

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

S.88 Commonhold and Leasehold Reform Act 2002



DECISION & ORDER

Case Number: CHI/00ML/LCP/2008/0002

Property: Sandringham Lodge
23 Palmeira Avenue
Hove BN3 3GA

Applicant: Anstone Properties Limited

Respondent: Sandringham Lodge RTM Company Limited

Application: 24 September 2008

Hearing: 22 October 2008

Decision: 27 November 2008

Tribunal: Ms J A Talbot MA
Mr N J Cleverton FRICS

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 £1,499.46 inclusive of disbursements and VAT.

Application

1. On 24 September 2008 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 RTM company in connection with its acquisition of the right to manage under the Act, which took effect on 1 June 2008.
2. The matter was set down for an oral hearing on 22 October 2008.
3. Osler Donegan Taylor, solicitors for the Applicant, provided a brief Schedule of costs setting out in summary form the work carried out by them and showing the activity, level of fee earner, hourly rate, time spent, and amount charged. The total costs claimed were £1,940.71 including disbursements and VAT.

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.

Hearing

5. A hearing took place in Hove on 22 October 2008. The Applicant landlord was represented by Mr J Donegan, solicitor, of Osler Donegan Taylor ("ODT"). The Respondent RTM Company was represented by Ms Fitzpatrick, solicitor, of Dean Wilson Laing ("DWL").

6. In summary the facts were as follows. Sandringham Lodge is a purpose built block of 20 flats. On 25 January 2008, DWL served upon the respondents ("Anstone") a Claim Notice under Section 79 of the 2002 Act indicating that Sandringham Lodge Residents RTM Company Limited intended to acquire the right to manage ("RTM") on 1 June 2008. The deadline for the service of any Counter-Notice was 29 February 2008. Anstone referred the matter to ODT on or about 4 February 2008 when Mr Donegan acknowledged instructions and sent a brief retainer letter.
7. On 15 February 2008 ODT wrote to DWL requested certain information regarding the qualifying tenants (QTs") including evidence that all the QTs were members of the RTM company, copies of the Invitation Notices and confirmation as to whether the Claim Notice had been sent to all the QTs. They had received information from one of the lessees, Mr O'Reilly (who was also a client of the firm) that he had not received any papers from the RTM company and had not agreed to participate in the RTM company or claim.
8. On 26 February 2008 DWL replied enclosing, inter alia, a copy of the Members Register of the company which indicated that Mr O'Reilly was a member of the RTM company. The Claim Notices were not sent to all the lessees until 26 February. ODT considered that the information received was not consistent with the information received from Mr O'Reilly.
9. On 29 February ODT served a Counter-Notice in which it was contended that the Claim Notice did not comply with the requirements in Section 79(2) and (8) of the Act. ODT took further instructions with Mr O'Reilly on 19 March 2008 on his return from holiday and at this meeting he now said he had been contacted by DWL before the service of the Claim Notice, and that by telephone he may have given the impression that he wished to join in with the RTM company. This was not consistent with his previous statement. In light of this information ODT withdrew their objection to the RTM claim and informed DWL that same day.

The Applicant's Case

10. In support of the landlord's costs, Mr Donegan explained that he was a partner in the firm of ODT, a Category A senior fee earner with experience of leasehold matters and that Anstone was at that time an existing client of his firm. The hourly charging rates claimed in the Application were the rates always paid to his firm by this client. The rates were: £200 per hour for Mr Donegan and £150 for Ms Claire Bown, a Category C fee earner. It was accepted by Ms Fitzpatrick that it was not unreasonable for the Applicant to retain its usual solicitors in relation to the matter at their usual hourly charging rates.
11. Mr Donegan submitted that it was necessary to serve a Counter-Notice and reasonable to investigate the potential breaches of Section 79(2) and (8) of the Act in light of the information available to him (the allegations made by Mr O'Reilly) at the material time. If the Counter-Notice was not served the tenants would automatically acquire the RTM.
12. Mr Donegan further submitted that had the RTM failed to serve intention to participate on any QT that neither was nor had agreed to become a member of the RTM company then this would have been a breach of Section 78(1) and would have invalidated the Claim Notice.

13. Mr Donegan defended the time taken to investigate the above matters and to prepare the Counter-Notice and for subsequently withdrawing the objection as reasonable and proportionate and within scope of Section 88. In answer to questioning from the Tribunal he explained that his firm routinely charged half a unit (£10 at his charging rate) for letters in, and this was mentioned in his retainer letter. At least 2 letters out to the client and around 5 telephone calls were in connection with the issues raised Mr O'Reilly. The other client attendances related to general and procedural advice on the RTM. The item "attendance on witness" related to meeting with Mr O'Reilly who attended ODT's office without appointment having been away.
14. Other letters out under the heading "attendances on company search agents/witnesses" included letters to the managing agent Mr Basley in relation to insurance, contractor notices (served by Mr Basley) and producing closing service charge accounts. Regarding company searches and land registry searches Mr Donegan said these were necessary and it was cost effective for a junior solicitor to deal with this. In general Mr Donegan submitted that all costs claimed were reasonable and incurred in consequence of the Claim Notice, under Section 88(1). Mr Donegan had not claimed for any costs incurred after the acquisition of the RTM on 1 June 2008.

The Respondent's Case

15. Ms Fitzpatrick put forward two main arguments: first, that it was not necessary or reasonable for ODT to serve a Counter-Notice at all, and second, that in any event the costs claimed were excessive.
16. In relation to the first point, Ms Fitzpatrick submitted that ODT did not act reasonably in their approach to the Claim Notice. It was unreasonable for a landlord to serve a Counter-Notice which lacked merit and was not pursued. In particular, once DWL had provided the information requested by ODT, including a copy of the register of members of the RTM company, it was not necessary to make any further enquiries of Mr O'Reilly as the register was conclusive. Therefore all costs relating to the Counter-Notice should be disallowed.
17. As a result, it was argued that the costs incurred in investigating those matters were not within scope of Section 88, as they did not meet the test in subsection (2) that "any costs incurred ... are to be regarded as reasonable only if and to the extent that costs in respect of such [professional] services might reasonably have been expected to have been incurred by him if the circumstances had been such that he was personally liable for all such costs". Ms Fitzpatrick contended that a client would be on a costs risk and would not be prepared to bear any costs of continuing unnecessary investigations once documentary evidence had been provided to confirm that Mr O'Reilly was a member of the RTM company.
18. On quantum, Ms Fitzpatrick further contended that the costs claimed were excessive, in that too much time had been spent overall and that the Tribunal should reduce the amount of costs for correspondence, attendance, perusal and preparation.

Decision

19. As a general principle the Tribunal considered that a landlord was not expected to be of pocket in respect of costs incurred instructing lawyers for a transaction forced upon it, in this case, the right to acquire the RTM. The law and statutory

procedures in this area are complex and require particular attention to detail, especially in relation to the Notices of Claim and Counter-Notice. This is of course subject to the proviso in Section 88(2).

20. It was not disputed that it was reasonable for Anstone to retain its usual firm of solicitors, at the same hourly charging rates that it normally paid for other work. The Tribunal accepted that those rates were reasonable.
21. From the facts found, and in all the circumstances, the Tribunal found it was reasonable for Mr Donegan to protect his client's position by serving the Counter-Notice. The Claim Notice was potentially invalid. He could not reasonably have been expected to ignore the information provided to him by Mr O'Reilly, even though later this turned out to be inaccurate, so it was also reasonable for him to investigate the validity of the Claim Notice. He was up against the deadline of 29 February. He received the information from DWL on 26 February and was unfortunately unable to contact Mr O'Reilly in those three days.
22. On quantum, the Tribunal found that some of the time taken was excessive and disallowed some costs as shown on the amended Schedule annexed hereto. In particular, perusal time of documents of 2 hours 30 minutes was excessive and the preparation of the Counter-Notice was not complex. Telephone attendance and letters to the client were reduced as the Tribunal considered that the necessary advice on the RTM procedure and on the progress of this particular matter could have been provided in less time.

Determination

23. The Tribunal determines that the Applicant's reasonable costs payable by the Respondent pursuant to Section 88(1) of the 2002 Act are £1,499.46 (inclusive of VAT and disbursements) as shown on the attached Schedule.

Dated 27 November 2008

Signed
Ms J A Talbot
Chairman

Amerded By Tribunal

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Fla BA
Chair

**ANSTONE PROPERTIES LIMITED
SANDRINGHAM LODGE**

**OSLER DONEGAN TAYLOR COSTS
FOR PERIOD 29/0-1/08-31/05/08**

Description of Fee Earner

**Claire Bown – Category C (admitted 2006). Hourly rate £150
Jeremy Donegan - Category A (admitted 1991). Hourly rate £200
All time Jeremy Donegan unless marked otherwise**

Allow

Attendances upon Client

7 letters out (pages) @ £20 £140.00 ~~100.00~~
15 routine telephone attendance @ £20 £300.00 ~~240.00~~

Attendances upon RTM Company/Solicitors

10 letters in (pages) @ £10.00 £100.00
6 letters out (pages) @ £20 £120.00
4 routine telephone attendances @ £20 £80.00 } allow

Attendances upon Company Search Agents/Witness

2 letters in (pages) @ £10.00 £20.00
4 letters out (pages) @ £20.00 £80.00
4 routine telephone attendances @ £20.00 £80.00
2 routine telephone attendances (C Bown) @ £15.00 £30.00 ~~15.00~~
Personal attendance on witness: 15 minutes @ £200 per hour £50.00 ~~25.00~~

Perusal Documents (RTM Claim Notice, Company Documents, Land Registry Searches)

12 minutes @ £200 per hour £40.00
2 hours 36 minutes (C Bown) @ £150.00 £390.00 ~~225.00~~ Allow 90 mins

Preparing Documents (Counter-Notice)

6 minutes @ £200 per hour £20.00
24 minutes (C Bown) @ £150 per hour £60.00 ~~30.00~~

Preparing Schedule of Costs

18 minutes @ £200 per hour £60.00 ~~45.00~~
Total £1,570.00
VAT £244.75
Company Search fee £29.96
Land Registry fees £36.00

TOTAL **£1,940.71** ~~1,220~~ **€ 1,499.46**

Signed 
J.P. DONEGAN (PARTNER)

Dated 26/6/08