

321



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Ref: LON/00AN/LCP/2012/0024

**DECISION OF THE LONDON LEASEHOLD VALUATION TRIBUNAL ON
AN APPLICATION UNDER SECTION 88(4) OF THE COMMONHOLD AND
LEASEHOLD REFORM ACT 2002**

Property: 1 - 15 Churchfield Mansions, London SW6 4RA

Applicant: Shellpoint Trustees Limited

Respondent: Churchfield RTM Company Limited

**Determination without an oral hearing in accordance with regulation 13
of the Leasehold Valuation Tribunals (Procedure) (England) Regulations
2003**

Tribunal: Margaret Wilson
John Barlow JP FRICS

Date of the decision: 5 December 2012

1. This is an application by a landlord under section 88(4) of the Commonhold and Leasehold Reform Act 2002 (the Act) for a determination of its reasonable costs incurred in consequence of two abortive claim notices to acquire the right to manage given by Churchfield RTM Company Limited (the RTM company) under Chapter 1 of Part 2 of the Act.

2. This determination is, with the consent of the parties, made on the basis of the written material alone and without an oral hearing in accordance with the procedure set out in regulation 13 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003.

3. The first claim notice was dated 13 April 2012. The landlord disputed the entitlement to acquire the right to manage on the principal ground, it is understood, that there existed another RTM company in relation to the same property, and the RTM Company thereupon withdrew the claim and issued the second notice of claim. The landlord disputed the second claim on the ground that it did not specify whether or not it included appurtenant property and that the claim was not properly served. While it disputed the contents of the landlord's counter-notice in respect of the second claim the RTM company decided, on advice, that it would be easier to withdraw the claim than to pursue a contested claim at the tribunal.

4. The RTM company does not dispute that it is liable to pay the landlord's reasonable costs incurred in consequence of the claim notices but disputes that the costs claimed are reasonable.

5. Section 88 of the Act provides, so far 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 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

(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.

6. The costs which the landlord claims relate to fees charged by Wallace LLP, solicitors. The sum claimed in respect of the first notice is £2100.60, including VAT of £422 and disbursements of £160. The schedule of costs in respect of the first notice appears to contain an arithmetical error in that on 9 May 2012 the partner has charged for 0.2 hours at £465 per hour which should amount to £93 but is shown in the invoice at £111.60. There is also an error in the VAT calculation. The sum claimed in respect of the second notice is £781.20, including VAT of £130.20. The schedule of costs supporting the fees for the second claim shows costs of £802.80, including VAT of £133.80. The combined total derived from the two schedules of costs is £2903.40, including VAT, but the landlord appears to be limiting its claim to £2500.24, including VAT of £400 and disbursements of £100 and fax and copying charges as set out in the invoice dated 31 July 2012.

7. The solicitors' costs in respect of the first notice are based on 3.5 hours of work carried out by a partner at an hourly rate of £465 and 0.1 hours of work carried out by a partner at an hourly rate of £325. The solicitors' costs in respect of the second notice are based on 0.8 hours of work carried out by a partner at an hourly rate of £465 and 0.6 hours of work carried out by a partner at an hourly rate of £495. In a statement served in accordance with

the tribunal's directions the landlord's solicitors say that those charging rates were within the range of charging rates for West End firms and that the legislation was complex and the consequences for a landlord which accepted an invalid notice of claim could be serious so that the work required the attention of a partner. They say that the RTM company's assertion that the landlord's aim was deliberately to frustrate the RTM company's legitimate rights is not correct and that there were valid reasons for resisting both claims, as had been accepted by the RTM company.

8. The RTM company say in their statement served in accordance with the tribunal's directions that the work reasonably required by the landlord's solicitors in relation to the first notice was to check whether the notice was correctly served, which could have been undertaken by a competent junior solicitor at a rate of £150 per hour plus VAT, and that any additional work was undertaken deliberately to frustrate the claim. They say that they have already sent a cheque for £1500 as an interim payment for costs which in their view is more than reasonable. They do not challenge the disbursements, nor do they take issue with specific items of work for which a claim is made other than to suggest that the landlord took unmeritorious points.

9. The landlord is entitled if so advised to dispute a claim to acquire the right to manage and to take technical points to defeat the claim. It is also in our view entitled to instruct a specialist firm of solicitors. We accept that the hourly rates applicable to the members of Wallace LLP which are appended to its terms of business are not unreasonable and we accept that the time spent was not excessive. However we are satisfied that the work could have been carried out effectively by a more junior partner than one charging £465 and £495 per hour and that a reasonable hourly rate for the necessary work would have been between £350 and £375 (with the exception of the work in respect of the first notice which was charged £325 per hour for 0.1 hours, which we accept as reasonable). We have taken an hourly rate of £350 up until 31 July 2012 and of £375 thereafter and have applied those rates to the

invoices dated 13 April and 15 June 2012. To the sums produced on this basis we have added VAT at 20% and disbursements as claimed.

10. We therefore determine that the reasonable costs payable by the RTM company are:

4.3 hours at £350 per hour	£1505
0.6 hours at £375 per hour	£225
0.1 hour at £325 per hour	£32.50
VAT at 20%	<u>£352.50</u>
<u>Sub-total</u>	£2115
Disbursements	£160
<u>Total:</u>	£2275

CHAIRMAN **Margaret WILSON**

DATE: **5 December 2012**