



HM COURTS & TRIBUNALS SERVICE

LEASEHOLD VALUATION TRIBUNAL

PROPERTY: Valcourt, 18 Branksome Wood Road, Bournemouth,
Dorset, BH4 9JY

Applicant: A Lambert Flat Management Ltd

and

Respondent: Valcourt Flat Management RTM Ltd

In The Matter Of

Section 88(4) Commonhold and Leasehold Reform Act 2002

**Application for an Award of Costs in relation to
a Right to Manage Claim**

Tribunal

Mr A Cresswell (Chairman)

Mrs J F Brownhill MA

Date of Hearing: 17 December 2012

DETERMINATION

The Application

1. On 24 August 2012, the Applicant, the manager of the property, made an application to the Leasehold Valuation Tribunal for its costs incurred in

consequence of a Claim Notice served upon it by the Respondent RTM company.

Summary Decision

2. The Tribunal has determined that costs in the sum of £954.80 plus VAT were reasonably and properly incurred and are payable by the Respondent to the Applicant.

Directions

3. Directions were issued on 30 August 2012. These directions provided for the matter to be heard on the basis of written representations only, without an oral hearing, under the provisions of Regulation 13 of the Leasehold Valuation Tribunals (Procedure)(England) Regulations 2003, as amended by Regulation 5 of the Leasehold Valuation Tribunals (Procedure)(Amendment)(England) Regulations 2004.
4. The Tribunal directed that the parties should submit specified documentation to the Tribunal for consideration. It was, in particular, provided that "the Respondent shall within 21 days of receipt" of the Applicant's bundle "serve on the Applicant and the Tribunal Points of Dispute to identify the issues between the Parties."
5. This determination is made in the light of the documentation submitted in response to those directions. The Respondent failed to serve any Points of Dispute.

The Law

6. The relevant law is set out below:
Commonhold and Leasehold Reform Act 2002

Section 88 Costs: general

- (1) A RTM company is liable for reasonable costs incurred by a person who is:
 - (b) party to such a lease otherwise than as landlord or tenant, 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

(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.

The Applicant's Case

7. The Applicant explains in its Statement of Case that it was a party to the flat leases at the property and responsible for the management of the block.
8. It says that the Respondent Right to Manage company initially served a Claim Notice dated 5 April 2010 (under a slightly different company name), to which the Applicant served a Counter Notice to the effect that the RTM company was not a properly constituted RTM company with the prescribed form of Memorandum and Articles of Association.
9. The Respondent subsequently served a second Claim Notice dated 23 July 2010. Solicitors acting on behalf of the Applicant requested a copy of the Articles of Association of the Respondent company. When no response to that request had been received, those solicitors made a preliminary check at Companies House, which indicated the change of name to the current name on 22 June 2010. Solicitors obtained the Memorandum and Articles of Association of the Respondent to check that they met with the statutory requirements. Subsequently the solicitors wrote to the Respondent requesting to inspect the Company Register or to be supplied with a certified copy of the Register of Members. A Register of Members was received by those solicitors on 11 August 2010, when the solicitors satisfied themselves that the defect in the first Claim Notice had been remedied.
10. The solicitors for the Applicant identified that the Claim Notice did not specify a date, not earlier than one month after the relevant date, by which the Counter Notice may be given in response to the Claim Notice. The Counter

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Notice, accordingly, pointed to a failure by the Respondent to comply with Section 80(6) of the 2002 Act.

11. Correspondence followed as to whether the Counter Notice had been served at the correct address.
12. The Respondent did not apply to this Tribunal for a determination that it was entitled to acquire RTM within the time prescribed by Section 84(4) of the 2002 Act, such that the claim was deemed withdrawn in accordance with Section 87(1)(a) of the 2002 Act. Subsequently the Respondent served a fresh Notice of Claim.
13. The Applicant claims the costs of its solicitor in the sum of £1063.30 plus VAT arising from its response to the second Claim Notice.

The Respondent's Case

14. The Respondent has not served upon the Tribunal any Points of Dispute in accordance with the Tribunal's directions referred to above.

Consideration and Determination

15. In the absence of any Points of Dispute served by the Respondent and in the light of the documentation served by the Applicant in response to the Tribunal's directions, the Tribunal has accepted the Applicant's claim as being an accurate account of the history of RTM claims.
16. What is in issue, therefore, is whether the costs claimed were reasonably incurred and are reasonable in sum and whether the costs are payable in accordance with the Act of 2002 and whether the Respondent should be required to pay those costs.
17. The Tribunal notes that there is no submission by the Respondent either that any of the costs incurred were not properly incurred in response to the service by it of the "second" Claim Notice (the first by the current RTM company) or that the costs are not reasonable in their amount. The Tribunal has, nevertheless, gone on to consider those issues.
18. RTM claims are complicated issues. The Tribunal cannot criticise the Applicant for instructing a solicitor partner (a grade A fee earner), given such complications and given the history of an earlier aborted claim. The Tribunal

notes that the fees claimed by the solicitor accord with the rates for grade A fee earners for Bournemouth and Poole County Court.

19. Noting the history, where the first Claim Notice was defective by reason of the then RTM company not being a properly constituted RTM company with the prescribed form of Memorandum and Articles of Association, it was not, the Tribunal finds, surprising that the Applicant's solicitors would first concentrate upon that issue following the service of the "second" Claim Notice (the first by the current RTM company).
20. The Tribunal has analysed the work conducted by the solicitor, which is helpfully detailed in a schedule and illustrated by relevant documentation in the Applicant's bundle, and finds that the work detailed was what the Tribunal would have expected to occur given the history and that the time recorded as expended is reasonable.
21. The Tribunal finds that Section 88(2) is also satisfied as it has noted that the Applicant engaged the same solicitor in relation to the first Claim Notice. Further, the Tribunal has noted the complexity involved in RTM claims and the actual history here, where there had been an earlier unsuccessful claim, factors likely to lead a party to engage a solicitor of experience.
22. The combined effect of Sections 84(4) and 87(1)(a) are such that the Claim Notice was deemed to be withdrawn after 2 months beginning with the day of service of the Counter Notice. The Counter Notice was served on 20 August 2010. The Tribunal agrees with the Applicant that the Counter Notice was properly served on the Respondent on 20 August at the address given by it in the Claim Notice (Civil Procedure Rules). The result is that the Applicant is unable to seek costs under Section 88 from the date of deemed withdrawal by reason of Section 89(2). The schedule submitted in the Applicant's bundle enables the Tribunal to deduct from the total sums claimed after the deemed withdrawal, i.e. a deduction of the costs incurred on 21 October 2010 (£108.50 from £1063.30 plus VAT) leaving a total of £954.80 plus VAT.
23. The costs of £954.80 plus VAT claimed by the Applicant arose as a result of the service by the Respondent of its Claim Notice. Having found that the costs were reasonably incurred and that they are a reasonable sum, reflecting the work actually and properly conducted, the Tribunal concludes that they are payable by the Respondent to the Applicant.

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Andrew Cresswell (Chairman)

Date 18 December 2012

A member of the Southern Leasehold Valuation Tribunal

Appointed by the Lord Chancellor