

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



**S.88 and S.89 Commonhold and Leasehold Reform Act 2002**

**DECISION & ORDER**

<b>Case Numbers:</b>	<b>CHI/24UL/LCP/2009/0005</b>
<b>Property:</b>	<b>Wykeham House Alexandra Road Farnborough GU14 6DE</b>
<b>Applicant:</b>	<b>Sinclair Gardens Investments (Kensington) Ltd Solicitors: P.Chevalier and Co ("P")</b>
<b>Respondent:</b>	<b>Duncan Court Associates RTM Company Limited Wykeham House RTM Company Ltd</b>
<b>Consideration:</b>	<b>5<sup>th</sup> October 2009</b>
<b>Decision:</b>	<b>6th November 2009</b>
<b>Tribunal:</b>	<b>Mr RTA Wilson LLB Mr D Lintott FRICS Ms T Wong</b>

**SUMMARY OF DECISION**

The tribunal determines that the total amount payable by the respondent to the applicant in respect of legal costs shall be the sum of £3,075.64 VAT inclusive.

**APPLICATION**

1. On 15<sup>th</sup> July 2009 the applicant applied to the tribunal pursuant to Sections 88 and 89 of the Commonhold and Leasehold Reform Act 2002 ("The 2002 Act") to determine the costs payable by the respondent in connection with two 'right to manage' claims in respect of the Property.

2. Directions were issued on 27<sup>th</sup> July 2009 to the effect that the tribunal was minded to determine the issue on the basis of written representations unless either party objected. The respondent objected to the application being dealt with on the papers alone and supplemental directions were thus issued providing for the application to be determined by a three-member tribunal at an oral hearing.
3. 'P', solicitors for the applicant, provided a detailed breakdown of their costs which was made up of three parts. The first part claimed was for £999.52 in respect of a first claim notice. This claim notice was subsequently withdrawn following a jurisdiction hearing by the tribunal which found the application to be defective. The second part claimed was for £1486.37 in respect of the applicant's costs in preparing for the jurisdiction hearing. The third part claimed was for £612.75 in respect of the second claim notice. The tribunal duly considered the application at a hearing on the 5<sup>th</sup> October 2009 which was attended by Paul Chevalier of 'P' for the applicants and five members of the RTM company who represented themselves and the RTM company.

## LAW

4. The law is to be found at Sections 88 and 89 of the 2002 Act, which deals with costs incurred in connection with a claim by a right to manage company and provides, insofar as is relevant:

### *Section 88 Costs: general*

- (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 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.*

***Section 89 Costs where claim ceases***

- (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 it 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 a liability for costs incurred by him down to that time.*
- (3) *Each person who is or has been a member of the RTM company is also liable for those costs (jointly and severally with the RTM company and each other person who is so liable).*

**CONSIDERATION**

5. The tribunal carefully considered the bill of costs rendered by 'P'. The total amount claimed for costs in the application is we believe incorrectly stated to be £2485.89. We believe the correct sum to be £3,098.64 which is made up by adding the three figures set out in paragraph 3 above. It appears that the figures claimed are all inclusive of VAT.
6. The tribunal's papers contained detailed submissions by 'P' running to some 150 pages and a two page letter of objection from the RTM company. At the hearing the applicants were represented by Mr Chevalier of 'P' and five members of the RTM attended to give evidence on behalf of the respondents and the RTM company.
7. The background facts are as follows; on 1<sup>st</sup> September 2008 the respondents served on the applicants a notice purporting to be a claim notice pursuant to the 2002 Act. We say purported because 'P' considered the notice to be invalid as it failed to comply with the strict provisions of the 2002 Act. 'P' served a counter notice denying the validity of the notice and correspondence passed between the parties in connection with the status of the right to manage claim.
8. In the event, the respondent's advisors would not accept that the notice drafted by them was defective and an application was made to the tribunal to determine the validity of the notice. The decision of the tribunal was that the notice was indeed invalid and as a result the respondents withdrew it on 23<sup>rd</sup> February 2009.

9. On 8th day of June 2009 the respondents served a revised notice of claim on the applicants, which was accepted as valid, and the Acquisition Date was settled as the 20<sup>th</sup> October 2009.
10. The tribunal considered that the costs recoverable from the respondents were limited to those matters set out in S.88 and 89 of the 2002 Act. Summarising this legislation, any costs incurred by a landlord in respect of professional services rendered by any person shall only be regarded as reasonable 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. The tribunal considers that the effect of these clauses is to give the landlord a choice of solicitors. He is not obliged to shop around and find the cheapest solicitor available to do the work. He can make his own choice as to who should act on his behalf and as long as the costs are reasonable and within the scope of the above legislation then they should be recoverable.
11. Looking at the quantum of costs and having regard to the legislation mentioned above, the tribunal considered it was not unreasonable for the applicants to retain their usual solicitor and in view of the importance of the matter to the client and the compulsory nature of the transaction, for the solicitor who appears to be a sole practitioner to have sole conduct of the case at the hourly rate he would normally charge for this work. There was no standard client care letter confirming his hourly rate of £230 but it is clear that there is a strong and long established relationship between the applicants and 'P' and accordingly a client care letter is not required in these circumstances. There was a letter in the hearing bundle from the applicants confirming that they had been updated as to the costs of this matter and agreeing the hourly rate of £230.
12. In the tribunal's view whilst this rate was at the very top of the scale of fees that it would expect to find for this type of work, bearing in mind the geographical location of 'P', it passed the statutory test of reasonableness as referred to above.
13. The respondents led no credible evidence challenging the hourly rate charged by 'P' and had not come to the hearing prepared to challenge the break down of the bill of costs to be rendered by 'P'. In essence their primary objection was that they themselves were the innocent parties and had not been responsible for the mistakes that had led to the first notice being held invalid. The mistakes had been made by their advisors. Moreover they had been advised that the first notice should be defended in a jurisdiction hearing. In these circumstances it was unfair and not reasonable that they should be penalised in the form of paying the costs of the applicants in relation to the first notice and the tribunal proceedings. They appeared unwilling to accept that in law they were not able to separate themselves from the actions of their advisors.
14. Mr Chevalier referred the tribunal to his lengthy written submissions, which he considered comprehensively set out his client's position. However for the benefit of the respondents who appeared unfamiliar with the steps that had to be taken by a prudent advisor to a landlord upon receipt of a right to manage claim, he outlined the steps to be taken and the work to be done up to the point when the claim notice was either accepted or challenged. Mr Chevalier also outlined the

steps that he had had to undertake to prepare for the jurisdiction hearing. Having heard this address the respondent questioned the time taken to complete some of the work outlined in the first and third parts of the bill. Mr Chevalier defended the time taken by reference to a manual time recording system, which he used. This comprised of keeping a manuscript record of the time whenever the file was worked on. A record was made in manuscript ink to the flysheet of the file. The tribunal conducted a brief comparison of the file records and the itemised bill, which accompanied the applicant's claim and concluded that the two records were consistent with each other in all material respects. There was only one query which revealed that 'P' had charged for one too many letters and P agreed that his bill of costs should be reduced by £23 to address this over charging.

15. Generally the tribunal agrees with the submissions made for the applicant focussing on the legitimate interests of a landlord in ensuring that all is in order with the right to manage claim. In the tribunal's judgement it is not possible to find that the overall fees payable, in the present case, falls outside the range of what it would be reasonable to pay solicitors of admitted experience and expertise in this area of law and practice for work properly undertaken in consequence of a RTM claim notice. Whilst we have sympathy for the respondents that they have had to bear considerable legal fees in defending what ultimately was found to be a defective notice, there is no basis in law to uphold their claim that they should be excused from paying the section 88 and 89 costs on account of them being the innocent parties. It is not for the applicants to have to bear the loss in these regrettable circumstances and the respondents redress if any should lie with those advising them.

## **DETERMINATION**

16. The tribunal therefore determines that the applicant's reasonable costs payable by the respondent pursuant to sections 88 and 89 of the 2002 Act are £3,075.64 inclusive of VAT.

**Dated 6th November 2009**

**(signed)**

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**Mr. RTA Wilson**  
**Chairman**