

S.88 Commonhold and Leasehold Reform Act 2002

DECISION & ORDER

Case Numbers:	CHI/21UG/LCP/2009/0012
Property:	Jasmine Way Terminus Avenue Bexhill on Sea East Sussex TN39 3GJ
Applicant:	Frays Property Management (No.3) Ltd Solicitors: Wallace LLP ("W")
Respondent:	Jasmine Way RTM Company Limited Solicitors Menneer Shuttleworth
Consideration:	2nd March 2010
Decision:	12th April 2010
Tribunal:	Mr RTA Wilson LLB (Lawyer chairman) Mr N Robinson FRICS

SUMMARY OF DECISION

The tribunal determines that the total amount payable by the respondent to the applicant in respect of legal costs shall be the sum of £1,023.50 plus VAT as appropriate.

APPLICATION

1. On 11th November 2009 the applicant applied to the tribunal pursuant to Section 88 of the Commonhold and Leasehold Reform Act 2002 ("The 2002 Act") to determine the costs payable by the respondent in connection with five 'right to manage' claims in respect of the Property.
2. Directions were issued on 23rd November 2009 to the effect that the tribunal was minded to determine the issue on the basis of written representations unless either party objected. Neither party objected and accordingly the application was determined by a two-member tribunal on the papers submitted by the parties.

3. 'W', solicitors for the applicant claimed £1,651.24 in total and in their statement of case they had apportioned these costs between three distinct stages of the transaction. In general terms the first stage related to considering the validity of the notices. The second stage related to the time taken in respect of matters arising out of the transfer of management from the applicant to the respondent and the third stage related to the time spent in preparing and transferring the closing service charge accounts.

LAW

4. The law is to be found at Section 88 of the 2002 Act, which deals with costs incurred in connection with a claim by a right to manage company and provides, insofar as is relevant:

Section 88 Costs: general

- (1) *A RTM company is liable for reasonable costs incurred by a person who is—*
 - (a) *landlord under a lease of the whole or any part of any premises,*
 - (b) *party to such a lease otherwise than as landlord or tenant, or*
 - (c) *a manager appointed under Part 2 of the 1987 Act to act in relation to the premises, or any premises containing or contained in the premises,*

in consequence of a claim notice given by the company in relation to the premises.

- (2) *Any costs incurred by such a person in respect of professional services rendered to him by another are to be regarded as reasonable only 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.*
- (3) *A RTM company is liable for any costs which such a person incurs as party to any proceedings under this Chapter before a leasehold valuation tribunal only if the tribunal dismisses an application by the company for a determination that it is entitled to acquire the right to manage the premises.*
- (4) *Any question arising in relation to the amount of any costs payable by a RTM company shall, in default of agreement, be determined by a leasehold valuation tribunal.*

CONSIDERATION

5. The tribunal carefully considered the bill of costs rendered by 'W' totalling £1,651.24. It appears that the figure claimed is inclusive of VAT.
6. The tribunal's papers comprised the applicant's statement, which has annexed to it a client care letter from W, a list of hourly rates of its fee earners and its terms of business. The application also included what appeared to be a computerised time record. The respondents submissions consisted of a bundle

containing copy letters passing between them and their advisors and the applicants and their solicitor's, copies of the claim notices, a copy of a contractor notice and a selection of other correspondence between the parties and their advisors concerning the hand over and challenge to the costs claimed.

7. The background facts are that on 22nd September 2008 the respondents served on the applicants' five claim notices pursuant to the 2002 Act. The date in the claim notices for serving counter notices was stated to be the 24th October 2008.
8. The applicants did not serve a counter notice within the time limits set out in the notices. Rather, on the 14th November 2008 W sent an email to the respondents claiming that none of the claim notices were valid. The reasons given were that the relevant legislation did not provide for an RTM Company to bring multiple claims in respect of separate premises, which was what had happened in this case. As a consequence the applicants claimed that it was not necessary for them to serve counter notices under the 2002 Act. The email invited the respondents to concede that their claims were all defective by return failing which the applicants might bring declaratory proceedings in the County Court and seek costs against the respondents.
9. Following this email it appears that the respondents sought legal advice from their solicitors who wrote to W comprehensively setting out their reasons for contending that all the claim notices were indeed valid.
10. Whilst neither the applicants or W appear to have expressly accepted that the notices were valid, subsequent correspondence between the parties and those advising suggest that the applicants did accept that the notices were all valid and that their failure to serve counter notices within the prescribed time limits meant that they were precluded from contesting the RTM.
11. The tribunal considered that the costs recoverable from the respondents were limited to those matters set out in section 88 of the 2002 Act. Summarising this legislation, legal costs incurred by a landlord 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. The tribunal considers that the effect of these clauses is to give the landlord a choice of solicitors. He is not obliged to shop around and find the cheapest solicitor available to do the work. He can make his own choice as to who should act on his behalf and as long as the costs are reasonable and within the scope of the above legislation then they should be recoverable.
12. Looking at the quantum of costs and having regard to the legislation mentioned above, the tribunal considered it was not unreasonable for the applicants to retain their usual solicitor W and in view of the importance of the matter to the client and the compulsory nature of the transaction, for an appropriately qualified solicitor to have conducted the matter at his or her usual charging rate. The fee earner engaged was said to be a Grade B fee earner with seven years post qualification experience. Her hourly rate was said to be £225 plus VAT.
13. In the tribunal's view whilst this rate was at the very top of the scale of fees that it would expect to find for this type of work, bearing in mind the geographical location of 'W', it passed the statutory test of reasonableness as

referred to above. Further, the respondents did not challenge this hourly rate. The rate of £225 per hour is therefore upheld .

14. The respondent's primary case is that the applicants have spent an unnecessary amount of time trying to prevent and frustrate the RTM. This unnecessary time is reflected in the high level of fees claimed. The tribunal bore this contention in mind during its own assessment of the costs claimed.
15. In the applicants statement of case it is alleged that the applicants only became aware of the claims when they received a letter from the respondents dated the 28th October 2008. Crucially by this date the time for challenging the notices had passed. They state that "on making Investigations at their Registered Office incomplete notices served were produced". As a consequence W were instructed to consider the merits of the claims.
16. It is not clear who was responsible for producing the incomplete notices, as the copy notices contained in the respondents bundle are complete and correct. It appears that the applicants gave instructions to W to dispute the validity of claims before W had carried out their research into multiple claims. The tribunal deduces this sequence from the schedule of costs lodged by the applicants. This shows a time entry on the 19th November 2008 with the description "engaged considering LVT decisions relied on by the RTM Company." However the email challenging the validity of the notices is dated the 14th November 2008 some 5 days earlier than the research.
17. Nor is it clearly explained by the applicants why their solicitors were instructed to advise on the basis of copy notices rather than the originals. It appears that the original notices were dated the 22nd September 2008 and were addressed to the applicants at their registered office. Assuming that the notices were sent by royal mail, service would have been effected regardless of whether the notices actually came to the attention of the applicants.
18. In the event the applicants did not maintain the allegation of non-service of the notices or the defective nature of the notices all of which suggests that on mature reflection the applicants accepted that none of these issues had merit.
19. These matters aside the case appears to have been straight forward raising no complex or novel points of law which could have justifiably involved more time than one would normally expect for a case of this kind.
20. W had filed a time sheet schedule detailing the time spent on the transaction. The schedule, in the form of a computerised print out, was broken down into attendances (letters and telephone calls) and work done on documents. However, the schedule was of little assistance because the entries comprised of the briefest of descriptions of the work done so that the tribunal was not able to properly assess whether the costs claimed in the schedule were in the scope of Section 88 of the 2002 Act.
21. In the absence of documentation to support the time entries the tribunal did the best that it could with the evidence and also applied its collective experience in assessing the time that it considered should reasonably have been spent on this transaction by a Grade B fee earner with seven years post qualification experience.
22. In assessing the time taken the tribunal divided the transaction into the same three stages that the applicant referred to in its statement of case.

Stage One

23. The applicant claims 1.7 hours for this stage. The tribunal considers the notices served at the registered office of the applicant were good service even if the documents did not come to the attention of the applicants. This is established law. The tribunal is surprised that the applicants should have instructed their solicitors on the basis of copy documents as opposed to the original documents themselves and there is evidence that unnecessary work was carried out by W as a result. Secondly the tribunal considers that the applicant's solicitors in seeking to defend the claims on the basis of the multiple claim issue spent unnecessary time. The case relied upon by the respondents reveals that the solicitors involved were W themselves. In this case W successfully resisted a challenge to the validity of a claim notice on the very same point. Although this case was decided some two years earlier it should have been known to W and in the opinion of the tribunal it was not reasonable of the applicants to spend time contesting the notices on these grounds.
24. Doing the best it could with the paucity of information before it the tribunal considers that one hour of time should have been adequate to properly carry out all work necessary to check and accept the validity of the claim notices.

Stage Two

25. 1.9 hours are claimed for this stage. The papers contain very little information on exactly what work was carried out by W during this stage. The application states that advice was given on the handover process and liaising with managing agents to obtain information. The application also makes reference to contractor notices but it is not clear how many of these notices were sent. There is but one copy with the papers and this is contained in the respondents bundle.
26. Again doing the best that it could with the available information and drawing on its collective experience, the tribunal considers that a reasonable amount of time to be engaged in this stage of the transaction would have been no more than 1.5 hours.

Stage Three

27. 2.7 hours are claimed for this final stage and again the tribunal has been given only a general narrative over and above the time schedule. The narrative points to correspondence concerning outstanding payments of unallocated service charge funds and completion handover. There is reference to six letters being sent by the applicant's solicitors but copies of the letters are not included in the application. The tribunal acknowledges that the managing agents might have needed guidance at this stage but on the whole it would have been predominantly the managing agents and not the solicitors who would have been involved in the work necessary to complete the hand over.
28. Again doing the best that it could with the information it had, the tribunal considered that two hours of solicitor's time should have been sufficient to complete this stage of the work.

Disbursements

29. The applicants claim £21.12 in respect of disbursements. The tribunal considers all these disbursements to be recoverable save for photocopying charges which the tribunal considers do not fall within the ambit of section 88 of the 2002 Act .

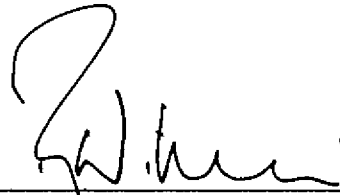
DETERMINATION

30. The tribunal therefore determines that the applicant's reasonable costs payable by the respondent pursuant to section 88 of the 2002 Act are as follows:-

Stage one costs	1.0 hour	£225.00
Stage two costs	1.5 hours	£337.50
Stage three costs	2.0 hours	£450.00
Disbursements		<u>11.00</u>
	Total	£1,023.50

The stage one, two and three costs being exclusive of VAT.

Signed



Mr. RTA Wilson
Chairman

Dated 12th April 2010