

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



**Residential  
Property  
TRIBUNAL SERVICE**

**S.88 Commonhold and Leasehold Reform Act 2002**

**DECISION & ORDER**

**Case Numbers:** CHU21UG/I/CP/2009/0001

**Property:** 8 Bolebrook Road  
Bethhill-on-Sea  
East Sussex  
TN40 1EN

**Applicant:** Waterglen Ltd  
Solicitors: Wallace LLP

**Respondent:** 8 Bolebrook Road RTM Company Limited  
Agent: Arko Property Management

**Application:** 4<sup>th</sup> February 2009

**Directions:** 6<sup>th</sup> February 2009

**Consideration:** 3<sup>rd</sup> April 2009

**Decision:** 20th April 2009

**Tribunal:** Mr RTA Wilson LLB  
Mr B Simms FRICS

### Summary of Decision

The Tribunal determines that the total amount payable by the respondent to the applicant in respect of legal costs shall be the sum of £410.00 plus disbursements of £19.50. VAT is to be added to this figure as appropriate.

### Application

1. On 4<sup>th</sup> February 2009 the applicant applied to the tribunal pursuant to Section 88 of the Commonhold and Leasehold Reform Act 2002 ("The 2002 Act") to determine the costs payable by the respondent in connection with a right to manage claim at 8 Bolebrook Road, Bexhill-on-Sea, East Sussex TN40 1EN ("the property").
2. Directions were issued on 6<sup>th</sup> February 2009 to the effect that the costs would be determined by the tribunal on the basis of written representations. Neither party objected.
3. Wallace LLP, solicitors for applicant, provided a schedule of costs together with copies of documents from their file. The respondent provided written submissions opposing the costs claimed. The application was duly considered by the tribunal on the papers on 3rd April 2009.
4. By letter dated the 6<sup>th</sup> March 2009 the Respondent made an application for an order under section 20 c of the Landlord and Tenant Act 1985. No directions were before the tribunal for the conduct of this application and the papers contained no submissions from thereon from the Applicant. Accordingly the tribunal made no consideration of this application and the parties have liberty to apply to the tribunal on this matter if it becomes relevant in the computation of uncommitted service charges at a later date.

### Law

5. The law is to be found at Section 88 of the 2002 Act, which deals with costs incurred in connection with a claim by a right to manage company and provides, insofar as is relevant:

#### *88 Costs: general*

- (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 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 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.*

#### Consideration

6. The tribunal carefully considered the schedule of costs and documents prepared and submitted by Wallace LLP. The amount claimed for costs was £1313.78 inclusive of vat & disbursements.
7. The background facts were as follows. On the 13<sup>th</sup> June 2008 the respondent served a claim notice on the applicant claiming the right to manage the property. On the 2<sup>nd</sup> July 2008 Wallace LLP wrote to the RTM company asking for information pursuant to section 116 of the Act. On the 8<sup>th</sup> July ARKO Property Management provided a response. On the 15<sup>th</sup> July, Wallace LLP served a counter notice on the RTM company admitting its entitlement to acquire the right to manage the premises. There followed correspondence between the parties relating to the insurance of the premises post 'right to manage' and also some correspondence relating to the transfer of the electricity supply. It appears that the right to manage took effect from the 16<sup>th</sup> October 2008.
8. On the 15<sup>th</sup> December 2008 Wallace LLP served a notice on the RTM claiming costs of £1,313.78 to be paid within 14 days. ARKO Property Management did not accept those costs and the application for assessment was made by the applicant on the 15<sup>th</sup> December 2008.
9. The application contained a schedule of costs which included a breakdown of the work for which costs had been charged, hourly rates and some other information. The schedule appeared to be a computerized time recording ledger which contained only the briefest narrative of work relating to each recorded entry. The majority of entries contained insufficient information to enable the tribunal to determine whether the time recorded fell within the charging provisions of Section 88 of the Act.
10. The tribunal considered it was not unreasonable for the applicant to retain its usual solicitors, and in view of the importance of the matter to the client and the compulsory nature of the transaction, for a junior solicitor to have overall conduct of the case at his or her usual charging rate.
11. The Schedule of Costs indicated that the solicitor in charge had an hourly charging rate of £225 plus vat. In the tribunal's view this rate was at the top end of what the tribunal would expect for this type of work in this geographical area. However the tribunal accepted this rate on the basis that the amount of time taken would be less than would otherwise be the case with a less senior lawyer. The property consisted of three flats and the papers before the tribunal indicated that there were no complicating elements and indeed no issues that were disputed. The matter proved to be entirely straightforward with the claim being admitted. The tribunal was therefore surprised to have before it an account in the sum of £1313.78 equating to approximately 5 hours of chargeable time.
12. The schedule in the form of a computerised print out prepared by Wallace LLP was broken down into attendances (letters and telephone calls) and work done on documents. However the schedule was of little assistance because most of the entries comprised of the briefest of descriptions of the work done so that the tribunal was not able to properly

assess whether the costs claimed in the schedule were in the scope of section 88 of the Act.

13. The Respondent provided its written submissions opposing elements of the costs claimed and setting out in detail its reasons for opposition. The tribunal reviewed each objection raised and applied its own judgement to the challenged items. This exercise resulted in the following charges claimed by the applicant being disallowed.

Date of work	Amount disallowed	Reasons
26/06/2008	£22.50	It is not reasonable for a fee earner to set up a file at an hourly rate of £225 when this could be done by admin staff.
09/07/2008	£45.00	There is no record of a letter sent to RTM on this day.
10/07/2008	£22.50	There appeared to be no necessity for a phone call to be made to Arko on this date because the time limits specified in earlier correspondence had not yet expired.
15/07/2008	£22.50	See entry above
15/07/2008	£112.50	Costs in relation to the counter notice of £180 have been allowed and it is not reasonable to claim a further £112.50 for drafting the notice.
21/07/2008	£85.00	These costs appear to be in relation to a contractor notice with the EDF and in the view of the tribunal the managing agents could have dealt with this matter more economically.
05/08/2008	£22.50	The respondents allege that they received no communication from the applicants around this date and in the absence of any further information concerning the entry the cost is disallowed.
09/10/2008 09/10/2008 09/10/2008 13/10/2008 17/10/2008 20/10/2008 22/10/2008	£45.00 £67.50 £22.50 £45.00 £45.00 £22.50 £22.50	All of these costs appear to relate to the matter of the landlord cancelling the buildings insurance policy mid-term. The respondent alleges that it had not received some of the communications apparently sent to them. In any event the reason this correspondence / communication had come about was because the applicant had made the unilateral decision to cancel the insurance. In the tribunals view cancellation in these circumstances can not reasonably be regarded as coming about in consequence of the claim notice and therefore the costs in relation to these items do not fall within the scope of section 88. There was no good reason to cancel an active policy, and it is not reasonable for the applicant to pay for the costs incurred as a result of this unilateral decision. The responsibility for insurance remains vested in the freeholder both before and after the RTM took effect.
15/12/2008	£112.50	This item represents the costs of preparing the application to the tribunal and in its opinion this work does not fall within the scope of section 88.

14. The tribunal therefore allowed the following costs broken down in detail showing time units as 6 minutes.

Date	Activity	Description	Hours	Amount
2 July 2008	Letters/ Documents	Engaged preparing client care letter, letters to RTM Company and client and obtaining Land Registry Search of freehold title	0.3	67.50
15 July 2008	Documents	Engaged receiving and considering documents from ARKO, obtaining RTM Company Incorporation documents and reviewing all details against details on Claim Notice	0.8	180.00
21 July 2008	Documents	Contractor notice to be dealt with by managing agents	n/a	50.00
30 July 2008	Email	Engaged preparing email to client	0.1	22.50
2 Oct 2008	Email	Engaged preparing email to client	0.1	22.50
8 Oct 2008	Letters/email	Engaged preparing letter to RTM Company and email to client	0.2	45.00
4 Nov 2008	Letters	Engaged preparing letter to client	0.1	22.50

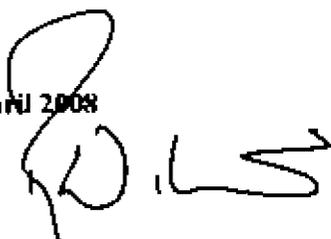
Total amount payable £410.00

Disbursements	Companies House Search Fee	4.00
	Land Registry search Fees	12.00
	Photocopying and Fax charges	3.50

#### Determination

15. The Tribunal determines that the Applicants reasonable costs payable by the Respondent pursuant to section 88 of the 2002 Act are £410 plus disbursements of £19.50 to which vat is to be added as appropriate. This sum shall be paid to the Applicant contemporaneously with settlement of the uncommitted service charges.

Dated 20th April 2008



Mr RTA Wilson  
Chairman