

**LONDON RENT ASSESSMENT PANEL  
LEASEHOLD VALUATION TRIBUNAL**

**Case Reference: LON/OOBE/LCP/2009/0023**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN  
APPLICATION UNDER SECTION 88 of the COMMONHOLD and  
LEASEHOLD REFORM ACT 2002**

Applicant:	Regis Group plc
Respondent:	52 – 44 Kelly Avenue RTM Company Limited
Premises:	44 – 52 Kelly Avenue, Peckham, London SE15 5LH
Date of Application:	7 December 2009
Date of Oral Pre-Trial Review:	16 December 2009
Date of PTR Directions:	16 December 2009
Date of LVT Decision:	26 January 2010
Leasehold Valuation Tribunal:	Mr D. L. Edge FRICS Mr O. N. Miller BSc

## Preliminary

1. Further to the Tribunal's Directions dated 16 December 2009, this application is to be decided without a hearing pursuant to Regulation 13. The determination is made on the basis of the statements of case of both parties which have been served and filed.

The determination takes account of the Respondent's letter of the 24 January 2010, and the Applicant's solicitor's reply of the 26 January 2010.

## Applicant's case

2. The Applicant's solicitors, Tolhurst Fisher LLP, had submitted an invoice dated 20 August 2009 in the total sum of £1,703.65 which comprised their fees of £1,404.00, VAT of £210.60, Official Copies of Register Entries of £84.00, Company Search fee of £1.00 and Special Delivery fee of £4.05.

In their Statement of Case in Reply dated 20 January 2010, they said that: -

- a) the Respondent's belief that the Applicant should be responsible for the Respondent's costs has no legal basis
- b) despite the fact that the Respondent was successful in acquiring the Right to Manage, pursuant to Section 88 of the Act the Respondent is obliged to pay the Applicant's legal costs
- c) the complexity of the legislation and the importance of ensuring that the Counter Notice was valid reasonably justifies the Applicant's decision to employ the services of a solicitor with the established experience and expertise necessary to deal with the Respondent's Notice of Claim and that it should recover the costs that it might reasonably be expected to have incurred in doing so

The Applicant's solicitor is a partner in Tolhurst Fisher LLP with an hourly rate of £180.00 per hour + VAT as a Grade B fee earner. The basis of charge is by the time spent by the fee earner. Upon receipt of a claim, it is necessary to deal with the following: -

- (i) to consider the participating tenants' entitlement to acquire the right to manage the specified premises and in relation to the validity of the Notice of Claim served
- (ii) to communicate with the client to obtain relevant information regarding the property
- (iii) to carry out and consider the Land Registry searches
- (iv) to deal with all correspondence with the participating tenants' solicitors
- (v) to prepare and serve the requisite Counter Notice
- (vi) to prepare the Contract and Contract Notices and
- (vii) to complete the acquisition of the right to manage.

It is asserted that the amount of costs claimed is reasonable on the basis that they are based on time spent, although no detailed time schedule was provided.

## Respondents Case

3. The Respondents, through their Chairman, Mr Kai Duggal, sent a Statement of Case dated 15 January, which set out the background, and said that for over five years they have been engaged in considerable correspondence concerning the administration, cleaning, maintenance etc of this property, which culminated in lengthy Tribunal hearings in June and July 2009. He also sent a supplementary letter of the 24 January 2010, which reiterated much of that contained in the previous Statement.

In both cases, they said, the Tribunal hearings ruled in their favour.

They said that in all matters with the Applicants, they had met obstructiveness.

In their Statement of Case, they said that: -

- (a) Tolhurst Fisher were appointed by Regis Group PLC, and not by 52 – 44 Kelly Avenue RTM Ltd. If we (the Respondents) did not appoint them, then we should not be responsible for their fees.
- (b) it is our belief that there was no need for legal intervention in this case. It was a straightforward application for the Right to Manage, and Regis could have granted this without further cost to them or anyone else.
- (c) the Tribunal decided that there was no reason for Regis to have contested our application for the RTM.
- (d) we originally attempted to acquire the RTM through Canonbury without the need for a tribunal. Regis chose to reject our claim and refused to mediate with us, forcing us to take our case to the LVT.

In the letter of the 24 January 2010, they said at paragraph 3. that at the time of the tribunal (LON/OOBE/LRM/2009/0007) the RTM company was not in existence, so we cannot be applied to for costs prior to our establishment.

## Decision

4. Section 88 of the Act provides:

(1) *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.*

(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.*

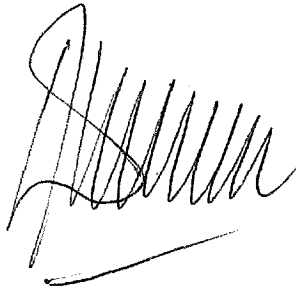
In this tribunal's view, the landlord was entitled to seek legal advice from specialist solicitors, and the charge out rate of £180.00 per hour + VAT is considered to be reasonable in all circumstances.

The Tribunal does not agree with the contention that there was no need for legal intervention in this matter. It was entirely proper for the landlord to be legally represented.

The Tribunal does not agree with the Respondent that since the RTM company was not in existence at the time of the tribunal hearing, the RTM company is not liable for any costs, see S.88 wording set out above..

Accordingly the Tribunal determines that the Applicant is entitled to be paid the total amount of £1,703.65 by the Respondent, such sum being both reasonable and reasonably incurred.

Chairman



D.L.Edge FRICS

Date: 26 January 2010