

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: 18A Queens Road, Penarth, CF64 1DJ

LVT ref: LVT/0005/04/17

Order: 6th July 2017

Applicant: Mr Jeffrey Hodgkinson

Respondent: Beili Bach Estates Ltd

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

ORDER

Further to the tribunal's directions dated 8 June 2017, the parties have each emailed the tribunal agreeing that the sum payable is £1,726.80.

1. The sum payable shall be £1,726.80

Dated this 6th day of July 2017

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

Lawyer chairman

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Residential Property Tribunal Service (Wales)
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Premises: 18A Queens Road, Penarth, CF64 1DJ

LVT ref: LVT/0005/04/17

Order: 8 June 2017

Applicant: Mr Jeffrey Hodgkinson

Respondent: Beili Bach Estates Ltd

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

ORDER

1. By **4pm on the 29 June 2017** the parties shall jointly lodge a document indicating the figure which they agree the Applicant should pay to the Respondent, arising as a result of our determinations.
2. In the event that the parties do not agree the figure they shall each set out by the same date their rival figures and why they are contended for.

Dated this 13th day of June 2017

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

Lawyer Chairman

Introduction

1. This is an application made by Mr Jeffrey Hodgkinson (“The Applicant”) for a determination of Beili Bach Estate Ltd’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. This matter was previously before the tribunal for a determination of the price of the lease extension, which was determined on the 19 December 2016.
3. The application in respect of determination of costs was received on the 19 April 2017. Directions were given by a procedural chairman on 28 April 2017. These required the Respondent, who bears the evidential burden of proving that his costs are reasonably incurred, to file “full details” of all costs claimed and to provide “... details of the Grade of fee earner, the hourly rates charged, the work undertaken, supported by time sheets, a narrative explanation of the work and any submissions in support of the costs claimed.” The Applicant was then given permission to file a response.
4. The directions provided for a determination of the issue of costs without an oral hearing, but with provision to make further application to the tribunal to be heard.
5. The Respondent’s statement is dated 15 May 2017. Although one was not formally directed, a statement of truth has not been appended. The statement exhibits a costs time sheet including 105 items and explains why the sum of £3,960 has been claimed in respect of legal costs and £600 has been claimed in respect of surveyor’s costs. It is unfortunate that the 105 items have not been individually numbered. So as to make this decision intelligible and not overly cumbersome, the tribunal has numbered each item 1 to 105.
6. The Respondent’s statement also explains the range of fee earners engaged in this work, from a partner at £200 ph, trainees at £100 ph, a paralegal at £75 ph and an administrative assistant at £50 ph.
7. The Applicant has responded with a statement dated 30 May 2017, again without a statement of truth. There is a table of 103 items which seeks to rebut in part the items in the Respondent’s schedule of costs one by one. It has 103 rather than 105 because the Respondent accepted on its schedule of costs that its first two items were not properly recoverable, as they related to a period before the notice claiming an extension was served. To make sense of the competing tables we have numbered each item in the Applicant’s table from 3 – 105, so that the numbers correspond with each other.
8. The Applicant submits at paragraph 4 of his statement that he “...disputes the costs documented within the completion statement, fee earners tariff and the time and fees ledger submitted.” Whilst we have accepted a number of the individual points made against particular items of costs challenged by the Applicant, he has not provided any suggested alternative fee rate, which we do not consider unreasonable. Accordingly, we do not make any deductions on account of the level of fees but confine ourselves to the issues as set out in the Applicant’s statement.
9. As already noted, directions have been given for the Respondent to set out its case and the Respondent bears the evidential burden of proving that the costs claimed are reasonably incurred. We have not been provided with extensive exhibits to the

statements and have had to try and discern what the costs item relates to by looking at the recorded item on the schedule which is then also annotated in handwriting on behalf of the Respondent. Not all of what is said is clear or backed by supporting documentation which would demonstrate the character of the work undertaken. On this basis, where the Applicant has made a challenge to particular items we have reminded ourselves of where the evidential burden lies and if the typed and handwritten annotations do not properly explain, characterise and justify the expenditure, we have then disallowed it. We have had to apply a proportionate approach to the determination with little material upon which to base our decision.

10. 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.”

11. We note two points from Hague (sixth edition at 32-34), namely:-

- a. The grant of a new lease under s.56, “This has been construed as meaning ‘the costs of and incidental to the drafting and execution of the new lease’ and will not include the costs of arguing or negotiating the claim. *Huff v Trustees of the Sloane Stanley Estate* Unreported 1997 LVT.
- b. A valuation fee was allowed even though a valuation had been carried out earlier when a voluntary lease extension was being discussed.

12. The exercise that we are undertaking is not the same as an assessment of costs in a civil court. However, there are similarities.

13. So far as the legal costs are concerned, many of the arguments can be bunched into groups. We have done the best we can with the limited material before us and have sought to approach this in a proportionate manner rather than issuing further directions for receipt of further evidence. We set out in the schedule attached our determinations of the legal costs issues applying the approach we had explained above. We expect the parties to calculate the final total in light of our determinations and to lodge that figure as being agreed, or not, by 4pm on the 29 June 2017.

14. In respect of the surveyor’s fee we note that a figure of £600 has been claimed. It is noted that the same surveyor appears to have been involved in a valuation of the property prior to the service of any notice for which the applicant paid a fee of £420 inclusive of VAT. The question arises is whether it is reasonable for a further fee to be raised once the notice was served and tribunal proceedings were in prospect. We

remind ourselves of the note in Hague (above) that a further valuation may be permissible. Whilst we note that point of principle, here we have the same valuer undertaking the same or very similar piece of work within a short period of time. In all the circumstances we consider £600 is not reasonably incurred, but that £300 should be allowed for updating work to be undertaken.

13 June 2017

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

Lawyer chairman

SCHEDULE TO 18A QUEENS ROAD COSTS DECISION

Tribunal determination number	Item number from schedules	Respondent submission	Applicant submission	Tribunal determination
1.	3, 4,8,9,10,11,40,41,42, 83,85,88,90,92,93,95,96, 97,98,99,100,101,102,103, 104,105	Applicant is liable	Applicant accepts liability	These items are reasonably payable
2.	5, 6	Email in from Applicant Email exchange with Applicant re deposit	Items relate to deposit payment	Item 5 is disallowed. We have been provided with a copy of this email and it does not appear to relate to the deposit and merely states the Applicant will be away for 10 days. Item 6 is allowed. The Respondent is statutorily entitled to ask for a 10% deposit and it is necessary and reasonable to correspond about that.
3.	7	Email in OS	Unable to determine what this	There is no handwritten annotation and it is unclear what

Tribunal determination number	Item number from schedules	Respondent submission	Applicant submission	Tribunal determination
			relates to	this relates to. The burden of proving reasonably incurred is not discharged, this item is not allowed.
4.	12	Personal service of counter notice on applicant	Personal service disproportionate	There is no explanation as to why personal service was adopted or necessary rather than secured post. This item has not been proved. £20 is allowed for the cost of secure post.
5.	13	Letter to client	Concedes liability if this relates to information about the service of a counter notice.	The Applicant does not hotly contest this item and it was incurred on the same day as the service of the counter notice. Upon this basis, on the balance of probabilities we accept that this is reasonably incurred

Tribunal determination number	Item number from schedules	Respondent submission	Applicant submission	Tribunal determination
6.	14, 15	Communications with Applicant via email	Relates to deposit payment	These items have been reasonably incurred. The Respondent is statutorily entitled to ask for a 10% and it is reasonable to correspond in respect of this.
7.	16	Letter re deposit	Sent in error as money previously deposited	This item is disallowed as it would appear that the money had been paid prior to this date (see email from Cerys Thomas dated 12 April 2016)
8.	17	Letter to update client	Not clear what it relates to	Item not allowed as Respondent not demonstrated what this relates to.
9.	18	Research LVT	Applicant not liable	Item disallowed – see s.60(5) LRHUDA 1993

Tribunal determination number	Item number from schedules	Respondent submission	Applicant submission	Tribunal determination
10.	19	Letter re payment of deposit	Sent in error	This item is disallowed – see our determination 7 above.
11.	20	Telephone message re deposit	Sent in error	This item is disallowed – see our determination 7 above.
12.	21	Monies received	Error	This item is disallowed – see our determination 7 above.
13.	22 – 33	Doing the best the tribunal can these items all appear to relate to the attempted negotiation of the premium.	Not allowed as relating to premium negotiation	Items disallowed – see reference to case of <i>Huff</i> in body of our decision.
14.	34	Letter to valuer	Relates to LVT	This item is allowed. It is reasonable to correspond with valuer. Not obviously relating to tribunal.

Tribunal determination number	Item number from schedules	Respondent submission	Applicant submission	Tribunal determination
15.	35	Letter to Mallards to Valuer re RPT	Relates to LVT	This item is disallowed. By Respondent's own handwritten annotation it is clear this cost relates to the tribunal proceedings.
16.	36	Update	Not liable if relates to LVT	Disallowed. This is the same date as correspondence has been sent in respect of LVT and Respondent has not shown what this relates to.
17.	37	Letter to LVT	Not liable as LVT	Disallowed as LVT
18.	38	Letter to Applicant re LVT	Not liable as LVT	Disallowed as LVT
19.	39	Review Applicant's entitlement to claim (dated 13.9.16)	Counter notice served at this stage so entitlement already established.	Applicant submissions accepted and item disallowed.

Tribunal determination number	Item number from schedules	Respondent submission	Applicant submission	Tribunal determination
20.	43 – 47	Reply to email from Lynne	Accepted if relates to valuation	Items allowed on basis of handwritten annotation by Respondent stating these relate to valuation instruction.
21.	48 – 80	Doing the best we can these items appear to be related to LVT proceedings	Not liable as LVT	Disallowed as LVT
22.	81	Excluded	Na	Na
23.	82	Reply to email from Marcus Brace	Not liable if LVT	Disallowed as not clear if relates to LVT
24.	84	Letter re amended valuation	Relates to LVT	Disallowed as relates LVT
25.	86	telecon advice	Relates to LVT appeal	Disallowed as relates to LVT
26.	87	Letter re telecon advice	Relates to LVT appeal	Disallowed as relates to LVT

Tribunal determination number	Item number from schedules	Respondent submission	Applicant submission	Tribunal determination
27.	89	Letter re proposed lease extension	Duplicate of above	Not charge indicated so no figure allowable under this head.
28.	91	Letter Mallard re Fees	Not liable as relates to LVT	Disallowed as relates to LVT
29.	94	Letter to Mallard re invoice	Not liable as relates to LVT	Disallowed as relates to LVT