

**S.88 Commonhold and Leasehold Reform Act 2002
Right to Manage – Landlord's Costs**

DECISION

Case Number: CHI/00ML/LCP/2009/0004

Property: 213b Ditchling Road, Brighton BN1 6JD

Applicant: 213b Ditchling Road RTM Company Limited

Respondent: Eastcourt Estates (Sussex) Limited

Application: 23 June 2009

Directions: 25 June, 30 September 2009

Consideration: 11 January 2010

Decision: 16 February 2010

Tribunal: Ms J A Talbot MA
Ms H Clarke, Barrister

Summary of Decision

The amount payable by the applicant to the respondent in respect of the landlord's costs payable by the RTM company pursuant to Section 88 of the 2002 Act is £714.60.

Case No: CHI/00HX/LCP/2007/0001

Property: 213b Ditchling Road, Brighton, BN1 6JD

Application

1. On 23/06/2009 the applicant made an application to the Tribunal pursuant to Section 88 of the Commonhold and Leasehold Reform Act 2002 ("The 2002 Act") to determine the reasonableness of costs payable to the respondent in connection with the applicant's acquisition of the right to manage the property under the 2002 Act. A simultaneous application under Section 94 for the respondent to pay accrued uncommitted service charges to the RTM company was later settled.
2. Directions were issued by the Tribunal in relation to the S.88 costs application on 30/09/2009. By agreement the matter was set down for a determination on the papers.
3. The respondent sought costs of £1,405.60 solicitors fees (Adams & Remers) and £542.80 managing agents fees (Worthing & District Estate Management).

Law

4. The law is to be found at Section 88 of the 2002 Act, which deals with costs incurred in connection with the acquisition of the statutory right to manage, and provides, insofar as is relevant:
 - (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,*
 - (b) *party to such a lease otherwise than as a landlord or tenant, or*
 - (c) *a manager appointed under part 2 of the 1987 Act to act in relation to the premises, or any premises containing or contained in 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.*

Facts

5. In summary the facts were as follows. The respondent, Eastcourt Estates (Sussex) Ltd ("Eastcourt"), owned the freehold of the property which was managed on its behalf by Worthing & District Estate Management ("Worthing & District"). Darren Winter and James Harwood were the directors of Worthing & District. Jenny Harwood was the property manager. Mr Harwood was also a director of Eastcourt. Mr P Rochford was a director of 213b Ditchling Road Right to Manage Company Limited ("the RTM company") acting on behalf of the tenants and co-directors Ms G Grillo and Mr M Pugsley, for the purpose of acquiring the RTM. Mr Rochford was also chairman of SELCHA (South East Leaseholders, Commonholders and Homeowners Association).

6. On 02/10/2008, Mr Rochford served a S.82 right to information notice on the respondent. This was followed by an exchange of correspondence and a Claim Notice dated 08/12/2008 to acquire the right to manage. The respondent instructed solicitors, Adams & Remers ("A&R"), who sent a client care letter to Mr Winter dated 22/12/2008 and a letter dated 18/12/2008 to Mr Rochford admitting the RTM subject to proof that Ms Grillo and Mr Pugsley were members of the RTM company. Mr Rochford responded with copies of the Notice of Invitation to Participate. Correspondence continued and a counter-notice was served by A&R admitting the RTM on 08/01/2009. The applicant acquired the RTM on 14/04/2009 as per the claim notice.
7. On 20/01/2009 a contract notice was served. Mr Winter responded on 02/02/2009 stating that Worthing & District had agreed to be registered as "a corporate company secretary of Eastcourt Estates (Sussex) Ltd with this agency's office as the registered office" but that "upon acquisition of your company's rights the 'management service' that we currently provide shall cease but other services to our client can continue to provided as may be instructed of course". No other relevant contracts were declared.
8. The correspondence between the parties and letter to the tribunal from Worthing & District set out the background to the RTM. On 03/11/2008 Worthing & District instructed solicitors to "commence debt collection proceedings against Ms Grillo for service charge arrears (referred to as "the debt claim"). She instructed Mr Rochford to represent her and he began the RTM claim on behalf of the tenants. Any costs attached to the debt claim were beyond the scope of Section 88 costs.
9. The tribunal saw copies of correspondence between the parties and also with A&R. The tone of this correspondence suggested an unfortunate degree of mistrust and antagonism between the parties. In particular, Worthing & District appeared suspicious of Mr Rochford and suggested there was a potential conflict of interest between his role as director of the RTM company and chairman of SELCHA. A&R, however, in an open letter of 08/01/2008, expressed "some sympathy" with Mr Rochford's "political or semi-political" view that "the mechanism for exercising this right [the RTM] is unfair to both landlords and tenants". The tribunal expresses no view on these matters as it would be inappropriate for it to do so.

Consideration

10. The Tribunal gave careful consideration to the application, correspondence from Worthing & District to Mr Rochford, A&R's letters, bill and supporting computer printout, and other documents provided by the parties, in light of the provisions of Section 88 of the 2002 Act.
11. There was no clear authority for Worthing & District to act on behalf of Eastcourt in connection with the RTM. The tribunal noted that Mr Winter had instructed A&R, the client care letter was addressed to him in person, and the computer client/matter printout gave Worthing & District as the client. The tribunal further noted that there appeared to be a close connection between Eastcourt and Worthing & District, in that Mr Harwood was director of both, and Jenny Harwood (presumably his wife) was also involved.
12. Assuming Worthing & District was authorised by Eastcourt to instruct solicitors, it was not unreasonable for it to retain a local firm of solicitors with experience in landlord and tenant matters. The solicitor engaged was Mr Geoffrey Wolfarth, senior solicitor. The hourly rate charged of £200 per hour. In view of the importance of the matter to the client and the compulsory nature of the transaction, the hourly rate was not unreasonable. The tribunal noted that the initial costs estimate was £500 plus VAT.
13. The tribunal further considered the invoice and breakdown of legal costs supplied by A&R. The breakdown dated 17/06/2009 was a printout of the firm's computerised time-recording record. Although it set out the time spent in minutes, the fee earner, activity type, hourly rate and actual cost per item, the narrative describing the work done lacked detail and was a very basic summary. The invoice dated 30/01/2009 was for legal fees of £1,200 plus VAT of £180 and disbursements of £24 being a company search fee and office copy entry fee plus VAT on the latter of 60p. The total was £1,405.60.

14. The tribunal examined the itemised breakdown. It allowed an initial telephone call from the client and one hour (£220) checking the claim notice, perusing documents and drafting letters (presumably the initial advice letter and letter to Mr Rochford). Additional drafting and consideration time was disallowed; it was not clear what this was for, and one hour in total was considered ample. Additional charges for letters out on 18/12/2008 were disallowed a duplication, given that drafting time was already charged for. Letters regarding HMLR and company search were disallowed as these searches can easily be carried out online with no covering letter necessary. Time for client admin, preparing the bill, and two attendance meetings was allowed (£140). Further charges for telephone calls, letters to the client and responding to the RTM company were restricted to £140 which the tribunal regarded as a reasonable amount in the circumstances. Charges in the printout recorded after 30/01/2009 were disallowed as these post-dated the bill and were not included in the costs claim.
15. The tribunal allowed 30 minutes in total at senior solicitor rate (£100) for preparing the counter-notice, which was straightforward given that the RTM was admitted. It appears that additional time was spent by a more junior solicitor (Victoria Walton). Duplication of time spent by Mr Wolfarth and for "internal discussions" was disallowed, as this would not normally be chargeable to the client. Similarly, no additional time for research was allowed. The tribunal took the view that as a general principle a senior solicitor should be expected to know the legal provisions relevant to RTM, or at least not to pass on research time to their clients. Even if in some circumstances research time might be chargeable to a landlord client under Section 88, the tribunal was not persuaded that this was a case where such time should be allowed having regard to the legally straightforward circumstances of this case. The total solicitors fees allowed was therefore £600 plus £90 VAT @ 15% plus disbursements of £24.60, a grand total of £714.60.
16. Turning to costs claimed by the management company of £542.80, these were stated in a letter and "closing statement" to Mr Rochford of 14/04/2009 (the date of acquisition of the RTM) to be "managing agents fees as noted in the service charge statement to 13/04/2009". In the "maintenance fund account" document for the period 29/09/2008 to 13/04/2009, a list of expenditure incurred included "management" itemised as follows: "basic fee £240, VAT £36, additional fees timecosted £232, VAT £34.80". These sums add up to £542.80, so presumably this is how that figure was arrived at. The closing account is the only evidence of this sum.
17. It appears to the tribunal that these were routine management fees incurred as service charges, not costs in connection with the RTM. These costs were therefore not within scope of this application. In any event, the tribunal saw no evidence of a contract or authority for any such charges to be payable by Eastcourt to Worthing & District. Mr Winter's letter of 02/02/2009 referred to at paragraph 7 above did not in the tribunal's view amount to an authority for Eastcourt to incur liability for any additional costs in relation to the RTM so as to fall within Section 88(1)(a). These costs were disallowed.

Determination

18. The tribunal determines for each and every reason stated above that the amount payable by the applicant to the respondent in respect of the landlord's costs payable by the TRM Company shall be £714.60 inclusive of VAT and disbursements

Dated 16 February 2010

Signed

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Ms J A Talbot
Chairman

Southern Rent Assessment Panel and Leasehold Valuation Tribunal

Case No. CHI/00ML/LCP/2009/0004

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
SECTION 88 of the COMMONHOLD 7 LEASEHOLD REFORM ACT 2002**

Property: 213b Ditchling Road, Brighton BN1 6JD

Applicant: 213b Ditchling Road RTM Company Ltd
Represented by Mr P A Rochford

Respondent: Eastcourt Estates (Sussex) Ltd

Decision: 16 February 2010

Refusal of permission to appeal: 09 March 2010

Members of the Leasehold Valuation Tribunal

Ms J A Talbot MA
Ms H Clarke, Barrister

Case No. CHI/00ML/LCP/2009/0004

231b Ditchling Road Brighton BN1 6JD

Application for Permission to Appeal

1. The Applicant's representative, Mr. P A Rochford, has applied for permission to appeal against a decision of the Leasehold Valuation Tribunal dated 19/02/2010.
2. This was a determination under S.88 of the Commonhold and Leasehold Reform Act 2002 of the reasonable costs incurred by the landlord in consequence of a claim notice given by the RTM company which the company is liable to pay.
3. Permission to appeal is refused.
4. The grounds of appeal assert that the Tribunal made a mistake of fact in connection with the landlord requesting copies of notices of intention to participate, and that the landlord unlawfully failed to respond to a Section 82 notice.
5. The Tribunal is satisfied that it was entitled to reach the conclusions that it did on the basis of the evidence before it, for the reasons fully explained in its Decision, in relation to the issue it had to determine. The matters raised in the appeal are not relevant to the costs determination.
6. There is no arguable error of law by the Tribunal in its application of Section 88.

It is for the parties now to consider whether they wish to make a similar application to the Lands Tribunal within 14 days, in accordance with Rule 5C(2) of the Lands Tribunal Rules 1996 (as amended) (SI 1996 1022), and paragraph 5.4 of the Lands Tribunal Practice Direction dated 16 May 2006.

Dated 09 March 2010



**Ms J A Talbot MA
Chairman of the Tribunal**

Southern Rent Assessment Panel and Leasehold Valuation Tribunal

Case No. CHI/00ML/LCP/2009/0004

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
SECTION 88 of the COMMONHOLD 7 LEASEHOLD REFORM ACT 2002**

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Decision: 16 February 2010

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Members of the Leasehold Valuation Tribunal

Ms J A Talbot MA
Ms H Clarke, Barrister

Case No. CHI/00ML/LCP/2009/0004

231b Ditchling Road Brighton BN1 6JD

Application for Permission to Appeal

1. The Tribunal has treated a letter dated 08/03/2010 from Worthing & District Estate Management as a request by the Respondent for permission to appeal against a decision of the Leasehold Valuation Tribunal dated 19/02/2010.
2. This was a determination under S.88 of the Commonhold and Leasehold Reform Act 2002 of the reasonable costs incurred by the landlord in consequence of a claim notice given by the RTM company which the RTM company is liable to pay.
3. Permission to appeal is refused.
4. The grounds of appeal assert that the Tribunal failed to take certain documents into account including an invoice dated 27/11/2009. The RTM was acquired by the Applicant on 14/04/2009.
5. The Tribunal took all the evidence into account and is satisfied that it was entitled to reach the conclusions that it did on the basis of the evidence before it, for the reasons fully explained in its Decision, in relation to the issue it had to determine. The costs determined were those within scope of S.88.
6. There is no arguable error of law by the Tribunal in its application of Section 88.
7. For the avoidance of doubt this is the second refusal of permission to appeal. A request by the Applicant was refused on 09/03/2010.

It is for the parties now to consider whether they wish to make a similar application to the Lands Tribunal within 14 days, in accordance with Rule 5C(2) of the Lands Tribunal Rules 1996 (as amended) (SI 1996 1022), and paragraph 5.4 of the Lands Tribunal Practice Direction dated 16 May 2006.

Dated 15 March 2010

**Ms J A Talbot MA
Chairman of the Tribunal**

