

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL**

Property : 14 Ailsa Road,
Westcliff-on-Sea,
Essex SS0 8BL

Applicant : Westleigh Properties Ltd.

Respondent : 14 Ailsa Road RTM Company Ltd.

Case number : CAM/00KF/LCP/2009/0006

Date of Application : 23rd September 2009

Type of Application : To determine the costs payable on
Service of RTM notice (Section 88 of the
Commonhold and Leasehold Reform Act
2002 ("the Act"))

Tribunal : Bruce Edgington (solicitor, chair)
David Brown FRICS MCI Arb

DECISION

1. The reasonable legal costs of the Respondent in dealing with the matters set out in Section 88 of the Act are £487.50 plus VAT subject to the consideration of whether VAT is recoverable by the Respondent.

Reasons

Introduction

2. The Respondent is a right to manage ("RTM") company created for the purpose of exercising the right to manage leasehold properties and serving the necessary notices under Section 79 of the Act in respect of the property in this case.
3. A claim notice was served as was a counter-notice denying the Respondent's right to manage the property on the basis that the notice was served at the wrong address. A further notice was served at the correct address which prompted this claim from the landlord for the Respondent to pay its legal costs arising out of the first notice.

The Law

4. Section 88 of the Act says that *"a RTM company is liable for reasonable costs incurred by a person who is....a landlord under a lease of the whole or part of any premises....in consequence of a claim notice given by the company in relation to the premises"*
5. The method of assessment is on the basis of what is sometimes called the indemnity principle. In other words the costs payable are those which would be payable by the client *"if the circumstances had been such that he was personally liable for all such costs"*. (Section 88(2) of the Act)

The Respondent's claim

6. The Respondent's solicitors are Conway & Co. of Henley On Thames and the fee earner in charge is said to be Mr. Leslie Conway who describes himself as the senior partner (of 2) with 24 years' post qualification experience. He claims at the rate of £225 per hour. From the Points of Dispute, the rate itself does not appear to be in contention. However, for the avoidance of doubt, the Tribunal notes that if Mr. Conway's experience includes over 8 years' experience of litigation then he is what is called a Grade A fee earner. The starting point for rates being awarded to Grade A fee earners in Thames Valley County Court in 2009 is £213 per hour.
7. Such rate is only a starting point. For this type of very specialised work, this Tribunal would normally consider that it is Grade A work. Mr. Conway is clearly very experienced and £225 per hour would not, in this Tribunal's view be unreasonable.
8. Mr. Conway has delegated some of the work to Lorraine Scott, a trainee solicitor. The rate applied to her work - £150.00 per hour - is not challenged.
9. The profit costs claimed are £547.50. No disbursements are claimed. VAT is only payable by the Applicant if the Respondent is not able to reclaim the VAT and no doubt this will be considered by the parties.

The Points of Dispute

10. The Respondent served a schedule of objections following the Tribunal's directions. The points raised are, essentially, as follows:-
 - (a) Mr. Conway's time (1 hour) spent of reviewing the original Claim Notice was excessive bearing in mind that only the address for service was challenged.
 - (b) Mr. Conway's time in considering further documents (6 minutes) on the 17th July 2009 was unnecessary for the same reason.
 - (c) Mr. Conway's time in considering further documents (6 minutes) on the 4th August 2009 was unnecessary for the same reason.

- (d) Lorraine Scott's time spent (12 minutes) in writing to the Respondent on 5th August 2009 is excessive and should have been 6 minutes.

The Respondent's replies

11. (a) This time included reviewing instructions; reviewing the Claim Notice; reviewing the correspondence; considering the law; reviewing the Freehold Register Entry and checking the registration of the Applicant on line.
- (b) This appears to have been a 'review of communications' from the managing agent about the address for service
- (c) This appears to have been reviewing an incoming letter from the Respondent
- (d) The extra time is because the letter was sent by Recorded Delivery post and 'the necessary arrangements for postage'

The Procedure

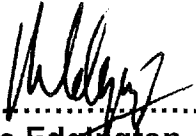
12. In the directions order made by the Tribunal chair on the 22nd October 2009, it was said that the Tribunal considered that it could deal with this matter on paper with the necessary written representations from the parties. The parties were informed that they could seek an oral hearing at any time prior to the matter being considered on or after the 9th December 2009. No such request was received.

Conclusions

13. As to the points in dispute, the Tribunal finds as follows:-
- (a) Mr. Conway has claimed as a Grade A fee earner which means that he is claiming as an experienced and expert practitioner. No practicing solicitor deals with right to manage companies on a daily basis. However, the sections of the Act covering this subject are not very many and it should be possible for an experienced solicitor to assimilate the relevant issues reasonably quickly. The client's instructions were presumably just to check and advise. The time taken to check the company, the Claim Notice, the accompanying letter, the Act and the freehold title should have taken less than an hour. Adding the time for the attendance note etc., one hour is allowed. Stopping work when it had been discovered that the notice was served at the wrong address is inappropriate because a counter-notice would have to specify all grounds for disputing the claim.
- (b),(c) In the Tribunal's view, the time taken to review communications from the managing agent and the Respondent is not chargeable. It has long been held that incoming communications cannot be claimed as separate items unless it is clear that they were sufficiently long and detailed to deserve a separate attendance note.
- (d) Claiming 12 minutes to cover a fairly short outgoing letter and the time spent on arranging for it to be posted as a Recorded

Delivery item is not acceptable. Arranging postage – whatever it may be – is an overhead. 6 minutes is allowed.

14. The result of this assessment is that the claim by the Respondent is reduced as follows (and using the numbering as above):-
- (a) As claimed
 - (b) Refused
 - (c) Refused
 - (d) Allowed at £15.00
15. This makes a total reduction of £60.00. Taking this from the claim of £547.50 leaves an amount allowed of £487.50.


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Bruce Edgington
Chair
28th January 2010