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Residential
Property
TRIBUNAL SERVICE

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
(LONDON PANEL)

COMMONHOLD AND LEASEHOLD REFORM ACT 2002 SECTION 88
LANDLORD AND TENANT ACT 1985 SECTION 20C

Property: **28 Sylvan Avenue, Mill Hill, London NW7 2JJ**
Applicant: **Waterglen Ltd**
Respondent: **28 Syl-Ave RTM Co Ltd**

Tribunal Member:
Mr Adrian Jack (Chairman)

Ref: LON/00AC/LCP/2007/0005

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1. By a notice dated 12th January 2007 the Respondent sought to claim the right to manage the property. The Applicant did not dispute the right and served no counternotice. The Respondent acquired the right to manage the property on 21st May 2007.
2. By the current application the Applicant seeks the determination of the legal fees to which it is entitled, which the Applicant puts at £791.03. The Respondent accepts that £573.64 is a reasonable figure for the legal fees.
3. The Respondent also seeks an order under section 20C of the Landlord and Tenant Act 1985 that the Applicant is unable to recover its costs of the current application from the tenants.

The law

4. Section 88 of the Commonhold and Leasehold Reform Act 2002 provides:

> "(1) A RTM company is liable for reasonable costs incurred by a person who is (a) landlord... 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."

Section 88(4) gives this Tribunal jurisdiction to determine disputes as to the amount of the costs payable.

The claim and submissions

5. The Applicant has produced a schedule showing the work done. The relevant fee earner was an associate billed at £200 rising in October to £225 per hour, with some work by a trainee at £105 per hour. The Respondent did not dispute the choice of solicitor, the rates, the level of fee earner, the fact of the work having been done or the disbursements.
6. The Respondent submitted that 23 letters, e-mails and telephone calls totalling 24 units were excessive. It further submitted that a number of the communications would have concerned the building insurance and therefore not in consequence of the claim notice. The Respondent said that it "suspects that a number of solicitor/client communications between the Applicant and its solicitors related to a longstanding service charge dispute between the Applicant and the leaseholders." Further the Respondent submitted that liability for costs ceases on the date the Respondent acquires the right to manage, in this case 21st May 2007. Accordingly costs after 21st May 2007 are irrecoverable. The Respondent also disputed the duty to pay the time for the preparation of the schedule of costs. Lastly the two items on 10th October 2007, a letter and phone call, were "debt collecting" and thus irrecoverable.

When does liability for costs cease?

7. When does the liability for costs cease? The Respondent submitted that the combined effect of sections 81(4) and 89 was that the liability for costs ceased on 21st May 2007. Section 81(4) provides:

> "Where a claim notice is given by a RTM company it continues in force from the relevant date until the right to manage is acquired by the company unless it has previously:
>
> (a) been withdrawn or deemed to be withdrawn by virtue of any provision of this Chapter, or
>
> (b) ceased to have effect by reason of any other provision of this Chapter."

Section 89 provides:

> "(1) This section applies where a claim notice given by a RTM company:
>
> (a) is at any time withdrawn or deemed to be withdrawn by virtue of any provision of this Chapter, or
>
> (b) at any time ceases to have effect by reason of any other provision of this Chapter.
>
> (2) The liability of the RTM company under section 88 for costs incurred by any person is liability for costs incurred by him down to that time."

8. It can be seen that section 89(1) parallels section 81(4). Section 81(4) starts by providing that the claim notice "continues in force... until the right to manage is acquired". This language stands to be contrasted with the two following paragraphs which refer to withdrawal or ceasing to have effect. There are thus three outcomes under section 81(4): "continue in force until

acquisition" "withdrawal" and "ceasing to have effect." Section 89(1) in my judgment only applies where a claim notice has been withdrawn or ceased to have effect. It does not apply where the claim notice becomes spent upon the right to manage being acquired.

9. A claim notice cannot in my judgment sensibly be considered to have "ceased to have effect" where the whole basis of the acquisition of the right to manage is posited on the claim notice having had full effect. Accordingly the Applicant can in principle recover costs incurred after 21st May 2007.

Building insurance

10. So far as the building insurance is concerned, both the Applicant and the Respondent had an interest in the orderly transfer of arrangements for the building insurance. This was in my judgment a direct consequence of the service of the claim notice.

11. The Respondent relied on the decision of the Tribunal in 1-6 and 19-24 Heronbridge Close, Swindon (CHI/00HX/LCP/2007/0001), but it is clear in that decision that much of the work claimed concerned a separate pre-existing dispute about a boundary wall. The Tribunal accepted there that at least some of the work concerning insurance could be recoverable under section 88.

Separate service charge dispute

12. The Applicant denied that any of the sums claim related to the separate service charge dispute. I accept that assurance by its solicitor.

Schedule of costs

13. The Respondent disputed the claim for time spent preparing the detailed breakdown of costs. However, the Respondent itself in its notice seeking information under section 93 required such a breakdown. Accordingly it is reasonable for the Applicant to have incurred those costs. 18 minutes of time is reasonable.

10th October 2007

14. The Applicant sent a copy of its schedule of costs to the Respondent's solicitor on 2nd July 2007, but received no reply. The two items on 10th October 2007 comprised a call to the Respondent's solicitor and a chasing letter to the Respondent personally.

15. In my judgment these costs were incurred in consequence of the claim notice, albeit indirectly, and are thus recoverable.

Overall view

16. Standing back, I turn to consider whether the amounts claimed are in total unreasonable. In my view they are not. The amounts claimed fall well within the sums awarded by the Tribunal in other cases, as shown by the cases on which the Applicant relies. There is no dispute that VAT is payable by the Respondent.

Conclusion

17. It follows that I disallow nothing.

Section 20C

18. The Tribunal has a discretion whether to make an order under section 20C of the Landlord and Tenant Act 1985, so as to prevent the landlord recovering its costs of this application. Since the Respondent has lost comprehensively, it is in my judgment inappropriate to make a section 20C order and the application is accordingly refused.

DETERMINATION

The Tribunal determines that the Applicant is entitled to recover £791.03 from the Respondent under section 88 of the Commonhold and Leasehold Reform Act 2002. The Tribunal refuses the Respondent's application for an order under section 20C of the Landlord and Tenant Act 1985.

Adrian Jack, chairman 8th January 2008