

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

S.84, S.88 & S.89 Commonhold & Leasehold Reform Act 2002



DECISION

Case Number: CHI/21UD/LRM/2005/0005

Property: Westhill House
Exmouth Place
Hastings
East Sussex
TN34 3JA

Applicant: Westhill House Hastings RTM Company Limited

Respondent: The Frobisher Development Company Limited

Date of Hearing: 1 March 2006

Place of Hearing: Hornty Park Sports Complex, Bohemia Road, Hastings

Appearances: Miss C Bown of Ostler Donegan Taylor (for the Respondent)
The Applicant was not represented

Tribunal Members: Mr B H R Simms FRICS MCIArb (Chairman)
Mr J B Tarling MCMI (Legal Member)
Ms J K Morris (Lay Member)

Date of Decision: 6 March 2006

SUMMARY

The reasonable costs incurred by the Respondent and payable by the Applicant are a total of £2,683.91, made up of £1,996.06 in respect of the invalid claim notices and £687.85 in respect of the valid claim notice.

BACKGROUND

1. This is an application for costs payable to the Respondent following a successful application for the right to manage by the Applicant.
2. A pre-trial review was held on 12 December 2005 at which the Applicant withdrew the two claim notices dated 25 July 2005 and 26 August 2005 and accepted liability to pay the reasonable costs incurred by the Respondent under Ss. 88 and 89 of the Commonhold & Leasehold Reform Act 2002 ("CLR Act 2002"). The Applicant also withdrew an application under S.20C of the Landlord & Tenant Act 1985 as it was not relevant to the right to manage proceedings.
3. A further claim notice was served by the Applicant and by counter notice, the Respondent admitted that on 16 December 2005 the Applicant was entitled to acquire the right to manage the premises specified in the claim notice.
4. Directions issued following the pre-trial review asked the Respondent to prepare and serve on the Applicant and the Tribunal a schedule of costs and these were delivered to the Tribunal accompanying a letter dated 1 February 2006 in respect of the invalid claim notices and a letter dated 16 February 2006 in respect of the claim notice dated 16 December 2005.
5. The Applicant was requested to attend the hearing with its observations and objections in writing. A letter was sent to the Tribunal dated 17 February 2006 outlining some objections to the fees schedules. The Applicant did not attend the hearing or submit any further statement.
6. The hearing was scheduled to start at 12.45 pm, at which time ~~there was~~ no representative of the Applicant was present. The hearing was delayed to allow enquiries to be made of the Tribunal Office but nothing had been heard from the Applicant. The hearing therefore proceeded without a representative of the Applicant being present. Upon conclusion of the hearing a further check was made in the waiting area but no one from the Applicant company could be found.

RELEVANT LAW

7. S.88 of the CLR Act 2002 provides that a RTM company is liable for reasonable costs incurred in consequence of a claim notice given by the company in relation to the premises. The costs are to be regarded as reasonable only if those costs might reasonably be expected to have been incurred if the circumstances had been such that the person incurring the costs had been personally liable for such costs.
8. S.89 provides that if a claim notice given by a RTM company is withdrawn or ceases to have effect, the RTM company is liable for the reasonable costs incurred down to the time that the claim notice is withdrawn or ceases to have effect.
9. Each person who is or has been a member of the RTM company is also liable for the costs, jointly and severally, with the RTM company.
10. There is no dispute about liability for costs. The Applicant has raised the question of reasonableness.

EVIDENCE

11. In the absence of the Applicant, the Tribunal Chairman read out the relevant parts of the Applicant's letter dated 17 February 2006 and put these points to Miss Bown for comment.
12. Miss Bown confirmed that Frobisher Development Company Limited was not registered for VAT.
13. Miss Bown indicated that the case was complex and that it was appropriate for a grade A fee earner to be responsible for, and to supervise, the work of a grade D fee earner. The partner would always be responsible for liaison with the client.
14. With regard to the amounts charged, Miss Bown produced to the Tribunal the customer care letter which confirmed the hourly rates being charged to the Respondent's client as those set out in the schedules of costs.
15. Miss Bown confirmed that the number of letters sent and received was as stated in the schedules. It had also been important that the managing agent was kept in touch with the progress of the claim as at the end of the day the managing agent would have to give such advice as was appropriate in connection with the balance of service charges.
16. An objection was made to the charge for mileage in order to deliver a letter to the Applicant. Miss Bown accepted that it may not have been appropriate to hand deliver a letter but, as it contained a formal notice, it was their firm's usual practice either to hand deliver it or to send it special delivery.
17. Miss Bown had nothing further to add to the schedule other than to say that the costs incurred were those that would be reasonably incurred by their client should the matter not be before the Tribunal.


CONSIDERATION

18. The Tribunal retired to consider the evidence before it which included the papers received as well as the oral evidence at the hearing.
19. We had no reason to dispute the calculation of the costs and no evidence had been presented to indicate that the time spent on the matter or the letters issued were anything other than reasonable. We had seen the customer care letter and were satisfied that the hourly rate of £190 plus VAT for Mr Donegan and £120 per hour for grade D fee earners was the charge that would have been made to the client if the matter was not before the Tribunal.
20. We considered that it was unreasonable to make a charge for hand delivering a letter which with more care could have been sent a few days earlier by special delivery. The Tribunal made enquiries and found that the cost of a normal special delivery letter would be £3.85, including the usual postage. This is a more appropriate charge for this item. This reduces the costs by one round trip to Hastings - £37.60, and substitutes the special delivery cost of £3.85, an overall reduction in costs of £33.75.

DECISION

21. The Tribunal determines that the reasonable costs incurred for which the Applicant RTM company is liable are:
- a) In respect of the costs for the period up to the withdrawal of invalid claim notices - £1,996.06, plus
 - b) In respect of the claim notice dated 16 December 2005 - £687.85,
- a total of £2,683.91.

Dated 6 March 2006

A handwritten signature in black ink, appearing to read 'B. H. R. Simms', with a long horizontal stroke extending to the right.

Brandon H R Simms FRICS MCI Arb
Chairman