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**HM Courts  
& Tribunals  
Service**



**Residential  
Property  
TRIBUNAL SERVICE**

**Ref: LON/00BE/LCP/2012/0025**

**DECISION OF THE LONDON LEASEHOLD VALUATION TRIBUNAL ON AN  
APPLICATION UNDER SECTION 88(4) OF THE COMMONHOLD AND  
LEASEHOLD REFORM ACT 2002**

**Property: 369 Upland Road London SE22 0DR**

**Applicant: Assethold Limited**

**Respondent: 369 Upland Road RTM Company Limited**

**Determination without an oral hearing in accordance with regulation 13  
of the Leasehold Valuation Tribunals (Procedure) (England) Regulations  
2003**

**Tribunal: J. Pittaway**

**Date of the decision: 21 February 2013**

## BACKGROUND

1. This is an application under section 88(4) of the Commonhold and Leasehold Reform Act 2002 (the Act) for a determination of the Applicant's reasonable costs incurred in consequence of an abortive claim for the right to manage by the Respondent under Chapter 1 of Part 2 of the Act.
2. This determination is, with the consent of the parties, made on the basis of the written material alone and without an oral hearing in accordance with the procedure set out in regulation 13 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003.
3. The RTM company does not dispute that it is liable to pay the landlord's reasonable costs incurred in consequence of the claim notice but disputes that the costs claimed are reasonable.

## THE LAW

4. Section 88 of the Act provides, so far as is relevant:
  - (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*

...

*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*

*(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.*

## **THE PARTIES' CASES**

5. The costs which the landlord claims are
  - a. Solicitor's fees of £2,177.64 (inclusive of VAT and disbursements)
  - b. Barrister's fees of £1,380.00 (inclusive of VAT)
  - c. Manager's fees of £240.00 (inclusive of VAT)
  
6. The solicitors' costs are based on
  - a. 5 hours and 40 minutes @ £185 ph (£1048.33) taking instructions, reviewing documentation, preparing pleadings and brief to counsel and advice and correspondence;
  - b. 3 hours and 22 minutes @ £185 ph (£622.83) taking instructions, reviewing documents, providing advice, preparing and serving the counter-notice and correspondence.
  - c. Photocopying costs of £136.00
  - d. Postage £5.05
  - e. Land registry charges of £4.00
  
7. In Directions of 15 October 2012 the Tribunal directed the Applicant to provide a full breakdown of their costs. In the Applicant's Statement of Reply of 15 November 2012 they stated that the charge out rate of £185 per hour used to calculate the solicitor's fees was the normal

hourly rate charged to the Applicant and previously agreed by the Applicant with them. The Reply also broke down the total time spent into constituent elements.

8. In their Statement of Case the Respondents disputed the solicitors' costs on the ground that the Applicants had provided insufficient detail to enable the Tribunal to make a determination. In the alternative they disputed a total of 75 minutes of the 3 hours 22 minutes referred to above and 155 minutes of the 5 hours and 40 minutes referred to above on the basis of duplication of work, unnecessary correspondence or an excessive amount of time having been spent on the identified items charged for. They did not dispute the disbursements incurred.
9. In their Statement of Response on behalf of the Applicant of 7 February 2013 Conway & Co rejected that there was any duplication of work, unnecessary correspondence or excessive time charging.
10. In the Applicant's Statement of Reply the manager's fees are stated to be "as per management agreement", a copy of which (dated 23 August 2011) was provided by the Applicants as part of their Statement of Reply. This agreement had been entered before the Respondent's failed claim for the Right to Manage which was heard on 6 June 2012.
11. In their Statement of Case the Respondents allege that this cost duplicated work undertaken by Conway & Co, anticipated the outcome of the Hearing and that the meeting with the freeholder was unnecessary, all of which allegations are denied by the Applicant in their Statement of Response.

12. In their Statement of Reply the Applicant contends that Counsel's fees were necessary by reason of the Respondent having requested an oral hearing.
13. The Respondents in their Statement of Case do not query the actual fee; but rather whether it was necessary to instruct a barrister, given the knowledge and experience of the Applicant's solicitor. In their Statement of Response the Applicants note that the charge out rate of counsel, at £150 an hour, is less than the solicitor's charge out rate and that the Respondent itself was represented.
14. In their Statement of Response the Applicant requested an award of vexatious costs.

#### **TRIBUNAL'S DETERMINATION**

1. The Tribunal has carefully considered the submissions of both the Applicant and the Respondent.
2. The landlord is entitled if so advised to dispute a claim to acquire the right to manage and to take technical points to defeat the claim. It is also in the Tribunal's view entitled to instruct solicitors and counsel and as appropriate consult with its managing agents in relation to the claim.
3. The Respondents have provided no evidence that the costs incurred by the Applicant would have been different if the Right to Manage claim had succeeded and the Tribunal therefore considers that the costs are in general reasonable because they are costs in respect of services that the Applicant might have expected to incur in circumstances where the Applicant was personally liable for the costs.

4. The Tribunal therefore determines that the fees claimed by the Applicant in respect of the barrister and the managing agent to be reasonable.
5. However, the Tribunal does consider that the solicitor's costs are higher than might be expected in a claim of this nature. It notes that in their Statement of Response Conway & Co refer to time charging units of six minutes (in relation to correspondence) and the Tribunal agrees that this is a normal charging unit for time keeping by solicitors, not only in relation to correspondence. The Tribunal notes that neither 3 hours 22 minutes nor 5 hours 40 minutes (the chargeable times claimed by Conway & Co) are time periods divisible by 6.

The Tribunal also considers (in the absence of the correspondence itself but given the description of the correspondence by Conway & Co) that it is possible that there may have been some duplication in the correspondence between Conway & Co and the Applicant.

6. Insofar as the solicitor's costs are concerned the Tribunal therefore determines that these should be reduced by a total of £200 (plus VAT) to adjust for any rounding-up of the solicitor's time and to take into account any possible duplication in the correspondence which the Tribunal has not seen.
7. The Tribunal will not allow any claim by the Applicant for unquantified vexatious costs; there is nothing in the papers before it to support an allegation that the Respondent has behaved unreasonably or vexatiously in connection with this Application.

CHAIRMAN.....*Jim Pataway*

DATE: 21 February 2013