

RESIDENTIAL PROPERTY TRIBUNAL

LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/00341/01/18

In the Matter of: The Carriage Works, New Street, Mold, Flintshire, CH7 1NY
("the Premises")

In the Matter of an Application under Section 88 (4) of the Commonhold and
Leasehold Reform Act 2002 ("the Act")

Tribunal: David Foulds (Legal Chairman)

Applicant: Landmark (Bolton) Limited

Applicant's
Representative Womble Bond Dickinson (Solicitors)

Respondent: Carriage Works RTM Company Limited

Respondent's
Representative: HHL Company Secretaries Ltd

Date of Hearing: 9 April 2018

Date of Decision: 9 April 2018

DECISION

**The amount of costs payable by the Respondent to the Applicant
pursuant to section 88 of the Act is £1,378.80**

REASONS

The Application

1. This case involves an application for determination of the costs payable by the Respondent to the Applicant further to the deemed withdrawal of two Claim Notices served by the Respondent on the Applicant in respect of the premises known as The Carriage Works, New Street, Mold, Flintshire, CH7 1NY (the Premises). With the agreement of the parties this application has been determined on the papers without an oral hearing. By letter from the Applicant to the Respondent dated 19 February 2018 the Applicant invited the Respondent to include further costs in respect of a third Claim Notice within the application. In its Statement of Case dated 6 March 2018 the Respondent objected to the inclusion of these costs as part of the application and by email from the Applicant to the Tribunal received 5 April 2018 the Applicant

withdrew its request to include the costs of the third Claim Notice as part of the present application. This application is therefore confined to a determination of reasonable costs in respect of the first and second Claim Notices only.

Inspection

2. The Tribunal did not consider it necessary to inspect the Premises.

The Law

3. The relevant law is to be found in the Commonhold and Leasehold Reform Act 2002, sections 88 and 89.

88 Costs: general

(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 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 the appropriate 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 the appropriate tribunal.

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*
 - (b) at any time ceases to have effect by reason of any other provision of this Chapter*
- (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.*
- (3) Each person who is or has been a member of the RTM company is also liable for those costs (jointly and severally with the RTM company and each other person who is so liable).*
- (4) But subsection (3) does not make a person liable if—*
 - (a) the lease by virtue of which he was a qualifying tenant has been assigned to another person, and*
 - (b) that other person has become a member of the RTM company.*
- (5) The reference in subsection (4) to an assignment includes—*
 - (a) an assent by personal representatives, and*
 - (b) assignment by operation of law where the assignment is to a trustee in bankruptcy or to a mortgagee under section 89(2) of the Law of Property Act 1925 (c. 20) (foreclosure of leasehold mortgage).*

Factual background

4. The chronology of events in as far as the service of the two Claim Forms and the service of the Counter Notices in reply and the failure of the Respondent to make any application to the Tribunal in response to receiving the Counter Notices is uncontested. In summary the events are as follows:

First Claim Notice dated 18 November 2016

First Counter Notice dated 20 December 2016

No application made by Respondent to Tribunal in consequence of receipt of First Counter Notice

Second Claim Notice dated 14 July 2017

Second Counter Notice dated 14 August 2017

No application made by Respondent to Tribunal in consequence of receipt of Second Counter Notice

The Evidence

5. The application is supported by a Statement of Case dated 22 January 2018 including copies of the following documents –
 - (a) The above stated Claim Notices and Counter Notices
 - (b) Letter from Applicant's solicitors (Bond Dickinson) to Respondent dated 14 August 2017 (enclosing the Second Counter Notice)
 - (c) Letter from Bond Dickinson to Respondent dated 6 November 2017
 - (d) Applicant's Statement of Costs (unsigned and undated)
6. The Respondent has filed and served a Statement in Reply dated 6 March 2018 that did not include any additional documentation.
7. The Applicant filed and served a Response dated 13 March 2018 which again was confined to representations and did not include any additional documentation.
8. Finally in the bundle of documents the Applicant included a copy letter from Womble Bond Dickinson (formerly Bond Dickinson) to the Respondent dated 19 February 2018 which included a Statement of Costs dated 19 February 2018 signed by Mr Mason in his capacity as a partner of Womble Bond Dickinson, together with invoices from that firm to the Applicant for legal services dated 31 January 2017, 28 September 2017, 15 February 2018 and another dated 15 February 2018.

Costs claimed

9. In its letter of 6 November 2017 to the Respondent, the Applicant sought costs of £1,240 plus VAT.
10. After making this application and in its letter of 19 February 2018 to the Respondent the Applicant sought costs of £2,653.00 inclusive of VAT. It is to be noted this includes a £100 Tribunal fee included of the Applicant's Statement of costs.
11. The Applicant also seeks managing agent's costs of £250 plus VAT.

Points in issue

12. The Respondent raises the following points of dispute upon which the Tribunal determines as follows. When assessing the reasonableness of the costs the Tribunal assessed them on the basis set out in section 88 (2) of the Act as set out above.

- (i) The Respondent questioned the reasonableness of the Applicant in rejecting the validity of the First and Second Claim Notices and serving the First and Second Counter Notices.

The Tribunal determines that this is not a relevant consideration. The Applicant has a right to seek payment of its reasonable costs pursuant to section 88 of the Act.

- (ii) The Respondent states that no breakdown of the costs accompanied the letter of 6 November 2017, no timescale was given for payment and “no attempt was made to discuss or chase payment” and “we believe the application to the tribunal was therefore unnecessary and premature”. The Respondent further complains that there had been a conversation between the parties on 2 February 2018 and that the Respondent is “surprised” that the Applicant did not mention the outstanding costs, especially as the application had only just been made.

Whilst not expressly raised by the Respondent, the Tribunal notes that there is no express provision in the Act for payment of costs where a party has made or opposed an application under section 88. Specifically section 88 (3) of the Act provides that costs before the Tribunal are only payable when the Tribunal determines that the right to manage has not been acquired. Further section 89 (2) of the Act provides that the liability for costs is a liability for costs incurred by the Applicant to the time of deemed withdrawal.

The Tribunal therefore determines that the costs of preparing the application and preparing the costs statement of 1 hour at £290 per hour and 2.2 hours at £155 per hour are not payable by the Respondent, reducing the claimed costs by £631 plus VAT.

- (iii) The Respondent states that when the application was received the costs were higher than those claimed in the letter of 6 November 2017 “for what appears to be the same work”. The Respondent also states the costs now sought do not “reflect” the three invoices referred to in para 7 above which total £2662.80 and not £2,653.00 as now claimed.

The Tribunal determines that the reason the costs now exceed the initial £1,240 plus VAT is that additional costs of the application to the Tribunal had been incurred. As referred to in paragraph 12 (ii) above, the Tribunal notes the Schedule of work done on the Applicant’s Statement of Costs dated 19 February 2018 refers to “Preparing application and supporting documentation” and “Preparing costs statement”. In principle this will account for an increase in the costs sought from the

original amount of £1,240 plus VAT. For the reasons set out above these costs have not been allowed.

In respect of the three invoices it is noted the first two in date do total £1,240 plus VAT. The addition of the third invoice arrives at total costs of £2,662.80. The Applicant explains the difference between the said £2,662.80 and the £2,653.00 as being “likely due to the accounting of disbursements” and is “willing to reduce” the claim. Noting that the claim is in any event for the lower figure of £2,653.00 the Tribunal sees no merit in the Respondent’s representation and this discrepancy is no basis on which to otherwise question the costs sought. The third invoice will in any event have comprised costs of work in respect of making the application which have been disallowed as set out in paragraph 12 (ii) above.

- (iv) The Respondent states that a claim for 3.3 hours at a charging rate of £290 per hour is excessive in respect of the consideration of the First Claim Notice. The Respondent complains both about the time engaged and the hourly rate applied.

The Tribunal determines that consideration of the Claim Notice is work that requires expert consideration and by a solicitor with the commensurate experience and expertise. The Tribunal determines that a charging rate of £290 per hour is not unreasonable.

The Tribunal determines that a time of 3.3 hours is excessive. The Tribunal has had to take a broad brush approach when considering the reasonableness of the time engaged as no evidence was provided of the actual work done comprised with the 3.3 hours claimed. On the one hand there was no evidence that the Applicant had requested sight of any Notices of Invitation to Participate and no evidence that Land Registry checks were carried out in respect of the qualifying leaseholders or checks on membership of the Respondent. On the other hand, whilst the Claim Notice is a standard type document and the ground of dispute was a narrow one, the document would have still required careful study and it is clear the Respondent’s Articles of Association were checked as part of the work carried out. Doing its best and taking a broad brush approach, the Tribunal considers time engaged of 1.3 hours by a Grade A fee earner and 1.5 hours by a Grade B fee earner, to consider the Claim Notice and carry out the required checks and advise the client, to be reasonable. The Tribunal therefore reduces the costs sought by £347.50 plus VAT.

- (v) The Respondent states that a claim for 1 hour to consider the Second Claim Notice is excessive on the basis that “It was clear

to anyone reading this that it was identical in content to the first (save for the amended particulars)”.

The Tribunal determines that the time claimed is reasonable. The Tribunal agrees with the Applicant’s representations that it is not reasonable to expect the Applicant to take it at face value that the Claim Notice was near on identical and that it was necessary to properly study the document afresh. The reduction of time from 3.3 to 1 hour in respect of the Second Claim Notice shows that allowance has been made that the documents were of a like nature and related to the same matter.

- (vi) The Respondent states that the managing agents costs of £250 plus VAT are not reasonable as they are not proportionate and there was little or no requirement for them to be involved as Bond Dickinson had been appointed. In principle the Tribunal would not have disallowed these costs on the basis that Bond Dickinson had been appointed. It is reasonable for Bond Dickinson to have sought factual information from an agent and it is reasonable for an agent also to be involved in the process. The Tribunal also agrees with the Applicant that section 88 of the Act does not limit costs to legal costs. However the Tribunal determines these costs are not payable because no evidence of any kind has been put before the Tribunal to demonstrate what the agent actually did. Nor has an invoice been produced to show these costs were incurred.

13. The Tribunal notes that the Applicant seeks reimbursement of the Tribunal fee of £100 in respect of this application. The Tribunal has power to order reimbursement of this fee by the Respondent pursuant to para 9 of the Leasehold Valuation Tribunal (Fees) (Wales) Regulations 2004. In fact no actual fee was paid or indeed is payable in respect of this application and thus £100 has been deducted from the costs claimed.



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David Foulds
Legal Chair