

SOUTHERN RENT ASSESSMENT PANEL  
LEASEHOLD VALUATION TRIBUNAL

CHI/00HE/LCP/2010/0001

Decision of the Leasehold Valuation Tribunal on application under Section 88 of the Commonhold and Leasehold Reform Act 2002

Applicant Osprey Management Company Limited  
Respondent: Chymedden RTM Company Limited  
  
Re: Chymedden, Trebarwith Crescent, Newquay, Cornwall  
Date of Application 13<sup>th</sup> December 2009  
Date of Inspection None  
Date of Hearing None

Members of the Leasehold Valuation Tribunal

M J Greenleaves	Lawyer Chairman
J Tarling	Lawyer Member

Date of Tribunal's Decision: 9 April 2010

**Decision**

The costs payable to the Applicant in respect of Chymedden, Trebarwith Crescent, Newquay, Cornwall under Section 88 of the Commonhold and Leasehold Reform Act 2002 (the Act) are (exclusive of VAT if applicable):

Solicitors Profit costs	£ 2126.50
Counsel's fees	nil
Disbursements	nil.

**Reasons**

**Introduction**

1. This was an application made by the Applicant to the Tribunal under Section 88 of the Act for the determination of the amount of the Applicant's costs payable by the Respondent under Section 88 of the Act arising from a claim for the acquisition and exercise of rights in relation to the management of Chymedden, Trebarwith Crescent, Newquay, Cornwall (the property). The Respondent company took over management on 3 July, 2009.

2. Claim notices had been served by the Respondent on the Applicant on 10 November, 2008, 16 December, 2008, both of which were withdrawn after objection by the Applicant, the first by counter notice, and a final claim notice was served on 26 February, 2009 as a result of which the Applicant accepted the validity of that last notice and the Respondent's right to manage.
3. The Applicant applied to the Respondent for payment of its costs which have not been paid and accordingly the Applicant made this application on 18 December 2009 for determination by the Tribunal.

Inspection.

4. The Tribunal did not inspect the property.

Submissions

5. The Law. Section 88 of the Act provides, in so far as material to the issues, :-
  - a. The Respondent is liable for reasonable costs incurred by the Applicant in consequence of a claim notice given by the Respondent in relation to the property;
  - b. Any costs incurred by the Applicant "in respect of professional services rendered to him by another party 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";
  - c. The Respondent "is liable for any costs which [the Applicant] incurs as a party to any proceedings under this Chapter before a Leasehold Valuation Tribunal only if the Tribunal dismisses an application by the [Respondent] for a determination that it is entitled to acquire the right to manage the premises";
  - d. Any question arising in relation to the amount of costs shall, in default of agreement, be determined by the Tribunal.
6. The Applicant's Case. The Applicant applies for its costs in relation to not only work done and disbursements incurred by it not only arising from the claim notices but also the costs of assessment procedure in terms of collating papers, instructing cost draftsman, preparation of the Bill by the cost draftsman and checking and approving it. The total fees claimed are as follows:
 

a. Solicitors Profit costs	£3714 05
b. Counsel's fees	£2916.66
c. Other disbursements	£10.00
d. Total	£6640.71

7. The Respondent's Case

8. The Respondent's points of dispute, being the items they consider to be excessive are:
  - a. 11 hours 40 minutes to Counsel costing £2916.66
  - b. grade A partner engaged 2 hours, travelling and waiting 2 hours costing £880;
  - c. preparation of documents often performed (and charged) by overqualified persons;

- d. duplication of work throughout;
  - e. number of hours spent dealing with the case;
  - f. 79 e-mails at £22 each costing £1738
  - g. several items charged to the Respondent which are not applicable; detailed assessment procedure costing £457.50;
  - h. the Applicant would not have consulted Counsel if they were paying.
9. The Respondent makes the further following points:
- a. the Applicant's solicitors are specialist in the right to manage matters so must have been familiar with the claim form submitted and Ms Brewer, a partner of that firm, as company secretary must have known the property fully complied with Section 72 of the Act as a straightforward case with no complications; in their letter to the Applicant dated 17 November, 2009 saying "it appears that the way [Ms Brewer] dealt with this, which to her must have been a very straightforward, simple matter, was designed deliberately to saddle us with as large a bill as possible, and/or to create delaying tactics, and we not only believe that it is completely unreasonable to expect us to pay it, but we are confident that [the Tribunal will in all probability look on our case favourably]".
  - b. referred to the defects in the first and 2nd claim notices;
  - c. noting the time spent with Counsel discussing a standard form of notice; why it was necessary for Counsel to draft a counter notice at £125 when Ms Brewer should be able to do that at much less expense.
10. The Applicant did not reply to the Respondent's case.

#### Consideration

11. We considered all the documents provided by each party. This case is essentially not complex but we accept that each of the 3 Claim Notices required consideration and dealing with. Had the respondent understood and complied with the technical requirements in the first place, the costs would have been considerably reduced. As it is, the applicant has been put to additional expense.
12. In respect of the points in dispute as to preparation of documents often performed by overqualified persons, duplication of work and several items charged which are not applicable, we have no further information from the Respondent and, using our knowledge and experience and considering the case papers, we do not accept those points save to the extent that they may to some degree be dealt with in our findings below.
13. In respect of section 88 (2), if the Applicant had been personally liable for the costs, we doubt very much that it would have wanted to, or agreed to, incur the cost of Counsel in addition to experienced solicitors at their hourly rate.
14. We therefore found that a significant proportion of costs incurred, most particularly all of Counsel's fees, did not satisfy the test of Section 88 (2) and were therefore not reasonable.
15. We accept that the Applicant's solicitors state on their website that they can advise on Right to Manage matters. We consider their charging rates to be reasonable but for those levels of fees we consider they should be able to handle the matter themselves without instructing Counsel: it was not a complex matter and should be well within their competency. It does

appear to us that they have used Counsel at almost every opportunity and for all significant aspects of the matter.

16. We note also that Ms Brewer attended a conference with Counsel on 12 December, 2008, being engaged in the conference for 2 hours and for 2 hours travelling and waiting. We cannot see justification for a conference with Counsel in the circumstances of this case, even if engagement of Counsel had been justified in the first place.
17. For the above reasons, we found that there was unnecessary duplication of Solicitors'/Counsel's fees and by reason of the terms of Section 88 (2) of the Act, Counsel's fees are not justified and are not reasonable.

Item claimed	Item allowed	Charge allowed (all at the charging rates claimed)
<b>Bill Page 3:</b>		
17 Nov 2008 – instructions to Counsel to advise	Disallowed for the above reasons	-
26 Nov 2008 – Counsel's advice & fees paid	Disallowed for the above reasons	-
5 Dec 2008 – counter notice & Counsel's fees paid	Disallowed for the above reasons	-
12 Dec 2008 - attending conference, travel expenses & Counsel's fees	(Note: had we found it reasonable to instruct Counsel, we would not have found a conference to be necessary or reasonable) The fees and disbursements relating to this item were all disallowed for the reasons stated above	-
<b>Bill page 4: all items</b>	Disallowed for the above reasons	-
<b>Bill page 5:</b>		
14, 20 & 26 Nov 2008	The time charged is 40 mins to include reporting to client re Counsels' advice and taking instructions. Not having allowed for Counsel's advice, etc, we considered that the remaining work would have taken 24 mins	88.00
3 telephone calls, 9 letters/emails out; 10 letters/emails in	We have not seen these, but we considered their number to be excessive and allowed 3 of each category: total 9 @ £22 each	198.00
Grade D 2 telephone calls	Allowed in full	26.00
Grade D Paralegal 2 telephone calls; 1 letter/email out	Allowed in full	15.00
Grade A partner: 10 letters/emails out; 8 letters/emails in	We have not seen these, but we considered their number to be excessive and allowed 5 letter/emails out and 4 letters/emails in @ £22 each	198.00
Grade D 4 letters/emails out, 2 letters/emails in	We have not seen these, but we considered their number to be excessive	39.00

	and allowed 2 letter/emails out and 1 letter/email in @ £13 each	
<b>Bill page 6:</b>		
Grade D paralegal 1 letter/email in	Allowed in full	£5.00
Grade A partner 1 letter/email out	Allowed in full	22.00
Grade A partner 2 telephone calls, 1 letter/email out; 2 letters/emails in	Allowed in full	110.00
Counsel – attendances (pp 6 & 7)	Disallowed for the reasons set out above	0.00
<b>Bill page 7:</b>		
Grade A partner A) & B) 2 letters/emails out	Allowed in full	44.00
14 Nov 2008 consideration 30 mins	We allowed consideration ( to include, so far as appropriate, the first 5 items on page 8 and other consideration referred to below) and drafting of documents on the basis that this should have been carried out by a Grade A partner only and that 3 hours was a reasonable time	660.00
<b>Bill page 8:</b>		
Items 17 Nov – 26 Nov	These are the first 5 items referred to above and therefore no further charge was allowed	0.00
26 Nov 2008 considering and preparing lengthy letter	Allowed in full	132.00
3 Dec 2008 considering documents from Respondent	Allowed in full	66.00
4 Dec 2008 considering draft counter notice	Included within the 3 hours consideration and drafting referred to above	0.00
4 Dec 2008 attendance note	Not allowed as Counsel should not have been required	0.00
<b>Bill page 9:</b>		
5 Dec 2008 engrossing and finalizing counter notice	included within the 3 hours consideration and drafting referred to above	0.00
12 Dec 2008 attendance note of conference	Not allowed as Counsel should not have been required	0.00
17 Dec 2008 consideration	Allowed in full	66.00
2 & 8 Jan 2009 consideration, amendment & engrossing letter: total 12 mins	Allowed in full	44.00
4 Feb 2009 considering detailed letter	Allowed in full	22.00
6 Mar 2009 considering third notice	Allowed in full	44.00
13 Mar 2009 considering Counsel's email	Not allowed as Counsel should not have been required	0.00
<b>Bill page 10: detailed assessment procedure checking and approving</b>	We considered that as the bill had been prepared by costs draftsman, not more than 30 mins checking and approving would be reasonable	110.00
Costs draftsman	Allowed in full	237.50
<b>Total profit costs allowed</b>		<b>2126.50</b>
<b>Counsel's fees allowed</b>		<b>Nil</b>
<b>Disbursements allowed</b>		<b>Nil</b>

18. Accordingly we allowed solicitors Profit costs of £2126.50 but no fees for Counsel or the £10 disbursements for travelling to conference with Counsel.

19. The Tribunal made its decisions accordingly.

[Signed] M J Greenleaves (Chairman)

A member of the Southern  
Leasehold Valuation Tribunal  
appointed by the Lord Chancellor