

Y Tribiwnlys Eiddo Preswyl

Residential Property Tribunal Service (Wales)

Leasehold Valuation Tribunal (Wales)

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REASONS FOR DECISION OF LEASEHOLD VALUATION TRIBUNAL (WALES) LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993 s.60

Premises: 11 Albermarle Court, Cranleigh Rise, Rumney, CF3 4AL

LVT ref: LVT/0024/08/15-Albermarle

Order: 21 December 2015

Applicant: Anna Carmela Maria Lacobucci

Respondent: Ground Rents (Regis) Ltd

Members of Tribunal: Mr R S Taylor – Chairman
Mr R W Baynham FRICS

Introduction.

1. This is an application made by Anna Carmela Maria Lacobucci ("The Applicant") for a determination of Ground Rent (Regis) Limited's ("the Respondent") reasonable costs of dealing with a leasehold extension application. The application is made pursuant to s.60 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act").
2. The Respondent has set out its case for costs in a statement/argument dated 10 September 2015. The Applicant responded to this with submissions dated 23 September 2015. The Respondent rejoined with further submissions dated 11 November 2015. All submissions are appended with a statement of truth.
3. The Applicant is represented by Miss Francis Pitt of Rees Wood & Terry. The Respondent is represented by Miss Laura Cleasby, an in-house solicitor with Pier Management Limited, which is associated with the Respondent company. Pier Management Limited is based in Southend on Sea.

Background.

4. The terms of a new lease and the premium to be paid have been agreed between the parties. What remains between them is the sum of money which the Applicant should have to pay the Respondent on account of its reasonably incurred costs, as set out in s.60 of the Act.
5. Section 60 of the 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 this 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 s.56;

- c. The grant of a new lease under that section;

.....

(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.”

6. The exercise that we are undertaking is not the same as an assessment of costs in a civil court. However, there are similarities.
7. The surveyors’ costs in this matter have been agreed.
8. The written submissions disclose 4 main areas of contention, namely:-
 - a. The hourly rate at which Miss Cleasby seeks remuneration.
 - b. Certain items of time incurred.
 - c. VAT.
 - d. The disbursements, in particular the costs of a courier in serving a counter notice.

Hourly rate

9. Miss Cleasby seeks two rates. Up to 5 November 2014 she seeks £220 per hour + VAT and thereafter a rate of £258 per hour + VAT. Miss Pitt for the Applicant contends for an hourly rate of £217 per hour + VAT based upon the guideline National 1 rate for County Court guidelines.
10. Miss Cleasby advances her argument in the following way:-
 - a. Although the Respondent is based in Southend on Sea, Miss Cleasby works for Pier Legal Services Management Ltd which falls under Regis Group PLC. She works 3 days a week out of Southend on Sea and 2 days per week out of her employer’s Mayfair office.

- b. In her first submission Miss Cleasby states that she has applied a Mayfair (London 2) rate of £323 and then applied a discount of 20% to reflect the fact that she is in-house. This results in the £258 figure.
- c. In her second written submission Miss Cleasby refers to arriving at the figure of £258 by taking 2 days at a London rate (2) and 3 days a national rate 1. The submission states, "It has also already taken into account a 20% reduction for being in-house."
- d. We note that the claim for total time spent is 5 hours and 54 minutes (adjusting one item which claimed a period of time not divisible by 6 minutes) and that Miss Cleasby is in Southend on Sea for about 24 hours per week.

11. Looking at the above submissions in the round:-

- a. We do not accept that this is a matter of such complexity that only central London solicitors are able to deal with it, applying the test at s.60(2) of the Act. If this matter was not being dealt with in-house we could not see a justification for a London rate and we therefore cannot see how one is justified on an in-house rate.
- b. Miss Cleasby refers to making a discount for in-house services. We make no such deductions in this case, noting the observations of the Upper Tribunal in the case of *Alka v Arora* [2013] UKUT 0362 (LC) (sub nom *68B Maud Road*), particularly at [20] and [23].
- c. Given the balance of Miss Cleasby's working life, it appears to us that much of the work could have been undertaken whilst she was based in Southend On Sea in any event.
- d. We are confused by the second written submission, which refer to a composite rate to which a further in house deduction has been applied. We get to the figure of £259 per hour by taking $(323 \times 2) = 646 + (217 \times 3) = 651 = 1297/5 = £259$. If this analysis is correct, we cannot see how Miss Cleasby has applied a further discount to this to account for the fact she is in-house.

12. In any event, we find Miss Pitt's submission more attractive, namely, to allow an hourly rate of £217 which is the national 1 guideline rate. £217 is our determination.

Particular items in dispute

13. For ease of reference we have numbered all items in the Respondent's schedule of costs. We note that items 4, 6, 12, 13 and 17 remain in dispute.
14. Items 4 and 6 relates to the time taken in preparing notices. Miss Cleasby claims 36 minutes in respect of these two items. Miss Pitt says 12 minutes would be reasonable. Miss Cleasby has noted the detail of the work which goes into these notices. Whilst the notices do have standard elements to them we accept Miss Cleasby's submission that calculations must be made for the premium notice and that this will involve liaison with the valuer etc. We determine that 24 minutes is reasonable under this head.
15. Items 12 and 13 have been dealt with together by Miss Pitt and we propose to adopt that format. Whilst we accept there is a degree of complexity involved, we think that it would be unreasonable to incur 108 minutes. We think that 90 minutes would be reasonable to incur under this head.
16. Item 17 relates to post agreement correspondence. 56 minutes is claimed but we agree with Miss Pitt that 54 was probably intended to be claimed. We accept there is work to do post agreement, but determine that 42 minutes is the reasonable period of time to have spent.
17. By our calculation this results in 312 minutes being reasonably incurred, which results in an overall fee of £1,128.40 (rather than the £1,348.40 as claimed).

VAT

18. It appears to us that the Respondent will have to pay VAT in this instance and will not be able to claim it back. VAT will remain.

Courier Fee

19. The Respondent cites the case of *Calladine-Smith v Saveorder Ltd* [2011] EWHC 2501 (Ch) and the Southern panel decision of *Cavenish Mansions* (Chi/29UN/0C9/2014/0009) in support of justifying the courier fee. We do not accept that *Calladine* is authority for the proposition that notices must be served by courier. We accept that there may be cases where a courier is justified, for example, where there are only hours to go before the expiry of a notice period. However, in this case we have been provided with no evidence within the written submissions which

highlight this kind of problem. We cannot see why, on the submissions before us, it would not have been reasonable to send by Royal Mail Guaranteed Delivery service in this instance. We do not know the costs of this but have estimated a figure of £20 for this item only.

Overall

20. We shall leave the parties to calculate the precise sum owing in light of our determinations herein, if the parties remain in dispute as to how this may be computed the matter can be further referred back to us.

21 December 2015

A handwritten signature in black ink, appearing to read "Philip Taylor". The signature is written in a cursive, slightly slanted style.

Lawyer chairman