RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL
SOUTHERN PANEL

Property	:	**Marcella Court, 12 Royal Crescent, Margate, Kent CT9 5AJ**
Applicant	:	**Waterglen Limited**
Respondent	:	**Marcella Court RTM Company Limited**
Case number	:	**CHI/29UN/LCP/2006/0002**
Date of Application	:	**13th September 2006**
Type of Application	:	**Application to determine costs payable after service of a notice served pursuant to section 79 of the Commonhold and Leasehold Reform Act 2002 ("the Act") claiming a Right To Manage premises – section 88 pf the Act**
Tribunal members	:	**Mr. B. Edgington (lawyer Chair) Mr. R. Athow FRICS MIRPM Mr. C.C. Harbridge FRICS**
Date and Venue of Hearing	:	**(For the reasons set out below the hearing arranged for the 30th January 2007 did not take place and this matter was determined on written representations)**

DECISION

---

1. The Tribunal decides that the respondent RTM company is liable to pay the reasonable costs of the applicant landlord assessed at £377.55

Reasons

Introduction

2. At the relevant time, the applicant was the landlord freeholder of the property. The respondent Right To Manage ("RTM") company served

a claim notice pursuant to section 79 of the Act claiming the right to manage the property. The notice is dated 23rd March 2006.

3. On the 9th May 2006, Messrs. Wallace LLP, solicitors acting on behalf of the applicant, wrote to the respondent admitting entitlement.

4. Section 88(1) of the Act provides that an RTM company is "*liable for the reasonable costs incurred by a person who is the 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*".

5. Messrs. Wallace LLP therefore wrote again to the respondent on the 24th July 2006 enclosing a single sheet of paper headed "Costs Schedule – 24.07.06" setting out a summary of costs incurred. The costs in the schedule total £582.00 and include £120 plus VAT being the claimed costs of making this application. The letter asks for £441.00 being £582.00 less this £120.00 plus VAT but warns that if the claim is not met the costs will then include the additional amount.

6. The claimed sum was not paid and this application was made pursuant to section 88(4) of the Act which provides that any dispute about the amount of costs shall be determined by a Leasehold Valuation Tribunal. Directions Orders were made and both parties agreed to deal with this matter by way of a paper determination. Subsequently, however, the applicant asked, as it is entitled to do, for a hearing. A hearing was therefore arranged and fixed for the 30th January 2007 at considerable expense to the taxpayer.

7. The respondent wrote and said that it did not want a hearing and was not going to be represented. The applicant's response was to say that in view of the fact that the respondent was not attending, it was not going to be represented either. It should be remembered that the only party wanting a hearing was the applicant and to put the Tribunal to the expense of setting this up and then to say, at the last minute, that it was not attending is a matter of considerable concern. Hopefully, Wallace LLP will not treat future Tribunal's in such a cavalier fashion.

8. Both parties provided full written representations. The respondent complains, with justification, about the very late delivery of the applicant's statement. Little is to be achieved by setting out all of the arguments in this document as they are summarised in the Tribunal's discussion of the issues below. The respondent asks the Tribunal for some sort of 'regularisation' of this sort of claim for costs. Regrettably this cannot happen as each claim has to be considered on its own merits.

The Basic Assessment Criteria

9. Section 88(2) says that costs for professional services 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". This establishes what is sometimes referred to as the 'indemnity principle' i.e. that the receiving party cannot claim more than he would have had to pay for the professional services provided.

10. The next basic principle to consider is the hourly rate charged by the applicant's solicitors. The rates claimed are £180 per hour for what is described as an 'Assistant' and £200 per hour for the person who prepared this application. For reasons which will appear later, it is only the rate of £180 per hour which is relevant to this decision. This rate is challenged by the respondent who states that the applicant did not have to go to central London solicitors and the rates payable should be those awarded to solicitors in Margate under the detailed assessment of inter partes costs in the county court on the standard basis i.e. £163 per hour for a solicitor with more than 4 but less than 8 years post qualification experience or £137 per hour for a solicitor of lesser experience.

11. The solicitors instructed are in central London and the applicant is a company trading from an address in Southend-on-Sea, Essex. The solicitors sent a detailed client care letter at the outset stating that their client was the applicant. It states that the matter is being handled by Simon Serota, a partner, who says that he will be assisted by Eyvind Andresen who is described as being a solicitor but there is no indication as to this person's experience.

12. The rates quoted by the respondent would be the same for a solicitor in Southend-on-Sea (Chelmsford South) as those quoted for Margate. However, they are only guideline rates i.e. starting points for cases where one litigant is ordered to pay the costs of another litigant.

13. The respondent has referred the Tribunal to the LVT decision in **Stamford Lodge RMT Co. Ltd. v Anstone Properties Ltd**, decided in 2004. In fact, and entirely by co-incidence, the Chair of that Tribunal is the Chair in this Tribunal. It will therefore come as no surprise to the respondent that the general principle established in that case i.e. that in the provinces, this sort of matter is suitable for a Grade A fee earner i.e. a solicitor of at least 8 years post qualification experience will be followed. This is particularly pertinent as the respondent seeks to rely on that decision on other issues.

14. The point is that this sort of work it is generally recognised to be extremely specialised. Some London firms such as Wallace LLP do carry sufficient volume to be able to allow fee earners of lesser experience do less complex areas of the work under the supervision of a partner. This is what happened in this case. However, if the matter were taken on by a provincial solicitor, it would usually be dealt with by an experienced partner. Thus, if this case were to be dealt

with under the detailed assessment procedure referred to by the respondent, the applicant would be likely to recover at least £184 per hour which is the starting point for Grade A fee earners.

15. Fortunately, the applicant's solicitors do not claim for the cost of supervision by the partner and only claim £180 per hour. This Tribunal considers this to be a reasonable rate on the assumption that the work was undertaken with reasonable expedition and expertise. It is also reasonable and usual for solicitors to claim in units of 6 minutes each with routine letters and telephone calls being one unit each with no allowance for incoming letters unless they are particularly lengthy.

The Detail

16. The respondents challenge each item of claim by saying, in effect, that the time taken was unreasonable. The only way that these issues can sensibly be resolved is by the members of the Tribunal, using their knowledge and experience, coming to a view about each challenge. The items of claim and the Tribunal's view are:-

(a) 07.04.06 - £72 i.e. 4 units for 4 letters out, one of which was the client care letter which was certainly not a routine letter. This was written by the partner but claimed at the £180 per hour rate. The claim is reasonable

(b) 24.04.06 - £90 i.e. 5 units for obtaining and considering title documents from HM Land Registry and also the RTM company documents. The respondent concedes that this involved 9 sets of title documents which they took 22 minutes to download via the internet. They say that some of this work could have been delegated to an admin clerk or a secretary. The documents in this case are lengthy and clearly more complex than those referred to in the **Stamford** case referred to above. They go to the core of the case and delegating the consideration of such documents would not be reasonable. The claim is reasonable

(c) 09.05.06 - £54 i.e. 3 units for 3 routine letters is reasonable. The letters to the client and the respondent would not be the same in any event.

(d) 19.05.06 - £54 i.e. 3 units for 3 routine letters is, again reasonable. This work followed receipt of a letter from the respondent asking for details of the sum insured for the building. The request was passed to the managing agent. Thus it was reasonable to acknowledge receipt, write to the managing agent and keep the client informed.

(e) 21.07.06 - £90 i.e. 5 units claimed for preparing the schedule of costs and what would appear to be 2 routine letters. Here, the Tribunal had some sympathy for the argument that time spend preparing a schedule of costs is unreasonable. The schedule

should have been capable of creation by any modern practice management system as an overhead. Accordingly, only the 2 letters will be allowed at £36

17. The final item claimed is for the cost of preparing the application to this Tribunal. This Tribunal does not consider that the Act allows for this amount to be claimed unless there is a suggestion that the respondent has behaved so unreasonably that a claim could be made under Schedule 12, paragraph 10 of the Act as the respondent has "*acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonable in connection with the proceedings*". It cannot possibly be said that the respondent has been guilty of any of those behaviours in connection with the proceedings because they had not even started when these costs were incurred.

18. The only relevant statutory provisions are contained in Section 88(3) which clearly does not apply here for the reasons stated by the respondent and Schedule 12 which states specifically that no costs order can be made unless under the provisions of that Schedule or any other statutory provision. The Tribunal knows of none that would apply in this case and the applicant has not referred to any.

19. Thus the costs claimed are assessed as stated above i.e. by allowing all the costs claimed save for £54 claimed for work undertaken on the 21st July 2006 and all the work claimed for 13th September 2006 which makes a total reduction of £174.00 plus VAT i.e. £204.45. The costs allowed are therefore £377.55 i.e. the amount claimed of £582.00 less £204.45.

20. It should perhaps be said that no claim was made and therefore no allowance has been made for the consideration of the claim notice nor the supervision work undertaken by the partner both of which may well have been recoverable.

.....

Bruce Edgington
Chair
30th January 2007

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL
SOUTHERN PANEL

Property	:	**Marcella Court, 12 Royal Crescent, Margate, Kent CT9 5AJ**
Applicant	:	**Waterglen Limited**
Respondent	:	**Marcella Court RTM Company Limited**
Case number	:	**CHI/29UN/LCP/2006/0002**
Date of Application	:	**13th September 2006**
Type of Application	:	**Application to determine costs payable after service of a notice served pursuant to section 79 of the Commonhold and Leasehold Reform Act 2002 ("the Act") claiming a Right To Manage premises – section 88 pf the Act**
Tribunal members	:	**Mr. B. Edgington (lawyer Chair) Mr. R. Athow FRICS MIRPM Mr. C.C. Harbridge FRICS**
Date and Venue of Hearing	:	**(For the reasons set out below the hearing arranged for the 30th January 2007 did not take place and this matter was determined on written representations)**

DECISION

---

1. The Tribunal decides that the respondent RTM company is liable to pay the reasonable costs of the applicant landlord assessed at £377.55

Reasons

Introduction

2. At the relevant time, the applicant was the landlord freeholder of the property. The respondent Right To Manage ("RTM") company served

a claim notice pursuant to section 79 of the Act claiming the right to manage the property. The notice is dated 23rd March 2006.

3. On the 9th May 2006, Messrs. Wallace LLP, solicitors acting on behalf of the applicant, wrote to the respondent admitting entitlement.

4. Section 88(1) of the Act provides that an RTM company is "*liable for the reasonable costs incurred by a person who is the 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*".

5. Messrs. Wallace LLP therefore wrote again to the respondent on the 24th July 2006 enclosing a single sheet of paper headed "Costs Schedule – 24.07.06" setting out a summary of costs incurred. The costs in the schedule total £582.00 and include £120 plus VAT being the claimed costs of making this application. The letter asks for £441.00 being £582.00 less this £120.00 plus VAT but warns that if the claim is not met the costs will then include the additional amount.

6. The claimed sum was not paid and this application was made pursuant to section 88(4) of the Act which provides that any dispute about the amount of costs shall be determined by a Leasehold Valuation Tribunal. Directions Orders were made and both parties agreed to deal with this matter by way of a paper determination. Subsequently, however, the applicant asked, as it is entitled to do, for a hearing. A hearing was therefore arranged and fixed for the 30th January 2007 at considerable expense to the taxpayer.

7. The respondent wrote and said that it did not want a hearing and was not going to be represented. The applicant's response was to say that in view of the fact that the respondent was not attending, it was not going to be represented either. It should be remembered that the only party wanting a hearing was the applicant and to put the Tribunal to the expense of setting this up and then to say, at the last minute, that it was not attending is a matter of considerable concern. Hopefully, Wallace LLP will not treat future Tribunal's in such a cavalier fashion.

8. Both parties provided full written representations. The respondent complains, with justification, about the very late delivery of the applicant's statement. Little is to be achieved by setting out all of the arguments in this document as they are summarised in the Tribunal's discussion of the issues below. The respondent asks the Tribunal for some sort of 'regularisation' of this sort of claim for costs. Regrettably this cannot happen as each claim has to be considered on its own merits.

The Basic Assessment Criteria

9. Section 88(2) says that costs for professional services 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". This establishes what is sometimes referred to as the 'indemnity principle' i.e. that the receiving party cannot claim more than he would have had to pay for the professional services provided.

10. The next basic principle to consider is the hourly rate charged by the applicant's solicitors. The rates claimed are £180 per hour for what is described as an 'Assistant' and £200 per hour for the person who prepared this application. For reasons which will appear later, it is only the rate of £180 per hour which is relevant to this decision. This rate is challenged by the respondent who states that the applicant did not have to go to central London solicitors and the rates payable should be those awarded to solicitors in Margate under the detailed assessment of inter partes costs in the county court on the standard basis i.e. £163 per hour for a solicitor with more than 4 but less than 8 years post qualification experience or £137 per hour for a solicitor of lesser experience.

11. The solicitors instructed are in central London and the applicant is a company trading from an address in Southend-on-Sea, Essex. The solicitors sent a detailed client care letter at the outset stating that their client was the applicant. It states that the matter is being handled by Simon Serota, a partner, who says that he will be assisted by Eyvind Andresen who is described as being a solicitor but there is no indication as to this person's experience.

12. The rates quoted by the respondent would be the same for a solicitor in Southend-on-Sea (Chelmsford South) as those quoted for Margate. However, they are only guideline rates i.e. starting points for cases where one litigant is ordered to pay the costs of another litigant.

13. The respondent has referred the Tribunal to the LVT decision in **Stamford Lodge RMT Co. Ltd. v Anstone Properties Ltd**, decided in 2004. In fact, and entirely by co-incidence, the Chair of that Tribunal is the Chair in this Tribunal. It will therefore come as no surprise to the respondent that the general principle established in that case i.e. that in the provinces, this sort of matter is suitable for a Grade A fee earner i.e. a solicitor of at least 8 years post qualification experience will be followed. This is particularly pertinent as the respondent seeks to rely on that decision on other issues.

14. The point is that this sort of work it is generally recognised to be extremely specialised. Some London firms such as Wallace LLP do carry sufficient volume to be able to allow fee earners of lesser experience do less complex areas of the work under the supervision of a partner. This is what happened in this case. However, if the matter were taken on by a provincial solicitor, it would usually be dealt with by an experienced partner. Thus, if this case were to be dealt

with under the detailed assessment procedure referred to by the respondent, the applicant would be likely to recover at least £184 per hour which is the starting point for Grade A fee earners.

15. Fortunately, the applicant's solicitors do not claim for the cost of supervision by the partner and only claim £180 per hour. This Tribunal considers this to be a reasonable rate on the assumption that the work was undertaken with reasonable expedition and expertise. It is also reasonable and usual for solicitors to claim in units of 6 minutes each with routine letters and telephone calls being one unit each with no allowance for incoming letters unless they are particularly lengthy.

The Detail

16. The respondents challenge each item of claim by saying, in effect, that the time taken was unreasonable. The only way that these issues can sensibly be resolved is by the members of the Tribunal, using their knowledge and experience, coming to a view about each challenge. The items of claim and the Tribunal's view are:-

(a) 07.04.06 - £72 i.e. 4 units for 4 letters out, one of which was the client care letter which was certainly not a routine letter. This was written by the partner but claimed at the £180 per hour rate. The claim is reasonable

(b) 24.04.06 - £90 i.e. 5 units for obtaining and considering title documents from HM Land Registry and also the RTM company documents. The respondent concedes that this involved 9 sets of title documents which they took 22 minutes to download via the internet. They say that some of this work could have been delegated to an admin clerk or a secretary. The documents in this case are lengthy and clearly more complex than those referred to in the **Stamford** case referred to above. They go to the core of the case and delegating the consideration of such documents would not be reasonable. The claim is reasonable

(c) 09.05.06 - £54 i.e. 3 units for 3 routine letters is reasonable. The letters to the client and the respondent would not be the same in any event.

(d) 19.05.06 - £54 i.e. 3 units for 3 routine letters is, again reasonable. This work followed receipt of a letter from the respondent asking for details of the sum insured for the building. The request was passed to the managing agent. Thus it was reasonable to acknowledge receipt, write to the managing agent and keep the client informed.

(e) 21.07.06 - £90 i.e. 5 units claimed for preparing the schedule of costs and what would appear to be 2 routine letters. Here, the Tribunal had some sympathy for the argument that time spend preparing a schedule of costs is unreasonable. The schedule

should have been capable of creation by any modern practice management system as an overhead. Accordingly, only the 2 letters will be allowed at £36

17. The final item claimed is for the cost of preparing the application to this Tribunal. This Tribunal does not consider that the Act allows for this amount to be claimed unless there is a suggestion that the respondent has behaved so unreasonably that a claim could be made under Schedule 12, paragraph 10 of the Act as the respondent has "*acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonable in connection with the proceedings*". It cannot possibly be said that the respondent has been guilty of any of those behaviours in connection with the proceedings because they had not even started when these costs were incurred.

18. The only relevant statutory provisions are contained in Section 88(3) which clearly does not apply here for the reasons stated by the respondent and Schedule 12 which states specifically that no costs order can be made unless under the provisions of that Schedule or any other statutory provision. The Tribunal knows of none that would apply in this case and the applicant has not referred to any.

19. Thus the costs claimed are assessed as stated above i.e. by allowing all the costs claimed save for £54 claimed for work undertaken on the 21st July 2006 and all the work claimed for 13th September 2006 which makes a total reduction of £174.00 plus VAT i.e. £204.45. The costs allowed are therefore £377.55 i.e. the amount claimed of £582.00 less £204.45.

20. It should perhaps be said that no claim was made and therefore no allowance has been made for the consideration of the claim notice nor the supervision work undertaken by the partner both of which may well have been recoverable.

.....

Bruce Edgington
Chair
30th January 2007