

267.

HM COURTS & TRIBUNAL SERVICE
MIDLAND LEASEHOLD VALUATION TRIBUNAL

DECISION

On an application pursuant to Commonhold and Leasehold Reform Act 2002 s. 88(4)

<u>Applicant</u>	Holding and Management (Solitaire) Limited
<u>Respondent</u>	Swanns Building Management RTM Company Limited
<u>Property</u>	Swanns Building, Plumtree Place, Nottingham NG1 1LD
<u>Case number</u>	BIR/00FY/LCP/2011/0004
<u>Date of Application</u>	25 th August 2011
<u>Determination</u>	7 th December 2011 on paper submissions by the parties
<u>Members of the Tribunal</u>	Mr. R. Healey LL.B., Solicitor and Mr. D. Satchwell FRICS
<u>Date of determination</u>	12 th December 2011

DETERMINATION

The Tribunal determined that on the basis of the evidence before them they were not satisfied that the Invoice dated 14 January 2011 addressed to Holding and Management (Solitaire) Limited is reasonable and is therefore not payable by the Respondent to the Applicant.

Reasons for the determination

Introduction

1. This is an application by Holding and Management (Solitaire) Limited (“the Applicant”) for the amount of costs payable by Swanns Building Management RTM Company Limited (“the Respondent”) consequent upon the Respondent’s application for the right to manage Swanns Building, Plumtree Place, Nottingham NG1 1LD (“the Property”) to be determined by the tribunal pursuant to the Commonhold and Leasehold Reform Act 2002 s. 88(4) (“the Act”). The Applicant is stated to be the freeholder of the Property.

Background

2. The grounds of the application for payment of costs are set out in an application to the tribunal dated 25 August 2011 (“the Application”) made by Estates and Management Limited as managing agents (“the Managing Agents”) of the Property on behalf of the Applicant.

3. The Respondent served a right to manage claim under the Act on 24 November 2010 which was not proceeded with. The Applicant claimed cost against the Respondent in accordance with the provisions of section 88 of the Act as set out in an invoice by the Managing Agents dated 15 November 2010 in the sum of £276.38.

4. The Respondent served a further right to manage claim on 24 November 2010. The Applicant claimed additional costs against the Respondent as set out in an invoice by the Managing Agents dated 4 April 2011 in the sum of £270.00.

5. The Applicant submitted a further invoice for payment by the Respondent in respect of “legal and compliance work” undertaken by OM Property Management Limited. The invoice is dated 14 January 2011 and is in the sum of £300.

6. The parties acknowledge that the invoices in the sums of £276.38 and £270.00 specified in paragraphs 3 and 4 above have been settled.

Issue for determination

7. The issue remaining for determination is the liability of the Respondent for the invoice in the sum of £300.00 issued by OM Management Limited as set out in paragraph 5 above (“the Outstanding Invoice”).

The Law

8. Section 88 of the Act provides –

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 the 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 [*The Landlord and Tenant Act 1987*] 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.

Directions

9. Directions were issued on 12 October 2011.

Submissions

10. The Respondent responded by letter dated 24 October 2011 which may be summarised as follows –

10.1. The Outstanding Invoice had not been submitted prior to the Application. A copy was not attached to the subsequent invoice dated 4 April 2011 and all demands for payment prior to the Application had failed to request payment of it.

10.2. The Outstanding Invoice is not addressed to the Respondent nor marked as payable by them.

10.3. The description of services provided is vague.

10.4. A £250.00 charge (plus VAT) for the provision of administrative services is excessive – At a rate of £7.00 per hour it amounts to 35 hours work.

10.5 By letter dated 12 September 2011 to the Tribunal – with copy to the Applicant – the Respondent requested that a detailed breakdown of costs be made available.

11. By letter of 27 October 2011 the Managing Agents advised that only the Outstanding Costs were in issue and that submissions would be forthcoming from the manager's representatives.

12. By letter from the tribunal dated 16 November 2011 the Applicants were informed that as no further submissions had been received from them other than their letter of 27 October 2011 (referred to in paragraph 11) then in accordance with the directions dated 12 October 2011 the Applicant's case will be taken to comprise such documents and submissions as have already been received.

Hearing

13. A paper hearing was held at the Panel Offices Birmingham on 7 December 2011.

Findings of fact

14. The Tribunal found that the Outstanding Invoice was not addressed to the Respondent; neither was it marked for payment by them.

15. The Tribunal found that the Outstanding Invoice was vague and failed to properly identify the issues the subject of the invoice.

16. The Tribunal found that a request had been made by the Applicant to the Respondent for a breakdown of the costs claimed.

17. The Tribunal had before them a letter from the Managing Agents saying that "the manager's representatives will be making their own submissions"

18. No such representations were before the Tribunal from the Applicant to substantiate the Outstanding Invoice.

Roger Healey
Chairman

12th December 2011