



394.

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: 22 April 2013

DETERMINATION

The Application

1. On 8 January 2013, 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 £1,434.20 (£1193.50 plus VAT plus £2) were reasonably and properly incurred and are payable by the Respondent to the Applicant.

Directions

3. Directions were issued on 11 January 2013. 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 Respondents shall within 28 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 served a Claim Notice dated 15 November 2010 (and dated also 9 November 2010 at its end) by letter dated 10 November 2010, to which the Applicant served a Counter Notice on 5 January 2011 denying the claim to acquire the right to manage on the basis that the Claim Notice did not comply with the Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2010.
9. 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.
10. The Applicant claims the costs of its solicitor in the sum of £1193.50 plus VAT plus £2 for a Companies House search arising from its response to the Claim Notice.

The Respondent's Case

11. The Respondent has not served upon the Tribunal any Points of Dispute in accordance with the Tribunal's directions referred to above. A letter from HGW solicitors of 12 March 2013 indicated that the Respondent was content to *"rely upon the inherent jurisdiction of the Chairman of the Tribunal when considering an application for costs to ensure that these are fairly judged and properly payable"*.

Consideration and Determination

12. 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 claim.
13. 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.
14. 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 Claim Notice or that the costs are not reasonable in their amount. The Tribunal has, nevertheless, gone on to consider those issues.
15. 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, known to the Tribunal from an earlier determination, of two earlier aborted claims. 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.
16. Noting the history, it was not, the Tribunal finds, surprising that the Applicant's solicitors would take the steps detailed in its Statement of Case and in their scheduled Ledger of time expended on the claim.
17. The Tribunal has analysed the work conducted by the solicitor, which is helpfully detailed in the schedule, 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.
18. 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 earlier Claim Notice. Further, the Tribunal has noted the complexity involved in RTM claims and the actual history here, where there had been two earlier unsuccessful claims, as being factors likely to lead a party to engage a solicitor of experience.
19. 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 5 January 2011. 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 details work by the solicitor only to the date of the Counter Notice, such that the costs of that work would be recoverable.

20. The costs of £1,434.20 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.

Andrew Cresswell (Chairman)
A member of the Southern Leasehold Valuation Tribunal
Appointed by the Lord Chancellor

Date 22 April 2013