FIRST-TIER TRIBUNAL PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference :	CHI/00HD/OC6/2020/0003
Property :	79 Longford, Yate, Bristol BS37 4JW
Applicants :	Ryan Watson & Natasha Smith
Representative:	---
Respondent:	Wallace Estates Limited
Representative:	Stevensons Solicitors
Type of Application:	Landlord`s costs for leasehold enfranchisement Section 9(4) Leasehold Reform Act 1967 ("the 1967 Act")
Tribunal Member:	Judge P J Barber Mr I R Perry BSc (Est Man) FRICS
Date of Decision:	29 March 2021

DECISION

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Decision

(1) The Tribunal determines in accordance with the provisions of Sections 9(4) and 21(1)(ba) of the 1967 Act, that the costs claimed as referred to in paragraph 8 below (including VAT thereon where applicable) are reasonable, save for the Valuation costs which are allowed only in a sum of £350.00 plus VAT.

Reasons

INTRODUCTION

1. The application received by the Tribunal was dated 27 November 2020 and was for a determination of the reasonable costs payable by the Applicants to the Respondent landlord.
2. Directions were issued on 29 December 2020 and 22 February 2021, providing for the matter to be determined by way of a paper determination, rather than by an oral hearing, unless a party objected; no such objections have been made and accordingly, the matter is being determined on the papers.
3. The Applicants have provided an electronic bundle of documents to the Tribunal, a section of which appended a copy of the application, and to which were attached various documents including:-
   (a) Correspondence received by the Applicants from the Respondent`s solicitors, Stevensons
   (b) The Applicant tenants` claim notice under the 1967 Act
   (c) A copy of the Notice in Reply to the tenants` claim under the 1967 Act
   (d) Stevensons Completion Statement dated 15 September 2020
   (e) The Applicants` letter to Stevensons of 18 September 2020
   (f) Stevensons` letter of 28 October 2020 to the Applicants, together with attachments
   (g) The Applicants` letter to Stevensons dated 30 October 2020
   (h) Stevensons` letter to the Applicants dated 9 November 2020
   (i) The Applicants` letter to Stevensons dated 12 November 2020
   (j) A copy of the Lease made between Stanshawe Estates Limited (1) W R Allen (Builders) Limited (2) dated 5 November 1964.
4. The electronic bundle included certain other documents, such as the two sets of directions, the Respondent`s statement of case dated 22 January 2021 with attachments, and the Applicants` statement of case, together also with various attachments, including the Respondent`s schedule of legal costs.
5. Due to Covid 19 restrictions, no inspection was carried out in respect of the Property.

THE LAW

6. Section 9(4) of the 1967 Act provides that:

   "(4) Where a person gives notice of his desire to have the freehold of a house and premises under this Part of this Act, then unless the notice lapses under any provision of this Act excluding his liability, there shall be borne by him (so far as they are incurred in pursuance of the notice) the reasonable costs, of or incidental to any of the following matters:-

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

   (b) Any conveyance or assurance of the house and premises or any part thereof or any estate or interest therein;

   (c) Deducing, evidencing and verifying the title to the house and premises or any estate or interest therein;

   (d) Making out and furnishing such abstracts and copies as the person giving the notice may require;

   (e) Any valuation of the house and premises

   but so that 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.

WRITTEN REPRESENTATIONS

7. The directions issued in this matter required the Respondent to send to the Applicants full details of its claim for costs including details of fee earner(s), charging rates and print-outs. The directions required the Applicants to respond so as to identify each item in dispute and the grounds of challenge.

8. Stevensons` Completion Statement, as contained in their letter dated 15 September 2020, referred to the amount required to complete, which included the disputed costs as follows:-

	£	VAT	
Premium	175.00	---	
Valuation costs	420.00	84.00	
Legal costs	927.50	185.50	
Postage	20.00	4.00	
Land Registry fees	9.00	---	
Rent to 29.9.2020	5.25	---	
	1556.75	+ 273.50	= £1830.25

   Amounts paid by way of deposits in the sum of £63.00 were deducted, resulting in a net amount required to complete of £1767.25.

9. In its statement of case, the Respondent`s solicitors referred to the legal work undertaken as including, reading the lease, checking Land Registry entries, serving notice on the Applicants, requiring deduction of their title and a deposit, instructing a valuer for the Respondent, considering the tenants` notice of claim and any issues

arising from it, dealing with costs of the counter-notice, communications with the Respondent, preparing a draft transfer, checking execution, dealing with financial issues pre-completion, and liaising with the valuer regarding the valuation report. Reference was made to the decision in *Sinclair Gardens Investments (Kensington) Limited v Wisbey [2016] UKUT 0203 (LC).* The statement indicated that the Respondent is not registered for VAT and that any VAT incurred on costs is recoverable from the Applicants. The statement referred to separate charging for letters out and telephone conversations and submitted that this was reasonable in the context of the *Civil Procedure Rules*. The statement indicated that the fee earner was a solicitor qualifying in 1983, and who specialised in this area and who had acted for the Respondent company since its formation. The statement submitted that an hourly rate of £265.00 plus VAT had been charged, which it said was reasonable and also added that the Respondent was not required to find the cheapest solicitor, but to instruct as it would ordinarily do if it was bearing the costs itself. It was further submitted that *Wisbey* held that a charging rate of £250.00 plus VAT was a reasonable rate for such a solicitor in August 2014. It was further submitted that in these circumstances, the Respondent had not been a willing grantor of the new lease, which had been compulsorily required from it, and that in consequence the Respondent landlord had no alternative but to incur such costs, so as to protect its interests. It was also submitted that the proportion of the costs, in relation to the premium paid, is not relevant and that the services required would be the same whether the premium was £500,000 or £1500. Finally, it was submitted that the valuer`s costs were reasonable, taking into account the experience of the valuer concerned.

10. In their statement, the Applicants referred to each of the documents which they had attached to their application, and also to two statutory constraints upon recovery of costs, firstly that they must be reasonable, and secondly that they can only be charged for work which falls within the parameters of Section 9(4) of the 1967 Act, adding that in their opinion "*attendances on client obtaining instructions and advising*" and "*contribution to postage*" do not fall within the scope of Section 9(4). The Applicants submitted that the Respondent`s valuation costs were not reasonable, as the valuation had concluded that the premium payable was £714, although the Applicants said that they had been refused sight of the report. The Applicants submitted that the Respondent had accepted the Applicants` lower valuation of £175, and that accordingly, the Respondent`s valuation was not used, and superfluous. The Applicants adduced a graph which they submitted, demonstrated how the purchasing value of £1 erodes over time and that the value of the second and third reversion becomes negligible after approximately 600 years, regardless of the rate used. The Applicants disputed whether VAT should be included, given that they were to pay the monies into Stevensons` account, and pointed out that Stevensons are VAT registered. The Applicants further submitted that "*for a straightforward case like ours*" the matter did not warrant a Grade A solicitor, citing what they referred to as a precedent in similar cases, as at Appendices C & D to their statement, and further referred to "*the simplistic nature of the work involved*". The Applicants also submitted that the Respondent detailed work undertaken in March, April and May 2019, the entirety of that work happened prior to their notice served on the Respondent landlord and dated 27 July 2019. The Applicants stated that they are happy to pay the £9 Land Registry costs.

CONSIDERATION

11. The Tribunal has taken into account all the case papers in the bundle.

12. The issue for determination is whether the costs claimed under Section 9(4) of the 1967 Act are reasonable.

13. In regard to the Applicants` claim that neither "*attendances on client obtaining instructions and advising*" nor "*contribution to postage*" is within Section 9(4), it would have inevitably been necessary for Stevensons to communicate with their client in order to carry out the work required; such communication would of necessity include obtaining instructions and advising the client at each relevant stage of the transaction. As such, this work would be necessarily incidental to the legal work referred to in sub-sections 9(4)(a)-(d) of the 1967 Act. Similarly, the item charged for postage being £20.00 plus VAT would appear to be a reasonably proportionate amount and similarly, incidental.

14. In regard to the Respondent`s valuation report, the Applicants claim that it was not used and therefore can be considered superfluous. However, it is entirely reasonable for a landlord to require a valuation of the property and the obtaining of same is allowed and provided for by subsection 9(4). As to the amount, the Tribunal considers that the sum of £420.00 claimed in the Respondent`s schedule of costs is not of an excessive or unusual sum for transactions of this type; apart from actually making the calculation, the valuer would have to give full consideration as to which provision of Section 9 would apply to the transaction in question. However, the Tribunal notes that the invoice exhibited as "Attachment F" to the Respondent`s statement of case is actually in the sum of £350.00 plus VAT. Accordingly, and in the absence of evidence of an invoice in a higher amount sum, the Tribunal allows such amount for the valuer`s report, being £350.00 plus VAT.

15. In regard to VAT, the Applicants asserted that VAT should not be included in a claim for costs if the receiving party is able to recover the VAT as input tax, and they referred to Stevensons` letter of 15 December 2020. Stevensons referred in such letter to VAT being added to three items, namely the valuer`s costs, the legal costs and postage. The Applicants referred to Page 35 of the statements of case section of the electronic bundle, being an extract from the Civic Procedure Rules applicable to litigation costs. The costs in this instance relate not to litigation as such, but to statutory costs. In addition, Stevensons` invoice would have been addressed to their client, which they said in evidence, is not registered for VAT and therefore unable to reclaim VAT. Accordingly, VAT is properly charged and added for the above-mentioned items.

16. The Applicants disputed that a Grade A solicitor should have carried out the work for what they referred to as a "*straightforward case like ours*". The Tribunal accepts that the landlord is not obliged to seek out and appoint the cheapest legal representation; *Wisbey* at paragraph 23, accepted that it was reasonable for a landlord to instruct a solicitor, experienced in this specialized area of law. Mr Stevenson describes himself as being a specialist in enfranchisements and refers to having acted for the Respondent landlord since its formation, and the Tribunal accepts that it was reasonable for the Respondent to have instructed Mr Stevenson in the matter. In this case Mr Stevenson dealt with all the work himself, rather than delegating part or parts of it to more junior colleagues, although it is noted according to the footnotes on the firm`s letters, that Mr Stevenson is apparently the sole principal, and the scope for delegating to others may therefore be rather more

limited than might be the case in larger law firms. In any event the Tribunal accepts that it was reasonable for Mr Stevenson to have carried out the work himself; Mr Stevenson`s hourly rate of £265.00, whilst being towards the higher end of the spectrum of costs for a solicitor of his experience in Norfolk, is not considered to be unduly excessive. The Tribunal does not accept that the work would be straightforward and "*simplistic*" as suggested by the Applicants, and notes that the costs of £927.50 equate to slightly less than 4 hours in total, which would appear to be a reasonable and proportionate amount of time in relation to the transaction concerned.

17. The Applicants draw attention at paragraph 9 of the statement of case, to certain dates for work being undertaken by Mr Stevenson as having occurred in March, April and May 2019, when the claim notice was only served on 27 July 2019, adding "*So, that the entirety of the work detailed in Section A is claimed to have happened prior to the notice being served*." The Tribunal is grateful to the Applicants for drawing attention to this time discrepancy. It would appear that the dates set out in Section (A) of the Respondent`s Schedule of Legal Costs being at Page 8 of the statements of case section of the electronic bundle may be incorrect. However, the Tribunal notes that the items shown, being variously for attendances on client, considering the Lease and office copy entries, corresponding regarding the deposit, considering validity of the tenant`s notice, and drafting a counter-notice, clearly relate to the work which would have been undertaken after the claim notice was received. Whilst there may be a discrepancy as to the dates inserted in the schedule, the Tribunal nevertheless accepts that the Schedule refers to items of work which are in line with normal expectations and practice for a transaction of this type, and that the time units shown, being on the basis of 6 minutes per unit, are not unreasonable. Accordingly, the Tribunal accepts that the amount claimed for legal costs, being £927.50 plus VAT, is not unreasonable.

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.