LON/00AP/LCP/2005/0001

THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE

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

Property: **Barrington Court, Colney Hatch Lane, London N10 1QGb**

Applicant: Barrington Court Developments Limited (landlord)

Respondent: BCL (RTM) Company Limited

Determination made without an oral hearing under Regulation 13 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003

Tribunal: Lady Wilson

Date of determination: 7 September 2005

1. This is an application by the landlord, Barrington Court Developments Limited, under section 88 of the Commonhold and Leasehold Reform Act 2002 ("the Act") to determine the costs to be paid by an RTM company, BCL (RTM) Company Limited, in consequence of its claim notice.

2. 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 ... landlord ... 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* [Part 2 Chapter 1 of the Act] *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.*

3. The background to this application is that on 27 May 2003 the participating qualifying tenants of Barrington Court ("the property") gave the landlord an initial notice of a claim under section 13 of the Leasehold Reform, Housing and Urban Development Act 1993 to exercise a right to collective enfranchisement, and on 29 July 2003 the landlord served a counter-notice disputing their right on the ground that the property consisted, it was alleged, of more than one self-contained building. On 12 September 2003 the nominee purchaser issued a claim in the county court for a declaration that the tenants were entitled to claim the freehold, asserting that the

property was one self-contained building, and the trial was fixed for 20 and 21 May 2004.

4. By a claim notice under section 79 of the Act dated 17 February 2004, the RTM company gave notice of a claim to acquire the right to manage the property under Chapter 1 of Part 2 of the Act By a counter-notice dated 18 March 2004 under section 84 of the Act the landlord disputed the RTM company's entitlement to acquire the right to manage, also on the ground that the property was alleged to consist of more than one self-contained building and did not therefore, by virtue of section 72(1)(c) of the Act, fall within the definition of property to which the Chapter 1 of Part 2 applied.

5. On 20 May 2004 the parties reached agreement in relation to with the county court proceedings and a consent order was made which recorded that the landlord no longer challenged the validity of the notice of claim to acquire the freehold of the property; and, by a letter dated 27 May 2004, the landlord's solicitors said that the landlord had no objection in principle to the RTM company acquiring the right to manage. They subsequently wrote to the tribunal confirming their agreement to the RTM company's acquisition of the right to manage and saying that they did not understand why the hearing was proceeding, to which the RTM company's solicitors responded that they would be content for the proceedings to be adjourned once there was clarity as to the acquisition date.

6. The required clarity not having been obtained, a hearing took place on 8 June 2004, at which the landlord neither appeared nor was represented. In its decision dated 23 June 2004 the tribunal said that it was satisfied that the RTM company had the right to manage the property, and determined that the acquisition date was 8 September 2004, three months after the date of the hearing. It is therefore apparent that the right to manage the property was acquired by virtue of the determination and not by virtue of the agreement of the landlord.

7. It is in these circumstances that the landlord, through its solicitors Cramer Pelmont (who formerly practised as Georgallis & Co), have applied for a determination of the landlord's recoverable costs.

The landlord's case

8. The landlord claims £5985.50, plus VAT of £1047.52, a total of £7033.02, as set out in its solicitors' bill of costs. The costs are based on the time spent by a senior solicitor who charged £210 per hour for a total of 13 hours' work and include the costs of a conference with counsel prior to the service of the counter-notice, and a conference with counsel on 2 September 2004 (ie after the tribunal hearing), the second conference being, it is said, for the purpose of obtaining counsel's advice as to the steps to be taken by the landlord, advice regarding service charges, and how the RTM company would take over. The costs claimed also include £350 for three and a half hours of a costs draftsman's time at £100 per hour.

The RTM company's case

9. In an open letter dated 8 February 2005, sent in response to the landlord's solicitors' bill of costs, the RTM company's solicitors, Macrory Ward, said that the costs claim was preposterous, not least because the RTM legislation and procedure was clear and largely administrative and did not require counsel's advice, and they offered to advise their client to pay for two hours of the landlord's solicitors' time. However, in their response to the application, they say that since the landlord's solicitors have ignored that suggestion, thereby putting the leaseholders to further expense, the landlord's costs should be disallowed in full.

10. In their answer to the application, the RTM company's solicitors say that they challenge the claim for costs on grounds both of principle and of detail.

11. As to principle, they say that section 88 of the Act was designed to compensate a landlord for legal expenses to which he was legitimately put in responding competently to an application. In normal circumstances, they say, the RTM company would agree to meet the costs of and incidental to the counter-notice, but in circumstances where it has been put to the expense of making an application to the tribunal and preparing for it, only for the landlord to withdraw its opposition to the claim just before the hearing, it was not reasonable for the landlord to be awarded any of its costs. The legislation was, they say, clearly drafted, and there should have been no need for the landlord to consult lawyers, and certainly not counsel. They say that the landlord's opposition to the acquisition of the right to manage was effectively the same as its opposition to the right to collective enfranchisement, namely whether the property consisted of one building or six separate buildings, and that, on that point, it had already received advice from counsel in connection with the enfranchisement claim, where the point was made in lengthy and expensive litigation and then conceded. It had been necessary, they say, for the RTM company to proceed to a hearing because the landlord refused to agree, or even attempt to agree, the acquisition date, against the background of, they say, a long history of difficult dealings with the landlord's controlling director.

12. As to detail, they say:

i. insofar as this was new legislation and the landlord was "learning on the job", it was inappropriate that it should do so at the RTM company's expense;

ii. to the extent that legal participation was necessary, the charges should be at the lower end of the scale, namely £150 per hour, since the procedure was largely administrative;

iii. no costs were recoverable after service of the counter-notice, save where they were appropriate and necessary to work out the terms of the transfer of management;

iv. the counter-notice was a nullity;

v. the landlord had been wholly unco-operative in the transfer of management, and continued to undermine it, and the RTM company had no knowledge of letters 9 - 15 on the bill of costs [which appear to be letters to suppliers of services], which should in any event be disallowed in full;

vi. the times allegedly spent were preposterous for a claim of this nature, and in normal circumstances two hours would be adequate for consideration of and response to the claim, and all counsel's fees were unreasonable and should be disallowed;

vii. the costs draftsman's fees are inappropriate, in that he appeared simply to have been given a large bundle of papers and told to cost them, and/or he did not understand the legislation, and these should be disallowed in full.

Decision

13. The landlord is entitled only to its reasonable costs in consequence of the claim notice. In the present case, insofar as the landlord's costs were inflated by the counter-notice, in which the only point taken, namely that the property consisted of more than one self-contained building, was subsequently conceded to be bad, I am satisfied that the costs incurred by the landlord on that account are irrecoverable. (The assertion by the RTM company's solicitors that the counter-notice was a nullity is not understood. It was not treated as a nullity by the tribunal which heard

the application and I see no reason why it should have been.) Had the landlord acted reasonably in relation to the claim it would not have resisted it, would not have served a counter-notice, and would not have incurred substantial costs in consequence of the claim notice. I accept that the landlord, acting reasonably, was entitled to seek legal advice in consequence of having received the claim notice, and I consider that two hours of a suitably qualified solicitor's time should have been sufficient for this purpose and for any necessary letters to be written. I do not consider that the refusal of the landlord to entertain the offer to pay for two hours' time is relevant to issue of what costs would have been reasonably incurred in consequence of the claim notice. It is relevant to the costs incurred by the RTM company after the date of the offer, but does not affect the landlord's recoverable costs under section 88.

14. In any event I am not satisfied that any costs incurred by the landlord after the date of the tribunal hearing are recoverable in consequence of the claim notice. I consider that these costs, set out in items 3 to 16 inclusive of the bill of costs, were incurred in consequence of the acquisition of the right to manage and not in consequence of the notice.

15. Furthermore, even if I had not been satisfied that only the cost of two hours' of solicitors' time was reasonable in the light of the bad point taken in the counter-notice, I should have regarded the costs claimed in respect of work done prior to the tribunal's determination as excessive. To consult counsel on a point identical to that in relation to which he had already, it would appear, advised in connection with the collective enfranchisement claim, was in my view unreasonable

16. I also regard the use of a costs draftsman as unreasonable in connection with a matter which should have been simple and straightforward had the landlord acted reasonably and admitted the RTM company's entitlement to acquire the right to manage.

17. I accept that the importance to the landlord of the right to manage being acquired under the Act justified the attention of a partner, and I regard the partner's charging rate of £210 per hour as reasonable. In the circumstances the landlord's costs recoverable under section 88 of the Act are determined at £420 plus VAT for two hours work, a total of £493.50.

TRIBUNAL:.....

DATE.....7 September 2005