

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
LEASEHOLD VALUATION TRIBUNAL**  
Commonhold and Leasehold Reform Act 2002 Section 88  
**LON/00AE/LCP/2005/0003**

**Property:** 69 Oxford Gardens, London W10 5UJ

**Applicant:** Mrs Liliane Carter (in person)  
(Joint Landlord)

**Respondent:** Consensus RTM Company Ltd (represented by Mr M. Lawrence, a  
director of the company)  
(Management Company)

**Also Present:** Mr A. Carter (Applicant's son)

**Tribunal:**  
Mr L.W.G. Robson LLB (Hons) MCI Arb  
Mr F. L. Coffey FRICS  
Mrs M. B. Colville JP LLB

**Hearing Date: 4<sup>th</sup> October 2005**

**BACKGROUND**

1. The Applicant Landlord is a joint owner of the freehold of the Property and also a leaseholder of one of the six flats there. Mr Lawrence is also a leaseholder of one of the other flats. The Applicant applied on 21<sup>st</sup> March 2005 for a determination of the costs payable by the Respondent under Section 88(4) of the Commonhold and Leasehold Reform Act 2002 (the Act).
2. Directions for Hearing were given on 15<sup>th</sup> July 2005, and further directions were given for an oral hearing on 1<sup>st</sup> September 2005 at the request of the Respondent.
3. The Applicant made written representations dated 11<sup>th</sup> July, 18<sup>th</sup> August 2005 and 20<sup>th</sup> September 2005. The Respondent made written representations dated 12<sup>th</sup> August 2005. Both parties made supplementary oral submissions at the hearing.

**HEARING**

4. Immediately prior to the hearing the Tribunal gave the parties copies of two very recent LVT decisions relating to Section 88, i.e. Barrington Court, Colney Hatch Lane, London N10, dated 7<sup>th</sup> September 2005 (LON/00AP/LCP/2005/0001), and 9 Malvern Road, London NW6, dated 13<sup>th</sup> September 2005 (LON/00AE/LCP/2005/0002). At the start of the hearing the Tribunal indicated that it was aware of the decisions in those cases, but that it did not consider itself bound by them.

5. At the start of the hearing, at the request of Mr Lawrence, the Applicant confirmed that the total costs claimed were contained in the accounts of Messrs Comptons dated 28<sup>th</sup> October 2004 and 11<sup>th</sup> August 2005, despite the narrative in the account dated 11<sup>th</sup> August 2005 suggesting that it was an interim bill.
6. Again at the request of Mr Lawrence, The Chairman stated his understanding of the law that as the Applicant was a trustee for herself and her joint landlord, and the other landlord had been served with a copy of the notice of claim, the other landlord would not be entitled to make an independent application for costs at a later date. It was common ground between the parties that the other joint landlord had no wish to be involved in the proceedings.
7. The Chairman directed the parties' specific attention to the wording of section 88 of the Act before inviting them to make their oral submissions.
8. In her oral submissions, the Respondent stated her view that all the costs incurred by her solicitor were in consequence of the claim. Over many years a number of complex issues had arisen. When the claim arose she had gone to LEASE (The Leasehold Advisory Service) for advice particularly because of the difficulty with the joint landlord. She had been advised to consult a solicitor, and had done so. All along she considered she had been acting in accordance with the guidance of LEASE. She had no prior notice of the RTM company before the Notice to Participate was served on 27<sup>th</sup> October 2003. She had deliberately decided not to use her other solicitors to make sure there was no question of the costs in other matters being mixed.
9. She considered that all the work related to her position as landlord, and not related to her position in any other capacity. She had been trying to get answers to questions she had asked about her position as joint freeholder, whether she could be a director of the RTM company, voting, the position of other lessees in the house, and insurance. These were not issues she could have handled by herself. Referring specifically to Section 88(2) of the Act, she considered that as a member of the RTM company she was personally liable for the landlord's costs because she would have to pay 22% of them as her share.
10. Mr Lawrence submitted that the claim notice itself was uncontested. The complex issues had arisen afterwards. He agreed that there were issues, but they did not arise in relation to the RTM Notice of Claim. The central point was at what stage the company's liability ceased. Once the Counter-notice had been served the claim had been fully satisfied. In his view the wording of the Act was quite clear and he read it as allowing costs which were directly consequential to the notice.
11. In answer to questions from the Tribunal, Mr Lawrence considered that the end date for the Respondent's liability should be 25<sup>th</sup> March 2004, being

the date when it acquired the right to manage, and that the costs between the 27<sup>th</sup> October 2003 and the date of service of the notice of claim on 17<sup>th</sup> November 2003 should be split. He stated that there were 153 items shown on the solicitor's worksheets.

12. Based upon his knowledge of the correspondence, and assuming that the solicitor was communicating with his client on the same matters, his view was that the company should be liable for a sum of £503.46 inclusive of VAT. Although he had requested further details of the work done in his earlier submissions they had not been forthcoming. He considered that the solicitors had acted for the Applicant in 3 distinct capacities; her capacity as joint freeholder in a dispute with the other freeholder, her capacity as freeholder in relation to the Respondent, and her capacity as a member of the Respondent. He submitted that she was only entitled to costs in relation to her capacity as freeholder in relation to the Respondent.
13. The Tribunal considered all the submissions, and decided that there were two main aspects to this claim, firstly what costs could be charged, and secondly the amount of such costs.
14. The wording of Section 88 is as follows:
  - “(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 cost 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.”*
15. The Tribunal considered that the wording of section 88 was not clear. It did not accept the Applicant's view as to the meaning and effect of section 88 in relation to the costs which she had actually incurred. It considered that the words “in consequence of a claim notice” suggested some quite

close connection between the contents of the notice and the claim. Section 88(2) seems to impose an additional limit on the costs which should be accepted as reasonable. The extent of that limit is not altogether clear, but it suggests that claimants should not be allowed to charge costs unless they would have incurred those costs knowing that they would have to pay for them out of their own pockets.

16. The Tribunal also considered the decisions of other Tribunals in Barrington Court and 9 Malvern Road (referred to above).
17. Briefly stated, in Barrington Court the landlord served a Counter-notice to a Notice of Claim under section 88 on grounds which it later conceded to be bad when agreeing to an order by consent in the County Court. The landlord then claimed a total of £7,033.02 which included 13 hours of work by a senior solicitor, costs of a conference with counsel prior to service of the Counter-notice and a second conference with counsel relating to service charges, and how the RTM company would take over. The time of a costs draftsman for 3 hours was also included. The Tribunal explicitly distinguished between costs incurred in consequence of the acquisition of the right to manage and costs incurred as of the claim notice. It awarded the time costs of a senior solicitor at £210 per hour in considering the claim and serving a counter-notice which accepted the claim.
18. In the 9 Malvern Road case, the Applicant company claimed a total of £925.90 including VAT for legal services and an unquantified sum for work done by a director of the Applicant with relevant professional qualifications in reviewing the terms of the Act. The Applicant instructed its solicitors to serve a Counter-notice disputing the validity of the Notice of Claim without stating any reasons. The Tribunal disallowed the legal costs entirely on the basis that the Applicant did not in fact require advice, having had the benefit of the director's advice. It considered that the letter written by the solicitor could have been written by the company itself. The Tribunal estimated and allowed an amount for the costs of the director based on an estimated five and a half hours of the director's time.

What costs can be charged?

19. In this case, the Applicant sought advice on a number of related matters, which she helpfully set out in her application dated 11<sup>th</sup> July 2005. As noted above, these related to:
  - a) Her position as joint freeholder
  - b) Whether she could be a director of the RTM company,
  - c) Voting,
  - d) Issues relating to a lessee who was not a member of the RTM,
  - e) What repairs and improvements the RTM company was entitled to carry out.

The question of building insurance was also discussed in correspondence, and although perhaps not explicitly stated to the Tribunal, the validity of the Notice of Claim generally must have been discussed since a counter-notice accepting

validity of the Notice Claim was served. Another issue which was clear from the correspondence was the true meaning of the Act in relation to costs.

20. The Tribunal considered that a Notice of Claim primarily seeks to establish the validity of three matters, i.e. the grounds of the claim, the qualifying tenants and their membership of the RTM company, and their respective leasehold titles. Costs incurred directly relating to those issues must be “in consequence of the claim notice”. Also in this case there was a genuine dispute as to the meaning of the Act in connection with the costs, since at the time of the dispute there was no previous case authority.
21. The Tribunal distinguished between those costs and costs relating to clarification of the position of the joint freeholders (item 19a) above) and most (but not all) issues relating to the membership and running of the RTM company noted at 19b) c) and d) above. It was also clear to the Tribunal that the issues of insurance and repairs were matters relating to management, not to the Notice of Claim.

#### The amount of costs

22. The Tribunal had some sympathy with the Applicant’s position. The legal situation at the property was complex. She had no legal expertise, and quite large sums of money were at stake. The Applicant’s case was not assisted by the very vague terms of her solicitors’ bills, which in essence gave only details of time spent between certain dates on certain very general activities, but gave inadequate detail of the subject matter of the advice given and work undertaken. The Applicant assured the Tribunal at the hearing that she had received a client care letter at the outset and was aware of the remuneration certificate procedure. She was very satisfied with her solicitor’s performance.
23. Mr Lawrence for the Respondent had made some assumptions and attempted to analyse the work done under the three headings noted at paragraph 12 above. However these assumptions did not accord with the terms of section 80 of the Act relating to the contents of the Claim notice, and his conclusions were not very helpful, although well intended.
24. In the end the Tribunal decided to rely upon its own knowledge and experience of such matters. While the resulting figure was somewhat arbitrary, the evidence before the Tribunal was very imprecise and even minute analysis would not result in a clear result. The solicitors’ file was not in evidence, and due to the limitations of the disclosure procedures available to the Tribunal, putting the file in evidence would almost certainly disclose confidential information.
25. The Tribunal considered that upon receipt of a Notice of Claim, a reasonable landlord lacking legal knowledge would seek advice. The solicitor would assemble and check that the title deeds and records of tenants corresponded with information given in the Notice. He should then consider the terms of the Act before advising on the terms of the Counter-notice and serving it. In this case there was a complex factual background

which would have complicated his instructions, consideration and advice. The interpretation of the Act over the costs in this particular case was an additional issue which occupied the parties for some time, well after the date limit of 25<sup>th</sup> March 2004 suggested by Mr Lawrence in his submissions.

26. The Tribunal concluded that the time of a senior solicitor would be appropriate. The bills disclosed a charged rate of between £195 and £220 per hour over a period of one and half years. Much of the work properly payable by the Respondent would have been done in the first year

27. The Tribunal's calculation was thus:

During period of first bill at £195 per hour (28.10.03 – 27.10.04)

Taking instructions	30 mins	
Assembling title & checking terms of notice	1hr	
Considering law and facts	45 mins	
Advising client	30 mins	
Serving counter-notice	15 mins	
Subsequent correspondence		
On consequential matters	2hr	
	5 hrs	= £975

During period of second bill at £220 per hour (9.11.04 – 26.6.05)

Further correspondence		
On consequential matters	30 mins	= £110
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	Total time costs	£1,085
Add VAT		189.88
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	Total:	£1,274.88

28. Thus the Tribunal determined the reasonable costs payable by the Respondent to the Applicant under Section 88(4) of the Act to be £1,274.88

Signed: .....

Chairman

Dated: .....

23<sup>rd</sup> October 2005