

LEASEHOLD VALUATION TRIBUNAL

In the Matter of the Commonhold and Leasehold Reform Act 2002 Schedule 11,
Paragraph 5

And in the matter of Flat 3, 103A Highfield Lane, Southampton SO17 1NJ

Between:-

Ryan Harris

Applicant

And

Darcy Construction
Ltd

Respondent

Hearing: 18th May 2009

Tribunal: T A Clark (Chairman)
P.D Turner Powell FRICS

Application:

This is an application, to be determined without a hearing, as to whether an administration payment is properly payable by the Applicant to the Respondent.

The Law:

The Commonhold and Leasehold Reform Act 2002 Schedule 11 relates to the reasonableness or otherwise of administration charges.

Paragraph 1 defines administration charge as being

"an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly -

(a) ...

(b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant ...

Paragraph 2 provides that a variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Paragraph 5 of that schedule provides that a person may apply to the Tribunal for a determination as to whether an administration charge is payable and if so

(a) the person by whom it is payable

(b) the person to whom it is payable

(c) the amount which is payable

(d) the date at or by which it is payable, and

(the manner in which it is payable

subsection (5) goes on to provide that "the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

The Facts/Evidence

This application was determined as a paper application by agreement between the parties.

The Tribunal read the following documents

The application and Statement in support dated 23rd March 2009 with all documents appended thereto.

The Statement in Reply dated 27th April 2009 with all documents appended thereto.

The chronology of relevant events taken from the papers is as follows;

In or around May 2008 the Applicant proposed selling his leasehold interest in the property.

A prospective purchaser was duly found and questions were put to the Applicants solicitor Paul Davies of Coffin Mew LLP.

The solicitor put these questions in turn to the Respondents, being the Management Company holding such information. Such request was made on 20th May 2008.

On 30th May 2008 a chase up letter was sent to the Respondents from the Applicants solicitor. The letter also stated as follows;

"Further the buyers have requested additional information, and we would be most grateful if you could answer the following points.: ..."

These points were 6 in number.

On 2nd June 2008 the solicitors for the respondents Kaura and co wrote back stating that they required "an irrevocable undertaking to be responsible for our estimated costs of £175 plus VAT and disbursement and those of your client also estimated of £175 plus VAT and disbursements whether or not this matter proceeds to a completion"

On 4th June 2008 Coffin Mew wrote back in response to the letter of 2nd June stating that

" Having spoken to our client he confirms he will agree to pay your two fees of £150 plus VAT, however no more as these fees are at the top end of "reason"

On 6th June Kaura and Co responded "

We are instructed that unless both our clients and our Firms Fees as its legal adviser's fees are met and an undertaking provided as set out in our least letter our client will not deal with your enquiries or enter into any further correspondence

We do not consider our quoted estimated fees to be unreasonable bearing in mind that both a partners time and that of a Director of the Company is involved in dealing with your extensive enquiries. "

Ultimately the sum of £411.25 was paid on 11th June 2008. This was made up of £175 times 2 equalling £350 plus VAT thereon in the sum of £61.25.

The reply from the respondents states that there was a conversation between the Applicant and Mrs Mew that the further enquires could be dealt with direct by him through his solicitor but that the Applicant responded that he wished it to be dealt with by the respondent. The Respondents assert that Mr Harris then agreed to a charge out rate to respond to these enquires of £175 per hour plus VAT.

On 19th June Kaura and Co then wrote

Further to our two letters of yesterdays date we are informed by our client that the director involved has to now spent 2 hrs 45 minutes dealing with your enquiries. As the previously quoted fee of £175 plus VAT assumed it would take 1 hour to deal with the same, your clients cheque previously remitted by you is inadequate and our client requires you to provide further remittance in the (sic) of £306.25 plus VAT £53.59 making a total of £359.84 before we are able to send to you the balance of the replies Obviously the above quote sum includes work done by our client to now and does not involve any further requests or clarifications that you or your clients buyers solicits may require which will be charged at the hourly rate of £175 plus VAT for our client and a similar sum for our Firm "

The Applicant paid these funds on 19th June 2008 by way of cheque. The responses were received that same day via Kaura and Co.

Decision

The Tribunal has determined that at the time the letter of 4th June was written by Kaura and Co both the original enquiries and the further questions had already been put to the Managing Agents through Kaura and co. These were put on 20th May and 2nd June respectively.

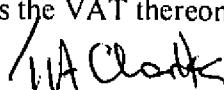
The Tribunal considered the contents of the letter from Kaura and co dated 4th June 2008 and notes that there was no reference of the price being charged for replies being an hourly figure.

The Tribunal has considered the questions put and have determined that the original questions put, although numerous, were little more than standard enquiries. The Tribunal has also concluded that the 6 further questions that were put by letter on 2nd June 2008 were neither complex nor required significant additional work. The draft replies actually appear on the copy letter which has been provided to us.

In the circumstances the Tribunal has concluded that the original sum given of £175 plus VAT for the Managing Agent and £175 plus VAT in respect of Kaura and Co's fees is at the top end of what might be considered reasonable using an objective test.

The Tribunal has therefore determined that the total payments ultimately demanded (and paid) of £656.25 plus VAT total £771.10 were unreasonable.

In the circumstances the Tribunal has concluded that the further administration charge demanded and paid on 19th June 2008 was unreasonable and it is this amount of £306.25 plus the VAT thereon which should be repaid.


T A CLARK
(CHAIRMAN)

23.6.09