

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL &
LEASEHOLD VALUATION TRIBUNAL

S.88 Commonhold and Leasehold Reform Act 2002
Right to Manage – Landlord's Costs



**Residential
Property**
TRIBUNAL SERVICE

DECISION & ORDER

Case Number: CHI/00HX/LCP/2007/0001

Property: 1-6 & 19-24 Heronbridge Close
Swindon
SN5 7DR

Applicant: Bath Ground Rent Estate Limited

Respondent: Heronbridge Close RTM Company Limited

Application: 06 March 2007

Consideration: 13 June 2007

Decision: 25 July 2007

Tribunal: Ms J A Talbot MA
Mr H D Lederman

Summary of Decision

The Tribunal determines that the amount payable by the Respondent to the Applicant in respect of the landlord's costs payable by the RTM Company shall be the sum of £466.66 (inclusive of disbursements) to which must be added such VAT as may be payable and supported by an appropriate VAT invoice.

Case No: CHI/00HX/LCP/2007/0001

Property: 1-6 & 19-24 Heronbridge Close, Swindon

Application

1. On 6 March 2007 the Applicant made an Application 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 its acquisition of the right to manage the property under the 2002 Act.
2. Directions were issued by the Tribunal on 9 March 2007 and the matter was set down for a determination on the papers. No request was received for an oral hearing so the matter was dealt with by the Tribunal on the papers.
3. The Applicant sought costs totalling £1,147.71 as set out in a letter dated 15 March 2006 from the Applicant's solicitors, McCloy & Co, to Mr J R Morris, Company Secretary for the RTM Company.

Law

4. The law is to be found at Section 88 of the 2002 Act, which deals with costs incurred in connection with the acquisition of the statutory right to manage, and provides, insofar 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 any premises,*
 - (b) *party to such a lease otherwise than as a 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.*

Facts

5. In summary the facts were as follows. The Applicant, Bath Ground Rent Estate Ltd ("BGRE"), owned the freehold of the property which was managed on its behalf by West of England Estate Management Company Ltd ("WEEMCO"). On 24 and 29 September 2005, the Respondent, Heronbridge Close RTM Company Ltd ("HCRTM") served two Claim Notices to acquire the right to manage ("RTM") in relation to Flats 19-24 and 1-6 Heronbridge Close respectively. The Applicant's solicitors, McCloy & Co ("McCloy") served Counter-Notices dated 17 October 2005 admitting the RTM.
6. Subsequently correspondence was exchanged between McCloy and Mr Morris, Secretary of HCRTM, WEEMCO and BGRE. McCloy wrote a letter dated 22 December 2005 to

HCRTM purporting to be a Contract Notice in relation to management, insurance and ground maintenance but stated that "as none of the matters identified above are ongoing in the contractual sense we have not served Contractor Notices". There was further correspondence on insurance cover, gardening and a boundary wall dispute. The acquisition of the RTM took effect on 1 February 2006.

7. By letter dated 15 March 2006 McCloy requested payment from HCRTM of the landlord's costs. These were stated to be £809.58 for McCloy's legal fees, £88.13 WEEMCO fees of "2.5 hours of administrative work for which they claim £75 plus VAT" and £250.00 fees for BGRE described as "incurred head office costs for Mr Gordon Bloor FRICS (no VAT)". Mr Morris requested breakdowns of all the costs which were provided but not agreed.
8. On 6 March 2007 McCloy applied to the Tribunal and on 30 March, in response to the Directions, provided a second Schedule of legal costs with additional narrative, a copy of its standard client care letter and bundle of correspondence and file notes in support. On 27 April 2007 Mr Morris on behalf of HCRTM provided a detailed 14 page Statement of items in dispute. McCloy did not respond in detail as "we cannot justify the additional and irrecoverable expenses which would be involved ... and we do not believe that there is a great deal to be gained in our doing so as the points made are largely matters of opinion and conjecture".

Consideration

9. The Tribunal gave careful consideration to the Application, McCloy's letters and documents in support, and to Mr Morris' Statement of issues in dispute.
10. In relation to the fact that McCloy had not issued a retainer letter to its client BGRE specifically in connection with this matter, the Tribunal accepted McCloy's explanation that BGRE was a long-standing client for whom a high volume of work was carried out. However, the lack of a retainer letter meant that the extent of the service to be provided, and to whom, was unclear. It was evident from the correspondence provided that much of the advice was given direct to the managing agents WEEMCO rather than to McCloy's client, BGRE. In the absence of any clear explanation, the Tribunal had to assume that the retainer extended to liaising direct with WEEMCO on behalf of the landlord in order to avoid duplication of work and costs.
11. The Tribunal further noted from McCloy's standard client care letter that for "subsequent transactions" for existing clients where "ongoing work" was to be undertaken, it would provide a "fee estimate". There was no evidence that a fee estimate was provided for work done in connection with the RTM, which was not in any event repeat work of a regular nature, as McCloy stated that this was the first time BGRE had been party to an RTM application. Bearing in mind the statutory principle under Section 88(2) to which it must have regard (see above # 4), the Tribunal would have expected to see a fee estimate, or other evidence of the landlord's agreement to pay McCloy's fees.
12. That said, it was not unreasonable for BGRE to retain its usual firm of solicitors at the same hourly rate that it would normally pay for other work. The hourly rate claimed was £175 per hour. McCloy did not explicitly state, either in the Application or on its Schedule of costs, what level of fee earner was engaged, and its letters did not identify Mr Patrick McCloy's fee earner status, but the Tribunal inferred from the firm's name and size that he was a partner. The Tribunal considered whether, as submitted by Mr Morris, any of the work could have been carried out more cheaply by a competent assistant. On balance, in view of the importance of the matter to the client and the compulsory nature of the transaction, the Tribunal in its collective experience concluded that the hourly rate was not unreasonable, and also that it was not unreasonable overall for a partner to have conducted the case. The rate of £175 per hour implied a Grade A fee earner, meaning a solicitor with considerable post-qualification experience, knowledge and learning.
13. The Tribunal considered the breakdown of legal costs supplied by McCloy. Two Schedules had been produced, the first as supplied to HCRTM in March 2006 and the

slightly more detailed second Schedule in response to the Directions in March 2007, under cover of a letter dated 30 March 2007. Both Schedules were deficient in that although they set out the time spent in minutes they did not include the actual costs, either of each item, or any totals or sub-totals. Solicitors time recording would normally be calculated in units of 1/10th of an hour, which would equate to £17.50 per unit, but the Schedules were expressed in minutes rather than 1/10th s of an hour. This equated to £2.916 per minute. According to the standard retainer letter, letters out were charged at 1/10th of an hour. Against this background the Tribunal considered the second Schedule in detail.

14. Arithmetically, the Schedule was not self-explanatory. In the absence of any information or figures, the Tribunal was unable to ascertain what McCloy had charged for letters out in addition to time spent. The total claimed in the Application was £809.58, presumably inclusive of VAT, but the Tribunal was unable to reconcile this with the total of 255 minutes spent plus 13 letters out stated in the Schedule. No VAT calculation was provided. In addition, at the end of the Schedule it was stated: "time spent 4 hours 25 minutes has been discounted to 3 hours @ £175 per hour so as not to exceed the amount allowed under the indemnity principle". This comment was not further explained. Applying McCloy's own figures, the time charged of 3 hours @ £175 would total £535 plus VAT of £91.88, equalling £616.88, not £809.58. In the absence of any clarity or explanation the Tribunal was unable to ascertain how the difference of £192.70 had arisen. Generally the Tribunal took the view that a fee paying client would expect his solicitor to justify the sums if the client were personally liable for those sums, as under Section 88(2).
15. Against this unsatisfactory background the Tribunal examined the itemised second Schedule. It decided that 10 minutes for initial instructions and 3 letters out (items 1-4) were reasonable. 60 minutes for item 5, "considering position generally" was not reasonable and 30 minutes was allowed. McCloy argued in support of their costs that "the clients had not previously been the respondents to an RTM application and "the law and factual issues required detailed consideration prior to the preparation of counter-notices". The Tribunal took the view that as a general principle no additional time should be chargeable, as a Grade A fee earner in a firm of solicitors should be expected to know the legal provisions relevant to RTM, or at least not to pass on research time to their clients. The Tribunal took the view that no additional time should be allowed merely because this was the first time the fee earner had been involved in a RTM transaction. Even if in some circumstances research time might be chargeable to a landlord client under Section 88, the Tribunal was not persuaded that this was a case where such time should be allowed having regard to the relatively straightforward circumstances of this case.
16. Items 7 & 8, letters in from WEEMCO and BGRE, were disallowed. Again as a general principle, consideration of straightforward letters received should not be separately charged unless the complexity of the content requires perusal time (which should be properly time recorded). According to the bundle of documents item 7 was a short letter and item 8 was not provided.
17. Items 10-16 concerned consideration of information and attendance advice to WEEMCO (as opposed to the client BGRE) totalling 70 minutes. The attendance notes covering this period were very brief and vague: "will check law and generally progress matters ... general consideration of practical issues ... checking terms of standard form of lease". The Tribunal regarded these notes as inadequate to justify the time claimed and the time spent as excessive. It allowed 30 minutes, to include preparation of a letter to Mr Morris dated 22 December 2005 in relation to "contracts" including insurance.
18. In relation to items 17-23, it appeared to the Tribunal that much of the content related to insurance queries and a pre-existing dispute over the condition of a boundary wall. The Tribunal accepted Mr Morris's point that some of this work was not "in consequence of" the Claim Notices for the purposes of Section 88 costs. Some of the work, such as checking the landlord's insurance obligations under the lease, considering apportionment of the premium, would be relevant, but the Tribunal was not persuaded that ongoing

correspondence as to whether and if so when the policy should be prematurely determined was a matter for which the costs should be borne by the Respondent. As for item 23, an "attendance on WEEMCO" dated 18/01/2006, the attendance note included in the bundle gave no idea of what work was carried out and did not assist the Tribunal. 15 minutes was allowed overall for these items.

19. Item 24, "instructions re handover arrangements" on 07/02/2006, was post the acquisition date of 1 February 2006 and according to the corresponding letter out of 14 February McCloy did not peruse the service charge accounts but merely returned them to WEEMCO: "as there is no money changing hands there is no need for me to become involved in management issues". The Tribunal regarded item 26 as unnecessary as the matter appeared to have been dealt with at item 24. In the absence of better information 10 minutes was allowed in total for both items. Item 27, regarding "ongoing obligations as landlords", was relatively straightforward and did not merit 30 minutes of a partner's time. Time "checking the law" was not recoverable as previously explained. 10 minutes was allowed. Item 30, "compiling claim for costs as requested by HCRTM", was disallowed under the principle in Section 88(2) as the Tribunal was not satisfied that it was part of the retainer between McCloy and BGRE for this client to incur extra costs of preparing a detailed narrative bill.
20. Standing back from the detailed arguments the Tribunal weighed all the points made together and allowed a total of 100 minutes chargeable time at £175 per hour amounting to £291.66. In relation to the 13 letters recorded letters out, the Tribunal decided it would be reasonable to allow a global amount of one hour's time at £175, as there appeared to be a level of duplication in written and oral advice provided to both BGRE and WEEMCO. The total of McCloy's legal costs allowed and payable by the Respondent was therefore £466.66 plus VAT as appropriate. The Tribunal would expect an appropriate VAT invoice to be produced for any sums on which VAT is payable.
21. Turning to the question of WEEMCO's managing agents fees, claimed at £75 plus VAT, the Tribunal found no evidence to show any liability for the landlord to incur these professional costs in addition to legal advice in connection with the RTM transaction. A letter dated 14 February 2006 from Mr P McCloy to Mr M Perry of WEEMCO stated: "I shall shortly be submitting a claim for costs. Would you like me to include the claim in respect of work carried out by WEEMCO relating to the RTM application and changeover. If so could you please let me have brief details and the amount you would like to claim". Mr Perry's reply stated: "I calculate that I have spent approximately 2.5 hours on administrative work relating to the RTM applications and I think fee in the region of £75 plus VAT would therefore be appropriate". When Mr Morris later asked for a breakdown Mr Perry claimed this was an undercharge of his actual costs. The Tribunal found this arrangement to be vague and informal and the costs unsubstantiated. It was therefore not persuaded that BGRE were liable to incur these costs and they were not payable by the Respondent.
22. The Tribunal then considered the costs initially described in McCloy's letter of 15 March 2006 as incurred by BGRE as "head office costs for Mr Gordon Bloor FRICS totalling £250 (no VAT)." These were later described as "costs incurred by the freeholder" in the letter dated 30 March 2007. This item and its descriptions were confusing. The "invoice" supplied in support of these costs was addressed to McCloy, not BGRE, and was headed "payable by Heronbridge Close RTM Company Ltd". It was anonymous and unsigned. The letterhead simply gave an address, Woodhill Mews, North Lane, Bath, which was the same as that on a letter dated 9 January 2006 from a Mrs Carol Easton to McCloy concerning collection of ground rents. The Tribunal presumed that this was the "head office" of BGRE, though no name or registered number of the company was provided. According to Mr Morris, who challenged these costs, Mr Bloor was a director of BGRE. The basis upon which BGRE could be liable to Mr Bloor for these costs was obscure and unsubstantiated.
23. The "invoice" was dated 24 November 2005 but was far as the Tribunal could infer had not been produced to HCRTM until 5 May 2006 when Mr Morris requested a breakdown.

It purported to describe work done between 24/09/2005 to 24/11/2005 in connection with the RTM. Much of this work appeared to relate to legal matters dealt with by McCloy, such as considering the validity of the Claim Notices, or management matters dealt with by WEEMCO, such as providing information on service charges and "management issues and procedures". Presumably BGRE employed WEEMCO to deal with such matters on its behalf and the Tribunal has already noted that most of the correspondence in the bundle was between Mr McCloy and Mr Perry. In addition there was no explanation as to how the figure of £250 had been arrived at despite Mr Morris' request for a breakdown. There was no evidence that the "invoice" had been paid.

24. The Tribunal was therefore not persuaded on the evidence that Mr Bloor's costs were costs "incurred by a person who is a landlord ... in respect of professional services rendered to him by another" within the meaning of Section 88. Even if they were, the Tribunal did not accept that the costs "might reasonably have been expected to have been incurred by [the landlord] if the circumstances had been such that he was personally liable for all such costs" under Section 88(2). The £250 was disallowed.
25. Finally the Tribunal found it was not reasonable for WEEMCO to charge £11.75 photocopying fees to supply a copy of a lease to McCloy. The Tribunal did not accept that BGRE would expect or be liable to pay its managing agent's copying charges in these circumstances. This sum did not appear in any of the costs breakdowns supplied for the purposes of the Application. For the sake of clarity the Tribunal decided that the costs allowed should be inclusive of disbursements.

Determination

26. Tribunal determines for each and every reason stated above that the amount payable by the Respondent to the Applicant in respect of the landlord's costs payable by the TRM Company shall be £466.66 inclusive of disbursements, as set out in the attached Schedule, to which must be added such VAT as may be payable and supported by an appropriate VAT invoice.

Dated 25 July 2007

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Ms J A Talbot
Chairman



McCloy & Co

Re: Heronbridge Close – Right to Manage

Schedule of time spent/Letters written

No.	Date	Item	Time (mins)
1.	10/10/05	Initial instructions from clients <i>Initial instructions from client pursuant to two notices exercising Right to Manage. Consideration of Position.</i>	10
2.	17/10/05	Letter out to BGRE	
3.	18/10/05	Letter out to HCRTM	
4.	18/10/05	Letter out to WEEMCO re contract	
5.	15/10/05	File attendance. Considering Notice. Checking law. Preparing counter-notices. <i>Following receipt of Notices, considering position generally. The clients had not previously been the respondents to an RTM Application and the law and the factual issues required detailed consideration prior to the preparation of counter-notices.</i>	60 30
6.	18/10/05	Letter to WEEMCO	
7.	31/10/05	Response from WEEMCO. Consideration. <i>Receiving letter from managing agents and considering matters in light of information provided by them concerning contractor notices</i>	5
8.	24/11/05	Letter of instructions from BGRE. Consideration. <i>Receipt and consideration of letter from BGRE concerning entitlement to costs and entitlement to membership of RTM Company</i>	5
9.	05/12/05	Letter to WEEMCO re contract	
10.	25/11/05	Consideration of position re contractor notices. <i>Checking facts and law re contractor notices as required to be prepared under the Act</i>	15
11.	12/12/05	Advice to WEEMCO <i>Provision of advice to WEEMCO in response to queries raised in e-mail of 12/12/05 on issues concerning management hand over</i>	10
12.	16/12/05	Further communication from WEEMCO re contracts <i>Receipt and consideration of further letter from managing agents re practical issues concerning management take over</i>	5

SUB TOTAL 40 mins

ITEMS 9-16

30 mins
allowed

13.	22/12/05	Letter to BGRE	
14.	21/12/05	Attending WEEMCO and investigating aspects of RTM management provisions on instructions. Checking terms of standard form of lease <i>Advising on further issues concerning letter to RTM company comprising the contract notice pursuant to the provisions of the Act</i>	35
15.	22/12/05	Letter to HCRTM	
16.	01/01/06	Communication from WEEMCO	5
17.	30/12/05	Consideration of points raised in HCRTM's letter of 28/12/05. <i>Received letter from RTM company dealing with contractor notices and other practical issues as stated. Consideration of points raised and thereafter referral to managing agents.</i>	15
18.	03/01/06	Letter to WEEMCO	
19.	13/01/06	Letter to WEEMCO	
20.	18/01/06	Further instructions from WEEMCO on letter from HCRTM <i>Receipt and consideration of letter from managing agents concerning practical issues including insurance and boundary walls</i>	10
21.	19/01/06	Letter to HCRTM	
22.	18/01/06	Attendance on WEEMCO	
23.	23/01/06	Instructions from WEEMCO re insurance Arrangements <i>Receiving and considering letter from managing agents for insurance arrangements relevant to RTM take over</i>	10
24.	07/02/06	Instructions from WEEMCO re handover Arrangements <i>Receiving letter from managing agents with revenue accounts, service charge estimates, ledger print out and details of arrears all relevant to financial adjustment at take over</i>	10 5
25.	14/02/06	Letter to WEEMCO	
26.	14/02/06	Communication from WEEMCO re service charge issue <i>Further consideration of position re service charge etc and letter to WEEMCO of 14.02.06</i>	10

ITEMS 17-23
15 mins
allowed

SUB TOTAL 50 mins

27. 14/02/06 Advice to clients re on-going obligations as landlords with particular reference to insurance. Also as to entitlement to membership of HCRTM. Checking law as necessary
The clients required advice as to their ongoing obligations in respect of insurance, in particular in the event of default on the part of the RTM. They also required advice as to rights and obligations attaching in connection with their entitlement to membership of the RTM. Checking the law and advising as necessary.

~~30~~ 10

28. 18/04/06 Letter to BGRE

29. 18/04/06 Letter to BGRE

SUBTOTAL 10 mins

30. 02/05/06 Compiling claim for costs as requested by HCRTM.

~~20~~

Amount Allowed under the

?

285
TOTAL ALLOWED
100
mins

Total time spent 4 hours 25 mins has been discounted to 3 hours @ £175.00 per hour so as not to exceed the amount allowed under the indemnity principle

Stalder
Chairman