UPPER TRIBUNAL (LANDS CHAMBER)

UT Neutral citation number: [2013] UKUT 0362 (LC)
LT Case Number: LRX/171/2012

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

LANDLORD AND TENANT – leasehold enfranchisement – reasonable costs – in-house solicitor – hourly charging rate – value of work undertaken – section 60 Leasehold Reform Housing and Urban Development Act 1993 – Appeal allowed

IN THE MATTER OF AN APPEAL AGAINST A DECISION OF THE LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT PANEL

BY

ALKA ARORA **Appellant**

Re: 68B Maud Road
London
E13 OJU

Decision upon written representations

The following cases are referred to in this decision:
Henderson v Merthyr Tydfil Urban District Council [1900] 1 Q.B. 434
Re Eastwood (deceased) [1975] Ch. 112
Cole v British Telecommunications Plc [2000] 2 Cost L.R. 310
Om Property Management Limited [2012] UKUT 102 (LC).

DECISION

Introduction

1. This is an appeal, dealt with on written representations, against a decision of the Leasehold Valuation Tribunal for the London Rent Assessment Panel ("the LVT") given on 25 September 2012 by which it determined the legal costs payable by the joint tenants of a flat at 68B Maud Road, London E13 on the grant to them of a new lease under Part I of the Leasehold Reform Housing and Urban Development Act 1993 ("the 1993 Act"). The appellant is the owner of the freehold interest in the flat and the landlord under the new lease.

2. The tenants' entitlement to the new lease was largely un-contentious. They gave notice under section 42 of the 1993 Act on 23 August 2011 and the principle that a new lease should be granted was not disputed in the appellant's counter-notice served on 17 October 2011. The parties reached agreement on the premium payable and on the terms of the lease and by June 2012 the only outstanding matter was the amount of the reasonable costs which the tenants were liable to pay to the appellant under section 60 of the 1993 Act.

3. Section 60(1) of the 1993 Act provides that:

> "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."

4. The costs claimed by the appellant for work carried out by her solicitor totalled £1,760.00, comprising seven hours work at a rate of £250 per hour plus a nominal fee of £10 for disbursements. That figure was supported by a summary of the time spent on the matter by Mr Ajay Arora, a solicitor of 8 years post qualification experience who had formerly practised in his own firm but who is now employed by a company owned by members of the appellant's family. Mr Arora refers to himself in this matter as the appellant's in-house solicitor.

The proceedings before the LVT

5. By the time the application came before the LVT there was no dispute over the reasonable cost of the valuation obtained by the appellant, but the costs claimed for the work carried out by Mr Arora in investigating the claim and in dealing with the grant of the new lease were energetically contested. Two points were taken on behalf of the tenants. First it was said that the appellant was not entitled to reimbursement of any costs on the grounds that Mr Arora was employed by the family company, rather than by the appellant, and that she had therefore incurred none of the costs claimed. Secondly, it was said that the amount of the costs claimed was excessive.

6. Both parties were represented by solicitors at an oral hearing before the LVT. In relation to the first objection on behalf of the tenants it was accepted that in principle a company may recover the costs of work done by an in-house solicitor, and the suggestion that Mr Arora was not the in-house solicitor of the appellant was met by the production of an agreement between the appellant and Mr Arora under which he was employed "in the capacity of in-house solicitor" and under which he was entitled to be paid at the rate of £250 per hour subject to a minimum payment equivalent to £2,500 per year. The LVT concluded on the basis of this material that the appellant was perfectly entitled to use Mr Arora as her solicitor and that she was also entitled to require the leaseholders to pay her professional costs of doing so under section 60 of the 1993 Act.

7. When it came to consider the quantum of the costs claimed the LVT began by acknowledging that:

> "If the landlord had chosen to use a specialist firm of solicitors in this matter, the costs to the leaseholders might have been considerably more expensive."

8. The LVT then made a number of general observations:

(1) First, it considered it well established that a landlord was entitled to make her own choice of solicitor.

(2) Secondly, a landlord could not be required to seek alternative or cheaper sources of legal services.

(3) Thirdly, the landlord's entitlement to recover reasonable professional costs subject to section 60(2) of the 1993 Act which provides that costs are only to be regarded as reasonable if and to the extent that they might reasonable be expected to have been incurred if the circumstances have been such that the landlord was personally liable for meeting them.

9. In paragraph 21 of its decision the LVT first considered the rate of charge for the work carried out by Mr Arora, as follows:

> "First, we consider that Mr Arora's charges are on the high side for an in-house solicitor. In-house solicitors do not have the costs and expenses of running a private practice, such as office rent, staff salaries, to say nothing of the expense of maintaining professional indemnity cover. For these reasons we determine that the reasonable hourly rate for an in-house solicitor is £200 for a case such as this one."

10. The LVT then considered the time spent by Mr Arora and said:

> "As to the work required we agreed with [the tenants' solicitor] that it is difficult to understand why some eight hours work is claimed. We consider that it is reasonable in a relatively straight forward case such as this for a solicitor of Mr Arora's experience to claim five hours of his time."

11. The LVT here overstated the time claimed by Mr Arora which, as it correctly recorded elsewhere, was seven hours rather than the eight suggested in paragraph 21 of the decision.

12. The LVT therefore determined that the leaseholders should pay £1,000 towards the landlord's legal costs.

The appeal

13. The appellant was refused permission to appeal by the LVT, but renewed her application to the Tribunal and on 22 March 2013 permission was granted by Her Honour Judge Alice Robinson limited to the question whether the LVT erred in law by reducing Mr Arora's charging rate on the grounds that he was an in-house solicitor.

14. The tenants have elected not to respond to the appeal on the grounds that the sums involved are too small to make their participation economic. I sympathise with that view but equally recognise that for the appellant and her family, who own a significant ground rent portfolio, the matter is of rather wider significance. I have dealt with the appeal on the basis of written representations alone.

15. In her written submissions the appellant relies on a number of well-known authorities in support of the proposition that the proper method of assessing the costs of an in-house solicitor is to adopt the same approach as would have been adopted had the solicitor been in independent practice. She submits that the LVT's conclusion in paragraph 21 of its decision that Mr Arora charges were "rather on the high side for an in-house solicitor" failed to apply this principle and was therefore wrong in law.

16. The first of the decisions relied on by the appellant is *Henderson v Merthyr Tydfil Urban District Council* [1900] 1 QB 434. The Council employed a qualified solicitor to prosecute and defend legal proceedings in return for an annual salary and reimbursement of expenses. Having successfully defended proceedings brought against it the Council obtained an order for its costs but

the registrar of the county court disallowed every item in the employed solicitors bill of costs except his out of pocket expenses. On appeal Channell J considered the application of the indemnity principle to the cost of work undertaken by employed lawyers. He acknowledged that the principle that a successful party was entitled to recover no more than the amount payable, as client, to its own solicitor for the work undertaken on his behalf was not easy to apply when the solicitor's remuneration related both to work done in the particular piece of litigation and to other work. In referring to the solicitor's annual salary he said:

> "No doubt the sum of £400 per annum was paid to the solicitor in respect both of the litigious and the non-litigious work done by the solicitor for the district council. A certain proportion of the £400 – it is quite impossible to say how much – was, therefore, paid in respect of this particular work which was done by the solicitor in this action. It is for the party objecting to the allowance of the usual costs under such circumstances to show that the allowance will give more than an indemnity, and in all ordinary cases, such as the present, it is impossible for them to show it.
>
> It must be assumed until the contrary is shown that £400 is a proper sum to be paid to the solicitor for his whole years work and also that 11 pounds 12 shillings and 7 pence was a proper sum to be paid to him for this part of his work. The district council must therefore be presumed to be paying their solicitor £11.12.7 out of the £400 for this very work. It seems to me that the Registrar was clearly wrong in disallowing the whole of the amount charged by the solicitor in respect of work done by him, and, further, that unless something could be shown which it is most improbable in this case can be shown, the whole ought to have been allowed, and, therefore, I think that there must be a review of the taxation. Cases such as this arise frequently, and I believe that they are always dealt with in the High Court in the way I have mentioned."

17. In *Re Eastwood (deceased)* [1975] Ch 112 the Court of Appeal considered the entitlement of the Attorney-General to costs in successful litigation conducted on his behalf by a senior solicitor in the Treasury Solicitor's office. The Court of Appeal was not attracted by the complexity of requiring a successful party with its own legal department to produce figures to demonstrate that the expenses of that department, analysed and broken down and apportioned to the particular case would not be less than the reasonable costs to be allowed had the litigant employed the services of an independent solicitor. Having considered the improbability that the in-house solicitor's bill might exceed that of an independent solicitor, the Court of Appeal commended a much simpler approach:

> "It is a proper method of taxation of a bill in a case of this sort to deal with it as though it were the bill of an independent solicitor, assessing accordingly a reasonable and fair amount of a discretionary item such as this, having regard to all the circumstances of the case. … There may be special cases in which it appears reasonably plain that the [indemnity] principle will be infringed if the method of taxation appropriate to an independent solicitor's bill is entirely applied: but it would be impracticable and wrong in all cases of an employed solicitor to require a total exposition and breakdown of the activities and expenses of the department with a view to ensuring that the [indemnity] principle is not infringed, and it is doubtful, to say the least, whether by any method certainty on the point could be reached."

18. More recent applications of the principle that costs incurred by an in-house solicitor should be assessed in the same way as the bill of an independent solicitor can be found in the decision of the Court of Appeal in *Cole v British Telecommunications Plc* [2000] 2 cost LR 310 and in the Tribunals decision in *Om Property Management Limited* [2012] UKUT 102 (LC).

Discussion and decision

19. The sole reason given by the LVT for reducing the hourly rate applied to the work done for the appellant by Mr Arora from £250 to £200 was that his "charges are on the high side for an in-house solicitor." The LVT identified particular costs and expenses of running a private practice which, as an in-house solicitor, Mr Arora would not have to meet, office rent, staff salaries and professional indemnity insurance, and reasoned implicitly from that that his charging rates should therefore be lower than those of a solicitor of equivalent experience and seniority in independent practice.

20. The LVT's approach seems to me to be open to three objections. First, while the particular costs which it mentioned were not met personally by Mr Arora, they were not avoided altogether. Office accommodation and administrative support for an employed or in-house solicitor is not a gift of nature; its expense is met by the solicitor's employer. While the expense of insurance may be avoided, the risk which it is designed to guard against is carried by the employer; in principle I can see no reason why the sum representing the reasonable cost to the employer of a solicitor undertaking work on an uninsured basis should not include an element to reflect that risk.

21. Secondly, by identifying specific costs which Mr Arora would not have to meet, and which therefore ought not to be reflected in his charging rate, the LVT was embarking on exactly the sort of analysis which the authorities cited to it indicate is inappropriate. It would be impractical, and contrary to well established principle, to require a landlord to justify the costs claimed for legal work undertaken by an employed solicitor by apportioning the overheads of its business to a particular transaction.

22. Finally, the LVT's focus on the terms on which Mr Arora worked and the expenses he did not have to meet, drew its attention away from the product or object of Mr Arora's engagement, namely the investigation of the tenants' claim and the grant of the new lease. Although it involved an element of technical skill and a knowledge of the relevant law, the LVT correctly regarded the grant of the lease in this case as a piece of work of no special complexity. This was not a case in which the involvement of a particularly skilled or experienced practitioner would provide some service of additional value to the client. Whether carried out by a specialist solicitor in an independent firm or an in-house generalist like Mr Arora, this relatively straightforward work had comparable value to the appellant which ought in either case to be reflected in the reasonable costs for which the tenants were liable under section 60 of the 1993 Act. Having acknowledged that the costs payable by the tenants might have been considerably greater if the appellant had chosen to use a specialist firm of solicitors in this matter, the LVT did not then explain why the reasonable costs payable by the tenants in respect of the same work should be less when it was carried out by Mr Arora.

23. The evidence before the LVT was that the hourly rate claimed for Mr Arora's work was within the relevant guideline rates issued by the Senior Courts Costs Office in its Guide to the Summary Assessment of Costs. By applying a different hourly rate to the work carried out for the applicant by Mr Arora purely on the grounds that he was an in-house solicitor, the LVT was in error. It ought to have asked itself whether a total charge of £1,750 was a reasonable charge for the work undertaken, irrespective of the terms on which the solicitor carrying out the work was engaged. In my judgment the LVT's decision was wrong in law, the appeal must be allowed and the decision set aside.

24. The guideline hourly rate identified by the Senior Court Costs Office for a solicitor of Mr Arora's seniority is £229 - £267. Those rates are reflective of the rates charged by individual firms of solicitors for routine work in civil litigation carried out by a grade A fee earner. Although, as the LVT pointed out, this case was not particularly complicated, the appellant's decision to entrust it to Mr Arora was not an unreasonable one nor was it suggested that he was over-qualified to undertake the work. On the contrary, as the LVT appeared to acknowledge, the appellant could reasonably have employed a more specialist solicitor. In those circumstances there seems to me to be no good reason to prevent the appellant from recouping the costs incurred in connection with the grant of the new lease at a rate falling in the middle of that band. The appropriate charging rate applied to the time spent on the work involved in this enfranchisement claim is, in my judgment, the £250 per hour claimed for it by the appellant.

25. The Tribunal has already refused permission to appeal the decision of the LVT to limit to five the number of hours which it was reasonable for Mr Arora to devote to this matter. Applying the claimed rate to that work produces a figure of £1,250. Standing back and looking at that figure I am satisfied that it is a reasonable one for the investigation of the tenants' entitlement to a new lease and for the work in connection with the grant of the lease in this case. It is no greater than might reasonably be expected to have been incurred if the circumstances have been such that the appellant was personally liable for meeting them. Accordingly the appropriate sum payable by the tenants under section 60(1)(a) and (c) of the 1993 Act is £1,250.

Dated 31 July 2013

Martin Rodger QC, Deputy President