

**HM COURTS & TRIBUNALS SERVICE
LEASEHOLD VALUATION TRIBUNAL**

Property : **Hanover Mill
Hanover Street
Newcastle upon Tyne
NE1 3AB**

Applicant : **Triplerose Limited**

Respondent : **Hanover Mill RTM Company Limited**

Case number : **MAN/00CJ/LRCP/2012/0002**

Type of Application : **Determination of costs Section 88(4) Part 2
Chapter 1 Commonhold and Leasehold
Reform Act 2002 ("the Act").**

The Tribunal : **Mr W L Brown LL.B (chairman)
Mr A Robertson FRICS**

Date of decision : **12 November 2012**

**Determination in respect of costs pursuant to Section
88(4) of Act**

The amount of costs payable by the Respondent in consequence of its Claim Notice given under Section 80 of the Act to acquire the right to manage the Property is determined at £6,443.24, made up as follows:

- (i) £5,321.24 for solicitors charges
- (ii) £522.00 for fees of its managing agent
- (iii) £600.00 for fees of counsel

The above sums are inclusive of VAT and disbursements.

Reasons

A. Introduction

1. By the application dated 2 April 2012 (the "Application") the Tribunal was requested to determine the costs in relation to a Right to Manage ("RTM") claim notice dated 31 January 2011 served by the Respondent on the Applicant, to which the Applicant served a counter-notice dated 4 March 2011.
2. The requested RTM was the subject of an application to this Tribunal (the "RTM Proceedings") for which the Tribunal issued a determination dated 14 October 2011, dismissing that application and determining that the Applicant was not entitled to an award of costs pursuant to paragraph 10(2) of Schedule 12 of the Act (i.e. declining to find that the Respondent had acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with those proceedings).
3. The Application sought costs incurred by it of:
 - (i) £672.00 fees of the managing agent (inclusive of VAT) and £2,843.96 for fees charged by the Solicitors (inclusive of VAT) (the "Notices Costs") and
 - (ii) £4,839.64 for solicitors and £600 for fees of counsel in relation to the RTM Proceedings)

Copies of the invoices submitted in support are attached to this determination as Annex 1.

4. The Tribunal issued directions dated 21 May 2012 and neither party requested a hearing for determination of the Application. The Tribunal convened to make its determination.

B. The Issue

5. Whether the Applicant should be awarded costs against the Respondent under Section 88(4) of the Act.
6. Determination of the proper amount of any costs arising.

C. The Law

- 7. The relevant law is:
- 8. Section 88 of the Act states

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, .

.....

(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.

.....

(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.”

D. The Applicant’s Position

- 9. Conway & Co on behalf of the Applicant stated that its fees as solicitors for the Applicant were costed in accordance with charging rates agreed with its client and confirmed that disbursements also were payable by its client under its agreed terms of engagement. It provided a detailed breakdown of time and work undertaken with regard to the Notice Costs, and for the RTM Proceedings which had been copied to the Respondent’s representatives and the Tribunal.
- 10. The fees of the managing agent (Y and Y Management Limited) concerned assessment and response in respect of the claim notice and counter-notice, which was work of management for which it was entitled to charge the Applicant under a management agreement dated 1 July 2010, a copy of which was produced in evidence. The fees were calculated in accordance with arrangements set out in that contract.

11. Fees of Counsel for the cancelled hearing concerned counsel preparing for the case and discussing various matters with the Applicant's solicitors. The hearing in the RTM Proceedings was listed for 2 August 2011 and a notice of withdrawal by the Respondent was served on 28 July 2011, two working days before the hearing.
12. By a Statement of Response dated 31 July 2012 the Applicant set out its responses to matters noted in paragraphs 13 – 17. The Tribunal records that it has considered carefully those representations but for the purpose of this decision sets out for the record the following as a summary:
 - (i) The Application has to be pursued for quantification of costs recoverable as there had been no previous determination of costs under Section 88 of the Act, which permits recovery of a Landlord's costs "...without adjudication." The Tribunal has no general power to award costs in the RTM process and the decision on costs in the RTM Proceedings was limited to those potentially recoverable only where there has been unreasonable behaviour by a party in proceedings.
 - (ii) The Applicant is not registered for VAT.
 - (iii) The counter-notice complied with the relevant statutory provision as to its content and both parties had knowledge of the premises and relevant circumstances to which the RTM process here concerned.
 - (iv) The managing agent is entitled to charge under the management agreement for work outside of routine maintenance activities.
 - (v) It alleged that the Applicant was seeking to avoid liability for failings in the RTM process for which it must bear some responsibility.
 - (vi) A disproportionate amount of the costs claimed arise after the Applicant's statement of case in the RTM Proceedings.

E. The Respondent's Position

13. The Respondent's solicitors Punch Robson represented that the Application should be dismissed on the basis of estoppel. It stated that the Applicant's request for costs pursuant to paragraph 10(2) of Schedule 12 of the Act had been dismissed in the RTM Proceedings and it had not within those proceedings pursued costs in the alternative under Section 88(4). Therefore it was an abuse of process to now later request costs under a different provision.
14. In respect of conduct in the RTM process, the Respondent criticised a lack of particularity in the Applicant's counter-notice dated 4 March 2011 and it was not until a Statement of Case dated 15 June 2011 in the RTM Proceedings was served that the Respondent understood the Applicant's argument (that there had been a failure to comply with Section 72(1) of the

Act) which lead to the withdrawal of the application in the RTM Proceedings on 28 July 2011.

15. It alleged that the Applicant had delayed unreasonably to particularise its case in the RTM Proceedings when relevant information was available to it, attributing to the Applicant motives to defeat the RTM process and stating that in consequence, the Respondent had incurred costs in that action.
16. The Respondent referred to notes in the White Book accompanying Part 16.5 Civil Procedure Rules on the content of a defence in proceedings setting out the expectation that a party should be comprehensive and give reasons for denying allegations. It represented that the Applicant had failed to do so by not spelling out its case in detail.
17. On the question of quantum of the Applicant's fees it stated:
 - (i) These should take account of the Applicant's conduct in the RTM Proceedings.
 - (ii) VAT was recoverable by the Applicant and should be excluded
 - (iii) The fees of the managing agent should be disallowed because it shared premises with the Applicant and so the costs of sharing of information between them would cause a double liability for the Respondent.
 - (iv) The Applicant had not produced evidence to show that the pro forma invoice relied upon had been paid.
 - (v) The solicitors could not justify nearly 13 hours work for dealing with the claim notice and preparing the counter-notice.
 - (vi) 15.5 hours of work referable to the RTM Proceedings was excessive because the time could have been reduced had the counter-notice set out detail and involved unnecessary time for preparing a bundle of documents in the case that did not contain only relevant material.
 - (vii) As the RTM process in one of "no fault", an adverse costs award should not exceed £500, being the amount awardable by the Tribunal if a party behaves unreasonably in the conduct of the proceedings.
 - (viii) Fees of counsel could have been avoided. The hearing in the RTM Proceedings was listed for 2 August 2011 and the application in them was withdrawn on 28 July 2011.
 - (ix) No costs should be awarded with reference to the unsuccessful application for costs in the RTM Proceedings.

F. The Tribunal's Decision

18. The Tribunal may award to the landlord under a lease its reasonable costs. The Tribunal determines that as there has been no application before it for determination of costs under Section 88(4) of the Act the Applicant is not prevented from pursuing the Application. Only a short period of time elapsed between purported withdrawal of the application in the RTM Proceedings and the planned hearing in that action but it was not incumbent upon the Applicant to pursue the Application in that case. The Tribunal's decision in that matter to refuse costs under paragraph 10(2) of Schedule 12 of the Act is not a bar upon the present Application as the issues for determination are not the same.
19. The Tribunal has considered the description of work undertaken by the Applicant's solicitors, counsel and managing agent and the representations upon their respective invoices. The Tribunal accepts that the work giving rise to the first invoice of Conway & Co. and that of Y and Y Management Limited relate to the RTM process.
20. The Tribunal finds the hourly rate of the solicitors of £185.00 appropriate for the fee-earner involved. However, having reviewed the description of the work and using its own knowledge and experience the Tribunal determines that the amount of time engaged by the solicitors is excessive, particularly with regard to reviewing of documents, recorded as 494 minutes. The Tribunal considers that reasonably knowledgeable solicitors would have incurred half of that particular time. It finds that the remainder of the time was reasonably incurred and therefore determines that the invoice of Conway & Co. should be calculated as 8 hours 36 minutes at £185 per hour, being £1,591. The postage charge of £5.05 is accepted. VAT at 20% should be added, making a grand total of £1,915.26.
22. With regard to the work of Y and Y Management Limited the Tribunal accepts that some work in the RTM process would be needed by the managing agent, but it finds that excessive time has been spent on fairly simple routine tasks. It therefore determines that the proper fee should be £400.00, to which there may be added the disbursements set out in its invoice dated 16 November 2011 (£35.00) and VAT at 20%, making a grand total of £522.00.
23. The Tribunal accepts that the second invoice of Conway & Co. relates to the RTM Proceedings. It finds that the hourly charging rates of the fee-earners involved (£185.00 and £165.00 respectively to be appropriate). However, it accepts the weight of the argument of the Respondent that time could have been saved had the counter-notice contained more detail and the information provided in the Respondent's Statement of Case

dated 15 June 2011 been made available sooner. Therefore it determines that the reasonable costs of the solicitors should be 10 hours at £185.00 per hour for work of the associate solicitor and 2 hours for the legal assistant at £165.00 per hour (total £2,180.00). The Tribunal accepts the disbursement charge for postage (£58.32) but finds that the bundle of documents produced for the hearing in the RTM Proceedings was excessive and therefore allows photocopying charges limited to 3000 pages at £0.20, being £600.00. VAT at 20% is to be added, making a grand total of £3,405.98.

24. The Tribunal is satisfied that the fees of Miss Ellodie Gibbons, counsel, set out in the fee note dated 29 September 2011 are reasonable for preparing for the hearing in the RTM Proceedings, listed for 2 August 2011 but cancelled only two working days before it. The sum of £500 plus VAT at 20% is allowed.
25. Therefore the determination of the Tribunal is that the total amount of charges recoverable from the Respondent under Section 88(4) of the Act is as follows:

	£
Solicitors' costs	3,771.00
Disbursements	663.37
VAT	<u>886.87</u>
	5,321.24

	£
Managing Agents' fees	400.00
Disbursements	35.00
VAT	<u>87.00</u>
	522.00

	£
Counsel's fees	500.00
VAT	<u>100.00</u>
	600.00

Grand total £6,443.24.

**W.L. Brown
Chairman of the Leasehold Valuation Tribunal
12 November 2012**