



Residential
Property
TRIBUNAL SERVICE

Case reference: LON/00AF/LCP/2009/0012

**DECISION OF THE LONDON LEASEHOLD VALUATION TRIBUNAL ON
AN APPLICATION UNDER SECTION 88 OF THE COMMONHOLD AND
LEASEHOLD REFORM ACT 2002**

Property: 10 Versailles Road, London SE20 8AX

Applicant: Baldry Son & Chandler

Respondent: 10 Versailles Road RTM Company Limited

**Determination without an oral hearing in accordance with regulation 13
of the Leasehold Valuation Tribunals (Procedure) (England) Regulations
2003**

Tribunal: Margaret Wilson

Date of the decision: 31 July 2009

1. This is an application by a freeholder under section 88 of the Commonhold and Leasehold Reform Act 2002 ("the Act") for a determination of its reasonable costs incurred in consequence of a claim notice to acquire the right to manage given by 10 Versailles Road RTM Company Limited ("the company") under Chapter 1 of part 2 of the Act.

2. This determination is made, with the consent of the parties, on the basis of the written material alone and without an oral hearing in accordance with the procedure set out in regulation 13 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 and by a single member of the tribunal by virtue of regulation 13(5).

3. The claim notice was given to the freeholder on 4 January 2007. It provided that the company intended to acquire the right to manage on 8 May 2007, and I assume that it did so by virtue of section 90(2) of the Act because there is no information before me to suggest that the freeholder disputed the claim. Having asked the company, through its secretary Ms Smith, the leaseholder of Flat 1, to pay its costs, the freeholder applied to the tribunal on 9 June 2009 for a determination of its recoverable costs. In pre-determination directions given on 15 June 2009 the freeholder was directed to serve a statement of its case on the company to which the company was directed to respond, and the freeholder was directed to lodge a bundle of documents no later than 15 July. The freeholder has not complied with the direction to lodge a bundle of documents but, in a letter to Ms Smith, which is before me, its solicitors, TWM, have provided the information required and have attached a schedule of costs showing total costs of £519, presumed to be excluding VAT. The costs said to be calculated on a time basis and to have been earned by a principal with an hourly charging rate of £245 plus VAT. The schedule suggests that fee-earner's hourly rate was in fact £230 per hour from 1 January to 28 March 2007, when it increased to £235 per hour until 11 September and then rose to £245, where it remained until 16 March 2009, when the final charge listed in the schedule was incurred. All the charges relate to letters in and out, to a telephone call to the client, and to perusing documents. The schedule differs from a bill dated 28 February 2008

submitted to the freeholder and sent with the application, which shows costs of £275 plus VAT for "professional charges incurred in relation to the Claim Notice dated 2 January 2007; perusing the same and reporting back to you on the same; including all correspondence, attendances and formalities and the general care and attention of the matter throughout".

4. Ms Smith, in a statement submitted on the company's behalf, said that she does not understand why she should be held responsible for the payment of any costs to the freeholder. She agrees that she was a party to the claim to acquire the right to manage and says that each of the participating leaseholders had paid £150 to the leaseholder of Flat 4 in connection with the acquisition of the right to manage, and she believed that only he could be liable to pay any of the freeholder's costs.

Determination

5. Section 88 of the Act provides:

(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 the premises

...

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

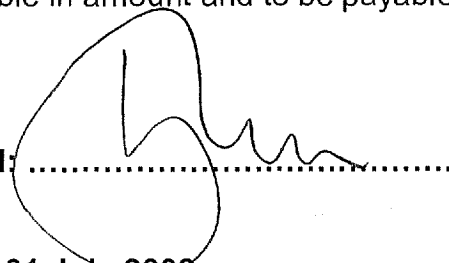
(2) Any costs incurred by such a person in respect of professional services rendered to him by another are to be regarded as reasonable only if and to the extent that costs in respect of such services might reasonably be expected to have been incurred by him if the circumstances had been such that he 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.

6. Accordingly, the company, but not Ms Smith personally, is liable to pay the freeholder's reasonable costs incurred in consequence of the claim notice, but such recoverable costs do not include the freeholder's costs as party to proceedings before the tribunal, which include the present application under section 88. It appears to me that the recoverable costs are those set out in the solicitors' bill to the freeholder dated 28 February 2008. These are in the sum of £275 plus VAT, or £323.13 in all. I consider these costs to be reasonable in amount and to be payable by the company, and so determine.

Tribunal:



DATE: 31 July 2009