

UPPER TRIBUNAL (LANDS CHAMBER)



Neutral Citation Number: [2017] UKUT 0126 (LC)

Case No: ACQ/38/2016

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

COMPENSATION - compulsory purchase - acquisition of flat in multi-storey block - costs of unqualified lay person in advising claimant - removals and storage costs - £2,250 awarded as compensation

IN THE MATTER OF A NOTICE OF REFERENCE

BETWEEN:

KERRY LAMBERT

- and -

KINGSTON UPON HULL COUNCIL

Re: 325 Milldane,

Orchard Park,

Kingston upon Hull

Before: A J Trott FRICS

The Royal Courts of Justice, Strand, London WC2A 2LL

on

17 November 2016

The Claimant appeared in person

Ian Ponter, instructed by Hull City Council Town Clerk's Service, for the Respondent

No cases are referred to in this decision.

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DECISION

Introduction

1.

In October 2010 Kingston Upon Hull City Council ("the Council") resolved to demolish and redevelop the multi-storey blocks of flats located at Orchard Park, Hull. One of these blocks was Milldane which contained 122 flats of which four were occupied by long leasehold owners. Mr Kerry Lambert was the leaseholder of Flat 325 Milldane.

2.

The Council resolved to purchase the leasehold flats by voluntary agreement and offered to pay compensation on the basis of open market value as though the properties were being compulsorily

acquired. They agreed to pay a home loss payment of 10% of the open market value of the property subject to a minimum payment of £4,700, together with a “disturbance payment” and “reasonable agreed surveyors and legal costs”.

3.

On 13 June 2012 Mr Lambert accepted an offer from the Council in the sum of £23,967.37 for the open market value of the leasehold interest (£17,000); a home loss payment (£4,700); an ex gratia goodwill payment (£1,800); and reimbursement of overpaid service charges (£467.37). Completion of the purchase took place on 23 August 2012 but left outstanding the settlement of the disturbance payment and Mr Kerry’s legal and surveyor’s costs.

4.

The legal costs, amounting to £300, are not in dispute.

5.

Mr Lambert had appointed Mr Roland Craft to “fully negotiate and advise on my behalf” on 21 November 2011. Mr Craft was apparently recommended to him by the concierge of the Milldane block of flats. Mr Craft was not a chartered surveyor and in the evidence he was described as an antiques dealer.

6.

Mr Craft submitted an invoice for his services to the Council on 22 August 2012 in the sum of £7,658. VAT was not charged. The invoice was raised by Viking International Associates and signed by Mr Craft as “Senior Consultant”. Payment was to be made to R H Craft & Associates. The Council replied to Mr Craft on 9 October 2012 saying they had not commissioned his services and that he should make his claim for payment directly to Mr and Mrs Lambert. The invoice was re-issued to Mr Lambert on 2 March 2015. Mr Craft subsequently died and Mr Lambert, who has not paid the invoice, does not know Viking’s current position regarding payment.

7.

Removal costs were claimed in the sum of £1,500 including VAT. An invoice in this amount was raised by Viking (Hull) Limited on 21 August 2012. The invoice itemised the work done as:

“(1) To itemise and securely wrap and box all contents from the above address [325 Milldane].

(2) To transport all contents and place in secure storage at Lyon Warf Wincolmllee, Hull as instructed by client [Mr K Lambert]”.

This amount was said to have been paid in full in a letter to Mr Lambert from Viking Logistics (UK) Ltd (previously known as Viking (Hull) Ltd) dated 2 March 2015.

8.

The Council considers the heads of claim for surveying services and removal costs to be excessive and unjustified and has offered £750 and £450 in settlement respectively.

9.

The final item in dispute is storage costs. Mr Lambert’s belongings were not moved to his alternative accommodation since by this time he and Mrs Amanda Lambert had divorced and he moved from 325 Milldane into rented rooms. Consequently he had to put his furniture and effects into storage. Mr Craft was again involved since he had storage facilities available at Lion Warf where he apparently stored antiques. He charged Mr Lambert £25 per week storage costs for the period 21 August 2012

until 25 February 2015. Viking Logistics (UK) Ltd invoiced Mr Lambert on 26 February 2015 in the sum of £4,014.24 plus VAT. Mr Craft was a director of that company.

10.

The Council correctly pointed out that the period between 21 August 2012 and 25 February 2015 was 132 weeks whereas the invoice was costed as though it was 160.5 weeks. The correct invoice figure should have been £3,300. Viking Logistics (UK) Ltd issued a revised invoice on 3 June 2015 for £3,275 plus VAT which was paid in full. The Council did not accept the storage claim as legitimate because (i) it doubted that the storage facility existed; and (ii) it believed Mr and Mrs Lambert had another property to which they could have relocated, namely Cherry Trees, North Moor, Cottingham which was registered in Mrs Lambert's name on 15 November 2007.

11.

The claimant appeared in person and both he and Mrs Amanda Lambert gave evidence of fact.

12.

Mr Ian Ponter of counsel appeared for the Council and called Mr Christopher Dearing, the Council's Renewals Team Leader, as a witness of fact.

13.

The reference was made by consent and was heard under the Tribunal's simplified procedure.

Issue 1: surveyor's costs

14.

Mr Lambert said that Mr Craft had told him he could take care of everything to do with his claim. He instructed him on that basis and informed the Council on 21 November 2011. There is no evidence that Mr Craft contributed anything of value (or at all) to the assessment of the open market value of Mr Lambert's leasehold interest. He appears to have held no surveying qualifications and there is nothing to suggest that he had experience in the residential property market. All that is known is that he was an antiques dealer recommended to Mr Lambert by the concierge of the Milldane block of flats.

15.

Mr Craft charged his services at £70 per hour and claimed a total of 109.4 hours between November 2011 and August 2012 (of which 39 hours were said to have been spent on telephone calls). Given that this was the acquisition of a leasehold flat worth £17,000 I consider this claim to be excessive and unsupported. Furthermore it appears that Mr Lambert has to date paid nothing in respect of this invoice and he and Mrs Lambert do not know what Viking International Associates' position is concerning payment following Mr Craft's death.

16.

In my opinion the Council took appropriate steps to notify Mr Lambert that it would meet his reasonable costs of instructing a chartered surveyor to undertake a valuation. It is not reasonable to expect the Council to pay for the unlimited time of an unqualified lay person to undertake specialist negotiations. Mr Lambert said that the Council had been happy to deal with Mr Craft and that it was due to his intervention that the Council's offer increased by £5,000. The Council's first formal offer appears to have been £15,200 for the leasehold interest made on 1 July 2011 which was subsequently increased to £17,000. There is no evidence to indicate what, if anything, Mr Craft did to obtain such

an increase, but I accept that Mr Craft took an active role in negotiating both an increase in the Council's ex gratia payment and the reimbursement of overpaid service charges.

17.

I consider that the Council's offer of £750 towards Mr Lambert's costs of instructing Mr Craft is reasonable subject to proof of payment by Mr Lambert of at least that amount in respect of the invoice from Viking International Associates.

Issue 2: removal and storage costs

18.

The Council produced convincing photographic and documentary evidence to show that the removal of Mr Lambert's furniture and effects from Milldane was not undertaken by a professional removals firm but by the use of an open dropside truck and a small van. There was no itemised list of the goods removed and nor was there evidence that the contents had been securely wrapped and boxed as was stated on the invoice from Viking (Hull) Limited dated 21 August 2012. Mr Lambert said that Mr Craft had obtained a quotation from A1 Removals in the sum of £1,200 plus VAT and that they could arrange storage at a rate of £30 per week. Mr Lambert also said that "many of the other quotes were a lot higher", but no details of any such quotes were provided.

19.

I note that in email correspondence to Mr Dearing dated 31 May 2012 Mr Craft said:

"With respect of the removal and storage which we have discussed the figure claimed is based on collection from Milldane top floor flat and removed to storage to Viking Logistics Limited's warehouse, 388 Wincolmlee, Hull [and stored] for a period of 6 months which it is a fair period to get themselves re-housed.

The total cost to be in the region of £1,250 plus VAT."

20.

The subsequent invoice from Viking (Hull) Ltd referred to transporting "all contents and place in secure storage at Lyons Wharf Wincolmlee, Hull as instructed by client." The invoice was in the sum of £1,250 plus VAT.

21.

It is reasonable to infer from these documents that the invoice was not just for removals but included six months storage as well. Given that Mr Dearing considered £450 to be a fair figure for removals, this would leave £800 as the cost of six months storage, or just over £30 per week.

22.

It appears that the Council accepted the principle of such storage. On 31 July 2012 Ms Carmen Taylor, the then Renewals Team Manager, said in an email to Mr Craft:

"You mentioned in our telephone conversation that you were going to arrange storage of Mr Lambert's furniture as per agreement with Chris Dearing. I believe this was agreed and on a time limit only and that we would only be able to pay this from the date of completion."

During examination in chief Mr Dearing was asked about the extent of any agreement regarding storage and he confirmed that it was "purely for that period", i.e. for six months.

23.

The (revised) total claimed for storage is £3,930 including VAT which was paid by Mr Lambert, apparently by making weekly cash payments of £25. In my opinion he had already paid for the first six months of storage when he settled the invoice for £1,250 plus VAT.

24.

Mr Dearing said that the Council believed that such storage was unnecessary because Mr Lambert appeared to have a property to which he could relocate, namely Cherry Trees in Cottingham owned by Mrs Lambert (even though it had previously accepted that a period of six months storage was reasonable). But Mr Dearing apparently did not know that Mr and Mrs Lambert were divorced on 15 October 2007. They were reconciled in late 2013 with Mr Lambert apparently moving to Cherry Trees in late 2014. At the valuation date Mr Lambert could not move to Cherry Trees and instead he lived in rented rooms. That being so it was reasonable for Mr Lambert to put his furniture and effects into storage.

25.

Mr Dearing produced evidence that Mr and Mrs Lambert were on the electoral roll for Cherry Trees in 2004. The Proprietorship Register on the Office Copy Entry shows the property was purchased on 18 November 2002 with Mrs Lambert becoming the registered proprietor on 15 November 2007, i.e. shortly after the date of Mr and Mrs Lamberts' divorce (although no evidence was adduced to show whether or not the property was transferred into Mrs Lambert's name as part of the divorce proceedings).

26.

Mr Dearing queried whether Mr and Mrs Lambert had resided in 325 Milldane for the previous 12 months; a requirement to qualify for a home loss payment. Whatever his doubts may have been they were not strong enough for the Council to withhold such a payment.

27.

There is no doubt that furniture and effects were removed from 325 Milldane; Mr Dearing's evidence shows this to be the case. The Council raised doubts about whether it was then actually stored at Lions (previously Lyons) Wharf at all; Mr Dearing's evidence was that the building did not appear to provide the necessary structural requirements for storage since it was not "pest proof" and had large sections of roof covering missing (as at May 2015). Mr Lambert said that the storage area was out of sight on the lower floor at the rear of the building.

28.

The Council accepted the principle of storage for a six month period shortly before it took possession of 325 Milldane. I am satisfied that Mr Lambert's furniture and effects were removed from his flat and, on balance, that they were placed into storage at Lions Wharf. In my opinion a period of six months storage was reasonable in all the circumstances and had been accepted by Mr Craft as a fair period. I accept Mr Dearing's figure of £450 as being reasonable for removal costs and I think that the balance of the invoice dated 21 August 2012 of £800 is a reasonable figure for six months storage of Mr Lambert's possessions. I therefore award a total of £1,500 (including VAT) as compensation for removals and storage.

Determination

29.

I determine the claim in respect of Mr Craft's assistance at £750 (subject to proof of payment by the claimant) and removals and storage expenses at £1,500 making a total of £2,250.

30.

This decision is final on all matters other than the costs of the reference. At the hearing Mr Ponter indicated that a sealed offer had been made and under these circumstances, despite the hearing having been held under the simplified procedure where costs are not normally awarded, the parties may now make submissions on such costs and a letter giving directions for the exchange and service of submissions accompanies this decision.

Dated: 20 March 2017

A J Trott FRICS

Member, Upper Tribunal (Lands Chamber)

COSTS ADDENDUM

31.

I have now received submissions on costs from both parties.

32.

On 14 November 2016 the Council made an unconditional offer of £1,850 in full and final settlement of the claim. The amount of my award was £2,250, £750 of which was subject to proof of payment by the claimant (see paragraph 6 and 17 above). So the offer, which was made just three days before the hearing, exceeded the award if the £750 is left out of account (since it had not been paid by the date of the hearing) but was less than the award if it is taken into account.

33.

The Council submits that each party should bear its own costs while the claimant submits that he should receive his costs amounting to £1,772.

34.

The hearing was heard under the simplified procedure where costs will only be awarded if there has been an unreasonable failure on the part of the claimant to accept an offer to settle, or if either party has behaved otherwise unreasonably, or the circumstances are in some other respect exceptional. In my opinion the appropriate award in this reference is that each party should bear their own costs and I so determine.

Dated: 13 April 2017

A J Trott FRICS

Member, Upper Tribunal (Lands Chamber)