

Commonhold and Leasehold Reform Act 2002

DETERMINATION OF THE LEASEHOLD VALUATION TRIBUNAL

In the matter of

Enville Manor RTM Company Limited (the Right to Manage Company) (the Applicant)

and

S M Properties (21) Ltd (the Freeholder) (the Respondent)

On the Applicant's application to the Tribunal under subs.88(4) Commonhold and Leasehold Reform Act 2002 for a determination of any costs payable by the Applicant

Premises: Enville Manor (also known as Enville Rectory and The Old Rectory), Bridgnorth Road, Enville, South Staffordshire DY7 5JA

Application dated: 28 February 2006

Heard at: The Panel Office

On: 13 June 2006

APPEARANCES:

For the Applicant: Mr G M Thompson, the Tenant of Flat 2 Enville Manor

For the Respondent: Mr R J Davis, Solicitor of Buller Jeffries (Solicitors)

Members of the Leasehold Valuation Tribunal:

Mr T F Cooper BSc FRICS FCI Arb (Chairman)

Mr J E Ravenhill FRICS

Mr P J Waller Solicitor

Date of Tribunal's determination: - 7 JUL 2006

Determination: The Applicant is liable to the Respondent for a sum not exceeding £962.50 plus VAT if appropriate

1. By its determination 11 February 2005 a Leasehold Valuation Tribunal ('LVT') determined:
 - (a) Pursuant to subs.84(3) Commonhold and Leasehold Reform Act 2002 (the 'Act'), the Applicant was, on 13 July 2004, entitled to acquire the right to manage the Premises;
 - (b) Pursuant to subs.90(5) the Act, the acquisition date was 7 April 2005; and
 - (c) Liberty to apply was given for a determination of the Applicant's liability for reasonable costs incurred under s.88 if not agreed.
2. Costs under para 1(c) above are not agreed and, by letter 28 February 2006, the Applicant applies for our determination of them.
3. A hearing was held on 13 June 2006 at which Mr G M Thompson, the Tenant of Flat 2 Enville Manor, appeared for the Applicant and Mr R J Davis, Solicitor of Buller Jeffries (Solicitors) appeared for the Respondent.
4. Mr Davis accepts that under subs.88(3) the Respondent is not able to recover any of its costs incurred as a party to proceedings before a LVT in the Applicant's claim to acquire the right to manage, that the Respondent's costs are limited to reasonable costs and that, under subs.88(2), the Respondent's liability is limited to an amount reasonable if the Respondent was personally liable for them.
5. VAT: All figures we refer to are exclusive of VAT. We have no jurisdiction to determine conclusively VAT matters. Therefore, we make our determination exclusive of VAT, save that VAT shall be added at the appropriate rate if applicable. Our understanding, whist not conclusive, is that, if the Respondent is not registered for VAT or is unable to recover the VAT element of its costs, allowed by us, as an input tax, VAT should be added to the amounts we determine.
6. Mr Davis says he has undertaken all the work personally, his standard hourly rate is £175, his total time engaged was 8.7 hours and his costs incurred by the Respondent amount to £1,522.50 (8.7 hours × £175 = £1,522.50) excluding VAT; itemised as:

		Hours		
7	4 routine letters out to client	0.4		
8	3 routine lettersto Applicant's solicitor	0.3		
9	Routine tel' attendances on client	0.6		
10	1 routine tel' call to Applicant's solicitors	0.1		
11	Attendance on client 24 Aug 2004	<u>0.6</u>	2.0	
Engaged on documents:				
Dates (2004)				
12	23 Jul	Drafting detailed report to client	1.5	
13	30 Jul	Completing lengthy report to client	0.3	
14	19 Aug	Drafting part long letter to client	0.2	
15	24 Aug	Drafting Respondent's counter-notice	0.8	
16	24 Aug	Drafting note of tel' conversation	0.1	
17	25 Aug	Considering question of share ownership	0.1	
18	17 Sep	Reviewing documents	0.3	
19	20 Sep	Drafting detailed report	1.3	
20	23 Sep	Completing detailed report	0.4	
21	23 Sep	Review of file	0.3	
22	6 Oct	Review Register of Members and draft report	0.4	
23	29 Nov	Drafting detailed report	0.8	
24	1 Dec	Amending & completing detailed report to client	<u>0.2</u>	<u>6.7</u> 8.7

25 In addition to £1,522.50, Mr Davis says the Respondent had costs of some £450 in considering the Applicant's application for the right to manage but the amount (£450) is not particularised.

26 Mr Thompson provides a chronology of relevant events between 13 July 2004 and 11 January 2005; pointing out the Respondent would not admit the Respondent's right to manage until 7 January 2005 (four days before the hearing 11 January 2005 on the issue of the Applicant's right to manage) and the LVT (at para 16 in its determination 11 February 2005 on para 10 Schedule 12 the Act costs, determining that the Respondent shall pay the Applicant's costs up to £500) said:

'... the [Respondent] acted unreasonably by only agreeing that the [Applicant] was entitled to the Right [to manage] at the "eleventh hour", four days before the hearing, despite having relevant information from the [Applicant] before 14 October 2004'

Accordingly, says Mr Thompson, the Applicant should not be liable for the Respondent's costs after 14 October 2004.

27 Mr Thompson says Mr Davis's itemisation shows 5.0 hours spent on drafting reports and a further 0.6 hours for client's tel' attendances which Mr Thompson says is wholly disproportionate and not reasonable. He accepts the items in paras 7, 8, and 10 above (0.8 hours); he says 0.4 hours is reasonable for para 9 and does not accept para 11. As to the 6.7 hours (total of paras 12 to 24) he says 4.0 hours would be reasonable. Mr Davis's hourly rate of £175 is not contested.

28 We accept Mr Thompson's contention that the Applicant should not be liable for the Respondent's costs after 14 October 2004 because a LVT determined the Respondent had, on 14 October 2004, relevant information from the Applicant to prove that it was entitled to the right to manage. Accordingly we disallow 1.0 hour (paras 23 and 24).

29 On enquiry from us, Mr Davis explains the structure and content of the several reports to the Respondent, made at the Respondent's request.

30 We find and hold that all of the costs incurred by the Respondent in obtaining detailed reports, at the Respondent's request, from Mr Davis are not reasonable. While the Respondent is entitled to have the matter explained by Mr Davis we find 5.6 hours (see para 27) for reports and tel' attendances is not reasonable. We find 3.0 hours is reasonable.

31 Accordingly, we find (and accept as to uncontested items) and the number of hours reasonably engaged is:
Hours

32	4 routine letters out to client (not contested) - at para 7	0.4
33	3 routine letters to Applicant's solicitor (not contested) - at para 8	0.3
34	1 routine tel' call to Applicant's solicitors (not contested) - at para 10	0.1
35	Attendances on client	3.0
36	Drafting Respondent's counter-notice - at para 15	0.8
37	Considering question of share ownership - at para 17	0.1
38	Reviewing documents - at para 18	0.3
39	Review of file - at para 21	0.3
40	Review Register of Members - at para 22 but report disallowed	<u>0.2</u>
41	Total	5.5

42 5.5 hours at £175 per hour = £962.50

43 As to the £450 claimed by the Respondent company (see para 25 above) - it is neither particularised nor itemised and we are not satisfied it has been reasonably incurred as in-house costs.

44 As our final determination: in so far as s.88 costs have been incurred by the Respondent and on production of an appropriate receipted invoice from the Respondent, the Applicant is liable to the Respondent for a sum not exceeding £962.50 (Nine hundred and sixty two pounds 50p) plus VAT, if appropriate, as the reasonable costs of the Respondent.

T F Cooper
Chairman

A handwritten signature in black ink, appearing to read 'T F Cooper', written in a cursive style.

Date - 7 JUL 2006