

THE LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT
ASSESSMENT PANEL

Reference: LON/00AX/LCP/2008/0001

COMMONHOLD and LEASEHOLD REFORM ACT 2002 – Section 88

Property: 8 Springfield Road, Kingston upon Thames, KT21 2SA

Landlord/Respondent: Plainworth Ltd.
Represented by: Russell Cooke (solicitors)

Applicant/Tenant: Springfield Management (No8) RTM Co Ltd
Represented by: FlatFocus Management

Preliminary

1. This is an application under S.88(4) of the Commonhold and Leasehold Reform Act 2002 ("the Act") by FlatFocus Management dated 23 January 2008 for a determination of the reasonableness of costs payable by a RTM company under S.88 of 'the Act'.
2. The costs in dispute are:
 - a) the freeholder's costs (Plainworth Ltd) of £500.00
 - b) the freeholder's solicitors' (Russell Cooke) costs of £446.50
3. The directions dated 25 January 2008 stated that the matter was to be dealt with by written representations without an inspection, and written representations were received from the representatives of both parties.
4. The matter was considered by a Tribunal on the 5 March 2008, and the following key documents were provided in the 'bundle' by the parties: -
 - i.) an invoice from Russell Cooke dated 23 May 2007 in the sum of £380.00 + VAT (£446.50)
 - ii) an invoice from Plainworth Ltd dated 25 September 2007 in the sum of £500.00
 - iii) a letter from Russell Cooke dated 4 February 2008 explaining the basis of the sums at i) and ii) above.
 - iv) A letter from FlatFocus Management dated 20 February 2008 in response to item iii) above
 - v) A document dealing with the provisions of S.88.

Respondent's case

5. The solicitor's costs represented 2 hours work as detailed, at a charge out rate of £190.00 per hour + VAT, and the freeholder's costs were charged for 'care and attention' as detailed, on the basis of £125.00 per flat for each of the 4 flats.

Applicant's case

6. The Applicants did not challenge the solicitors' hourly charge out rate, but argued that the time taken should have been 'a maximum of an hour'.
7. As regards Plainworth's costs, they argued that these were not 'a professional service/legal expense to be reimbursed' under the provisions of S.88. They say that 'The act refers to costs 'in respect of professional services' for which the landlord was 'personally liable' which is taken as being the landlord's legal expenses in dealing with the notice, which was carried out by the solicitor'.

The Tribunal's decision

8. Section 88 of 'the Act' states as follows: -

- 88 (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) *.....*
 - (c) *.....*

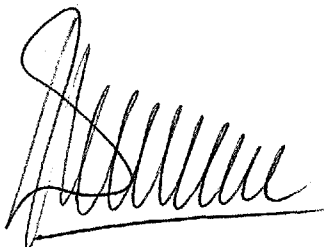
In consequence of a claim notice given by the company in relation to the premises.

- (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) *.....*
- (4) *.....*

9. The Tribunal finds that, in relation to the solicitor's costs, the time spent of 2 hours is commensurate with the task involved, and since the charge out rate of £190.00 per hour has not been challenged, the Tribunal determines that the sum of £380 + VAT is reasonable.
10. In relation to Plainworth's costs, the Tribunal does not accept the Applicant's contention that none of their costs are chargeable on the basis that they are 'not a professional service/legal expense to be reimbursed'. Section 88(1) does not, in the Tribunal's opinion, limit recovery to professional costs. Provided it can be shown that reasonable costs have been incurred, the RTM company is liable for them. In this instance, from the detailed analysis of the work done, it is apparent that some costs will have been incurred, e.g. postage, telephone calls, copying, travel to a meeting. However such costs are likely to be minimal and the Tribunal therefore determines the nominal sum of £25.00.

Tribunal members:

D.L.Edge FRICS
A.D.Ring

A handwritten signature in black ink, appearing to read 'D.L.Edge', written over a horizontal line.

D.L.Edge FRICS

5 March 2008