

LON/00AE/LCP/2005/0002

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

Premises: 9, Malvern Road, London, NW6 5PS

Applicant: Quite Limited

Respondent: Malvern Road RTM Company Limited

Date of Hearing: 13 September 2005

Date of the Tribunal's Decision: 13 September 2005

Tribunal: Mr. A. J. Engel MA(Hons)

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LEASEHOLD VALUATION TRIBUNAL

LONDON RENT ASSESSMENT PANEL

COMMONHOLD AND LEASEHOLD REFORM ACT 2002. SECTION 88(4)

PROPERTY: 9, Malvern Road, London NW6 5PS
APPLICANT: Quite Limited
RESPONDENT: Malvern Road RTM Company Limited

TRIBUNAL:

Mr A J Engel MA(Hons)

DECISION AND REASONS OF THE LEASEHOLD VALUATION TRIBUNAL

BACKGROUND

1. On 8th July 2005, the Edmonton County Court transferred to the Tribunal a question that had arisen as to the amount of costs payable by the Respondent to the Applicant – pursuant to Section 88(4) of the Commonhold and Leasehold Reform Act 2002 (The Act).
2. The Tribunal gave directions on 15th July 2005.

THE ISSUE

3. The Applicant claims legal costs of £788 plus VAT (total £925-90p) under Section 88(1) of the Act. The Respondent's case is that this amount is unreasonable.
4. The Applicant also claims an unquantified sum, under Section 88(1) of the Act, in respect of work done by Mr Wales (a Director of the Applicant).

THE TEST

5. The test I have to apply is laid down in Section 88 as follows:-

(1) A RTM Company is liable for reasonable costs incurred by a person who is –

(a) Landlord

(b)

(c)

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 if the circumstances had been such that he was personally liable for all such costs.

THE EVIDENCE

6. I had before me a witness statement (with exhibits) from Mr Wales and a witness statement from Mr Barker (a Director of the Respondent).

7. I have also seen court papers.

DECISION ON LEGAL COSTS

8. Mr Wales is a Fellow of the Institute of Residential Property Management and a Fellow of the Institute of Directors.

9. According to his witness statement, Mr Wales reviewed the (relevant) provisions of the Act. I accept this evidence. In my view, the Applicant did not require legal advice thereon.

10. On 22 March 2004, Solicitors instructed by the Applicant wrote a letter. This letter alleged that the Respondent's notice is invalid but the reason for the allegation is not given. This letter could have been written by the Applicant itself – in my view.
11. Another letter from the same Solicitors (dated 11 June 2004) is exhibited to Mr Wales' statement – but this is purely a demand for the legal costs.
12. Applying the test laid down in Section 88(2) of the Act, it is my conclusion, on the evidence before me, that the Applicant would not reasonably be expected to have incurred legal costs if it was liable for them. It follows that the Applicant's claim for legal costs fails.

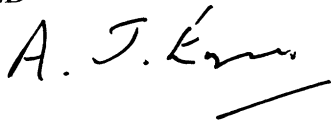
MR WALES' COSTS

13. The Applicant is a separate legal entity from its Directors. Thus (although I recognise that a contrary argument could be mounted), I hold that Mr Wales' reasonable costs are within the ambit of Section 88(1) of the Act.
14. Mr Wales has not quantified either his time or expenses; nor has he provided any evidence as to the reasonable cost of his time.
15. Doing the best I can, on the paucity of information before me, I estimate that Mr Wales spent 5 hours in consequence of the claim notice. He has qualifications (as set out in paragraph 8 above); I estimate an hourly rate of £50 for his time.
16. Both these estimates are on the low side – as the Respondent must not be prejudiced by the Applicant's failure to provide me with information.
17. I shall allow a further £25 for Mr Wales' (estimated) expenditure. Again this estimate is low for the reason already given.

CONCLUSION

18. The amount of the Applicant's reasonable costs (under Section 88(3) of the Act) is £275 (two hundred and seventy five pounds).

SIGNED

A handwritten signature in cursive script, appearing to read 'A. J. Engel', with a horizontal line drawn underneath.

A J ENGEL

13th September 2005