the tribunal have reached its decision on the basis of the evidence and submissions of Mr Pariente. The Directions stated, '*If any party fails to comply with these directions the Tribunal may in any event determine the issues in dispute on the basis of such information and evidence as is available.*' The Respondent has provided no statement of case, details of comparative cost estimates and any other documents he wished to rely on as he was directed to.
6. The Tribunal has to decide whether the costs are costs recoverable under section 60(1) and if so whether they meet the test of reasonableness set out in section 60(2).
7. On the basis of the breakdown of costs provided by Mr Pariente the Tribunal find that the costs listed by him in that breakdown fall within section 60(1), as they relate to investigation reasonably undertaken of the tenant's right to a new lease, the valuation of the tenant's flat or the grant of a new lease. The Tribunal notes that they do not include any costs which

Mr Pariente incurred in connection with the application to the tribunal, which are excluded under section 60(5).

8. Any costs incurred by the relevant person in respect of professional services rendered are to be regarded as reasonable only 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. The existence of invoices addressed to the Applicant may indicate that the Applicant has have paid them, but of itself that does not make the charges reasonable.
9. On the basis of Mr Pariente's evidence the Tribunal find that the transaction was not straightforward and that the failure of the solicitors with whom he was dealing to respond in a timely manner increased the length of time Mr Pariente had to spend on the matter. There are no submissions from the Respondent before the Tribunal as to the use of a senior solicitor for all aspects of the application. This may not be necessary but the Tribunal accept that while a senior solicitor may have a higher charge-out rate he may also be expected to undertake the work in a shorter period of time so that the use of a senior solicitor may be cost-effective. The Tribunal therefore find the legal costs to be reasonable.
10. In the absence of any challenge from the Respondent as to the use of Chestertons as the valuer, and given the agreed premium of £159,500 the Tribunal finds Chesterton's costs to be within the parameters of what might be considered reasonable.
11. The Tribunal note that the Applicant is seeking the costs plus VAT. The recovery of VAT from the Respondent is only reasonable if the Applicant is unable to recover the same.

Name: Judge Pittaway

Date: 14 June 2023

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).