SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case Reference: CHI/00ML/LRM/2009/0006

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON APPLICATION UNDER SECTION 88(4) OF THE COMMONHOLD & LEASEHOLD REFORM ACT 2002

Address:	Dyke Road Mansions, 144-146 Dyke Road, Brighton, East Sussex, BN1 5PA
Applicants:	(1) Barry Stuart Hill (2) Aileen Sara Hill
Respondent:	144-146 Dyke Road Mansions RTM Company Limited
Application:	1 February 2010
Inspection:	Not applicable
Determination:	13 May 2010

Members of the Tribunal
Mr I Mohabir LLB (Hons)
Miss C D Barton BSc MRICS

DECISION

Introduction

1. This is an application made by the Applicants under section 88(4) of the Commonhold and Leasehold Reform Act 2002 (as amended) ("the Act") for a determination of the costs to be paid by the Respondent as a consequence of having successfully acquired the rights to manage the property known as Dyke Road Mansions, 144-146 Dyke Road, Brighton, BN1 5PA ("the subject property").

2. The factual background of this matter can be set out shortly. By a claim notice dated to of May 2009, the Respondent exercised its right to acquire the management of the subject property. By a counter notice dated 12 June 2009, the Applicants did not admit the Respondent's right to do so and the latter made an application to the Tribunal for a determination of this issue. Subsequently, that application was withdrawn in September 2009 when the Applicants conceded that the Respondent was entitled to acquire the right to manage the subject property and it did so on 26 December 2009.

3. By a letter dated 1 February 2010, the Applicants made an application to the Tribunal for a determination of the costs to be paid by the Respondent having acquired the right to manage. The Applicants claimed the sum of £1575.13 including VAT, being the costs incurred by their solicitors, and has provided a breakdown of those costs which are supported by a work in progress print out and time recording notes. Also provided is a copy of the client care letter setting out the charging rates by the Applicants' solicitors together with a schedule of correspondence with other third parties.

The Law

4. 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 any premises...*

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

(2) Any costs incurred by 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."

Decision

5. The Tribunal's determination to place on 13 May 2010 and was based entirely on the documentary evidence filed by the parties. There was no hearing and the Tribunal heard no oral evidence.

6. The Response objections to the Applicants' breakdown of costs is set out in its Points of Dispute dated 9 April 2010. No complaint was made about the grade fee earner who had come out of this matter on behalf of the Applicants or the hourly rates charged.

7. It was firstly submitted by the Respondent that the Applicants had no entitlement to any costs incurred prior to the service of the claim notice. It is common ground that the notice was served by the Respondent's solicitors under cover of a letter dated 13 May 2009 and acknowledged by the Applicant's solicitors in a letter dated 18 May 2009. Therefore, the cost of the four letters written to the Applicants by their solicitors prior to service of the claim notice on 15 May 2009 amounting to £87.50 plus VAT should be disallowed.

8. In its Reply to the Respondent's Points of Dispute, the Applicants submit that these costs should be allowed because they had been notified by the Respondent's solicitors on 27 April 2009 that a claim notice would be served. Rather than waiting for the notice to arrive, it was felt prudent to advise the

Applicants of the consequences of such a notice before it was in fact served. Furthermore, the Applicants relied on the earlier Tribunal decision of ***St Leonard's Properties Ltd v Chaucer Court (Guildford) RTM Company Limited*** (CHI/43UD/LCP/2006/0001) where (at paragraph 23) it was construed that the costs incurred by a landlord prior to service of a claim notice could in principle include preliminary work, provided it was directly relevant.

9. The Tribunal, in the present case, was not bound by the earlier decision of ***St Leonard's Properties***. The Tribunal in that case adopted a purposive construction to a landlord's entitlement to costs under section 88(1) of the Act. However, it is beyond doubt that a landlord's entitlement to costs only commences upon the service of a claim notice. In other words, there must be a causal link between the serving of a claim notice and the costs subsequently incurred by a landlord. There is no entitlement by a landlord to any costs, however prudently incurred, prior to service of a claim notice. If the Applicants' submission is correct, it would entitle a landlord to incur costs prior to the service of a claim notice and, in the event that the notice the notice was not served by the tenants, the landlord would still be entitled to claim those costs even though the right to manage had not been exercised. This could not have been the intention behind the legislation. Accordingly, the sum of £87.50 plus VAT incurred by the Applicants prior to 15 May 2009 is disallowed.

10. The Respondent, secondly, submitted that the costs of £164 plus VAT incurred by the Applicants in relation to the aborted rights to manage application did not fall within section 88(3) and it should be disallowed.

11. In the Points of Dispute, the Applicants stated that they could not accept the validity of the claim notice because the Respondent had provided contradictory evidence and had failed to provide requested documentation. This was not provided until 24 September 2009 and, as a consequence, the Applicants admitted the right to manage and the application to the Tribunal was withdrawn by the Respondent. The Applicants submitted that, had the

Respondent complied promptly to the request for information and documentation, they would have admitted the validity of the claim notice and no application to the Tribunal would have been necessary. Therefore, these costs were recoverable and the earlier Tribunal decision of ***Anstone Properties Ltd v Sandringham Lodge RTM Company Limited*** (CHI/OOML/LCP/2008/0002) was relied on as authority for this proposition.

12. The costs in issue here related solely to the Respondent's application to acquire the right to manage and the (limited) proceedings in the Tribunal. The circumstances in which a landlord can recover costs against an RTM company in proceedings before a Tribunal are set out in section 88(3) of the Act. It can only do so when a Tribunal dismisses an application by the company to acquire the right to manage. There is no other basis on which a landlord can recover its costs in proceedings before the Tribunal. Therefore, when a landlord initially does not admit the entitlement to acquire the right to manage (even for good reasons) which results in an application to the Tribunal and then later concedes the position, does not entitle it to recover the costs incurred in relation to the proceedings. The entitlement to costs only arises if such an application by an RTM company is defeated. That did not occur here. Therefore, the reasons why the Applicants initially sought to contest the claim notice and then subsequently admit the right to manage are irrelevant and do not entitle them to recover the costs incurred in relation to the Respondent's application to the Tribunal. The case of ***Anstone Properties*** provided the Tribunal was no assistance is because, a proper reading of the decision, reveals that it is limited to the landlord's costs of preparing a counter notice and not the costs of proceedings. Accordingly, the sum of £164 plus VAT is disallowed.

13. Thirdly, the Respondent submitted that the costs incurred relating to the handover of management in the sum of £307.50 plus VAT do not fall within the scope of section 88 and is not recoverable by the Applicants. It was contended that once the eligibility of the Respondent to acquire the right to manage had been established, or was no longer subject to challenge, matters

relating to the handover of management on the acquisition date do not fall within section 88 of the Act.

14. The Tribunal did not accept the Respondent's submission as being correct. Instead, it agreed with the Applicants' submission that the costs of organising the handover of management were *"in consequence of a claim notice given by the company in relation to the premises"*. Furthermore, the Tribunal adopted the same reasoning that was applied in ***St Leonard's Properties*** that *"... it was not unreasonable for lawyers rather than managing agents to collate and coordinate the response to request for information regarding contracts and insurance matters. These flowed from and were connected to the RTM and there were specific statutory duties to provide the information, the content and the form of which was also prescribed"*. Therefore, the Tribunal found that these costs fell within the ambit of section 88(1) of the Act and were allowed as claimed.

15. It was accepted by the Applicants that the correct rate for VAT in relation to their costs is 15%. Accordingly, the total costs payable by the Respondent is **£1,282.82** (£1,115.50 plus VAT of £167.32).

Dated the 8 day of July 2010

CHAIRMAN..... I. Mohabir

Mr I Mohabir LLB (Hons)