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

**Case Reference** : **LON/00AC/OC6/2017/0002**

**Property** : **100 Willifield Way, London NW11  
6YG**

**Applicant** : **Daejan Properties Limited**

**Representative** : **Wallace LLP**

**Respondent** : **(1) Jacqueline Caro  
(2) The Hampstead Garden  
Suburb Trust Limited**

**Representative** : **(1) Comptons  
(2) Lee Bolton Monier-  
Williams**

**Type of Application** : **Assessment of costs under section  
21(1) of the Leasehold Reform Act  
1967**

**Tribunal members** : **Judge S O'Sullivan  
Mr D Jagger MRICS**

**Date of Decision** : **10 October 2017**

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**DECISION**

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## **The background**

1. The Applicant has made an application for the determination of the costs payable pursuant to sections 9(4) of the Leasehold Reform Act 1967.
2. The Second Respondent, The Hampstead Garden Suburb Trust Limited (“Hampstead”) is the freehold owner of a number of premises at Willifield Way and land at the back of 19 Erskine Hill, Hampstead of which 100 Willifield Way London NW11 6YG (the “Property”) forms part. Hampstead is the competent landlord for the purposes of the Act.
3. Daejan Properties Limited (“Daejan”) is head leaseholder pursuant to a lease dated 29 October 1929 for a term of 999 years from 24 June 1907. Daejan is the intermediate landlord for the purposes of Act.
4. The First Respondent, Jacqueline Adrienne Caro, (the “Tenant”) holds a long lease of the Property dated 11 May 1962 for a term of 999 years (less than 10 days) from 24 June 1907.
5. On or about 14 September 2015 the Tenant made an application to acquire the freehold title to the Property by way of a Notice of Claim (the “Notice”) pursuant to the provisions of the Act.
6. The terms of the acquisition were finally agreed between the parties on 28 July 2017.

## **The application**

7. By an application dated 23 January 2017 Daejan applied to the tribunal for a determination of the costs payable in respect of the statutory claim.
8. Directions were issued dated 9 August 2017. Further to those directions bundles were lodged by the parties.
9. Neither party having requested an oral hearing, the application was considered by way of a paper determination on 10 October 2017.

## **Section 9(4) costs**

10. Section 9(4) of the Act provides that the tenant shall be liable for reasonable costs of and incidental to any of the following matters:-  
namely

*(a) “Any investigation by the landlord of that person’s right to acquire the freehold;*

- (b) *Any conveyance or assurance of the home and premises or any part thereof or of any outstanding estate or interest therein;*
- (c) *Deducing, evidencing and verifying the title to the house and premises or any estate or interest therein;*
- (d) *Marking out and furnishing such abstracts and copies as the person giving the notice may require;*
- (e) *Any valuation of the house and premises. “*

**Daejan’s costs**

11. Daejan says that the reasonable costs of the work carried out are £2,830.50 plus Vat and land registry disbursements of £27.00. It relies on an itemised print out included in the bundle.
12. The solicitors acting for Daejan were Wallace LLP and the fee earner acting was a Partner, a Grade A fee earner, with a charge out rate of £450 per hour. An Assistant Solicitor, also a Grade A fee earner, also undertook work at a charge out rate of £330 per hour rising to £350 per hour in August 2016 and £365 per hour in August 2017. Additionally a Partner in the Conveyancing Department also undertook work in relation to the draft form of transfer who had a charge out rate of £465 per hour at the relevant time. A paralegal also undertook work at £200 per hour in respect of obtaining office copy entries.
13. Daejan’s solicitors have acted for them for many years in relation to enfranchisement matters and are their choice of solicitor having the knowledge to carry out work on their behalf. It is said that the rates are commensurate with the usual charge out rate in Central London. Additionally it is said to be reasonable for a fee earner with the relevant experience to have conduct of the matter and perform work on the same. Daejan relies on the authority of *Daejan Investments Ltd –v- Parkside 78 Limited* and submits that the same principles apply.
14. Daejan’s solicitors say that the work undertaken included considering the tenant’s entitlement to the freehold title and the validity of the Notice of Claim, communication with the client, carrying out relevant Land Registry searches, corresponding with the competent landlord and tenant’s solicitors, reviewing the Notice in Reply, corresponding with the valuer and reviewing and agreeing the form of transfer.
15. Daejan’s solicitors say that the provisions of the Act are complex in nature and the involvement of a Partner was necessary. The time spent by Daejan’s solicitors is said to be reasonable based on the technical nature of the legislation.
16. It is further said that the premium payable has no relevance to the determination of the reasonable costs pursuant to section 9(4) of the Act and has no bearing on the work required to deal with a statutory claim.

The costs incurred are said to have been incurred due to the Tenant's choice not to accept voluntary terms that were offered but instead to serve a statutory Notice. As far as the costs of the "voluntary" claim are concerned it is said that these costs concern only conveyancing costs and take no account of additional investigation and costs "*of and incidental to*" the service of the Notice for which the Tenant is responsible.

17. It is also submitted that there was no procrastination on the part of Daejan and reliance is placed on correspondence attached in this regard. Daejan says it is the conduct of the Tenant which has been unreasonable as she failed to respond to offers within stated time periods and failed to reply to correspondence seeking information.

### **Hampstead's costs**

18. Hampstead's solicitors made their submissions by way of the witness statement dated 13 September 2017 of Clifford Woodroffe, a solicitor and partner.
19. Mr Woodroffe confirms that the costs claimed by Hampstead are not £5500.80 but £3,700 plus Vat.
20. He points out that the Tenant fails to identify any of the claimed costs that are agreed and those which are disputed and makes no mention of the hourly rates claimed. He points out that the figures relied upon by Mr Compton were contained in a letter marked subject to contract offering to dispose of the freehold interest on certain terms. That offer was said to have never been accepted.
21. Mr Woodroffe says that the costs contained in the offer letter were on a fixed fee reduced basis on the basis that the process is not dictated by statutory provisions, is expedited and there is no protracted correspondence. The transfer would be offered on a take it or leave it basis rather than through negotiation. The costs of providing a valuation for a potentially contested hearing are said to be much greater than simply providing the requisite certificate under the Charities Act 2011 which Hampstead is obliged to obtain before making a disposal of its property.
22. It is submitted that the Tenant does not challenge the hourly rates applied or any aspect of the time incurred. Despite the tribunal's directions to provide details of any comparative costs estimate or accounts upon which reliance is placed none of which has been provided.
23. As far as the valuation fees are concerned Hampstead relied on an invoice of Chesterton's in the total sum of £2040 from Chesterton's. No copy of the valuation report is attached. The invoice describes the work as "*Perusing the head lease and underlease and to giving due consideration to the terms thereof. Drafting and finalising the report and to total time involved. Four hours at £425 per hour*".

24. The costs of the valuation have been apportioned between Hampstead and Daejan.

### **The Tenant's response**

25. The Tenant's solicitors, Comptons, responded by way of a witness statement of James Stephen Compton dated 6 September 2017
26. We would mention that Mr Compton made a further witness statement dated 20 September 2017. There was no provision for this in the directions and both Daejan and Hampton's solicitors objected to the same. We declined to admit this second statement. It was inserted in the bundle without the tribunal's permission and if we were to allow it we would as a matter of natural justice be required to allow the other parties to the application to respond.
27. In his first witness statement Mr Compton summarises the premium payable and contrasts this to the costs now sought. The premium payable to Hampstead was £3,627 and the legal costs demanded are said to be £5,500.80. The premium payable to Daejan was £7217 and the legal costs demanded are £3,324.60. Surveying costs are also sought in the sum of £1020 by both Daejan and Hampstead in respect of a shared valuation. Mr Compton points out that of the premium only £174 related to the nominal proprietary interest with the balance being paid in order to vary the restriction on developing the roof space.
28. Mr Compton says that the vast majority of the costs claimed "*do not apply given any reasonable purchaser of the property would not pay £10,865.40 in professional fees to acquire a reversionary interest for a premium of £7217*". It is further said that neither Daejan nor Hampstead have had any regard to the fact that costs incurred must be reasonable.
29. As evidence of reasonable costs the Tenant relies on an offer by Hampstead to sell its interest for £4200 and legal fees estimated at £600 plus Vat and surveying fees of £400 plus Vat. Daejan is said to have offered to sell its interest for £2000 plus legal costs of £725 plus Vat. This is said to be true evidence of the costs which should have been incurred and that there is no basis to claim higher fees just because this is a statutory claim.
30. Mr Compton asks the tribunal to determine the costs at the rates offered at the commencement of the transaction as detailed above.
31. Mr Compton also denies that there was any unreasonable action on the part of the Tenant. It is said that the Tenant wished to acquire the Property on a voluntary basis but the procrastination of Daejan prevented this.

32. Mr Compton made no comment on the schedule of costs prepared. He did not comment on the charging rates applied or the time taken in relation to any particular task.

### **Daejan's legal costs – the tribunal's decision**

33. Daejan's costs of £2,830.50 plus Vat are allowed in full. The Tenant has not challenged the hourly rates, time spent or the necessity for any particular item contained in the breakdown. The directions asked the Tenant to identify any elements that are disputed and invited the Tenant to specify alternative costs. The Tenant failed to do so. The tribunal is satisfied that all of the costs incurred fall within section 9(4) of the Act. We do not consider that a sensible comparison can be made between the statutory costs and those estimated in a commercial transaction. As Daejan's solicitors rightly point out the exercise to be carried out on service of a Notice of Claim is entirely different and the Tenant is liable for the costs "*of and incidental to*" the matters set out in sections 9(4)(a) to (e).

34. No challenge is made to the disbursements of £27 and these are allowed in full.

### **Hampstead's legal costs – the tribunal's decision**

35. In his witness statement Mr Woodroffe confirmed that their fees were not £5500.80 as suggested by the Tenant's solicitors but £3,700 plus Vat. We note from the bundle that the invoice dated 22 August 2017 from Hampstead's solicitors stood in the sum of £5500.80 inclusive of Vat, i.e. £4440 plus Vat. However given the content of Mr Woodroffe's witness statement we take the lower figure of £3,700 plus Vat as the starting point.

36. We allow the sum of £3700 plus Vat in full for the same reasons as set out above. We are satisfied that the time spent falls within section 9(4). The Tenant failed to identify any elements which are disputed and we are not satisfied that the commercial offer is a sensible comparison.

### **Valuation costs**

37. Valuation costs are claimed in the sum of £2040.

38. The tribunal has been provided with a copy of the valuation invoice. The valuation was carried out by Eric Shapiro. The valuer's hourly rate was £425.

39. The costs are challenged by the Tenant on the basis that they are too high and should be limited to the estimated costs of surveying fees of £400 plus Vat when the interest was offered for sale by Hampstead.

40. The tribunal allows the sum of £1,062.50 plus vat. We were not provided with a copy of the valuation report and it is not clear from the narrative if Mr Shapiro inspected. The hourly rate is not challenged and the tribunal considers it falls within a reasonable range. The total time allowed equates to 2.5 hours which the tribunal considers reasonable.

**Name:** Sonya O'Sullivan

**Date:** 10 October 2017