

**LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT
ASSESSMENT PANEL**

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

Property: SWAN HOUSE 5 ALL SOUL'S PLACE LONDON
W1B 3DB

Applicants: THE WARDEN & COLLEGE OF THE SOULS OF
ALL FAITHFUL PEOPLE DECEASED IN THE
UNIVERSITY OF OXFORD

Represented by: Farrer & Co, Solicitors

Respondents: SWAN HOUSE RTM COMPANY LIMITED

Represented by: Harter & Loveless, Solicitors

Paper consideration: Paper Determination 14th October 2009

**Date of Tribunal's
decision:** 14th October 2009

Leasehold Valuation Tribunal:

Mrs T I Rabin JP
Mr D Edge FRICS

EVIDENCE AND SUBMISSIONS

1. This is an application under section 88(4) of the Commonhold and Leasehold Reform Act 2002 ("the Act") for the determination of the landlord's solicitor's and surveyor's reasonable costs.
2. The Respondents, Swan House RTM Company Limited made an application under Section 79 of the Act for the right to manage Swan House 5 All Souls' Place London W1B 3DB ("the Building"). The notice of claim was served on 8th August 2008 and the Applicants served a counter notice denying the Respondents' right to manage on 15th September 2008. The intermediate landlords Freehold Estates Limited also served a counter notice admitting the Respondents' right to manage on 11th September 2008 but they are not parties to these proceedings.
3. The reason for the Applicants denying the right to manage was on the grounds that the Building was not self contained. Following the counter notice there was considerable correspondence between the Applicants' and the Respondents' solicitors during which the Applicants' solicitors invited the Respondents' solicitors to arrange an inspection. An inspection was arranged on 19th December 2008 following which the Respondents wrote to the Tribunal on 23rd December 2008 withdrawing the application.
4. The Respondents' solicitors produced a schedule of their costs indicating which were chargeable under section 88 of the Act and which were not. The Respondents' solicitors offered £500 plus VAT for solicitors' costs and £200 plus VAT for the surveyors, Messrs Cluttons. The Applicants' solicitors offered to accept £1750 plus VAT legal costs and £650 plus VAT for surveyors' costs. This was rejected, leading to this application.
5. The Applicants' solicitors total chargeable costs were £1,953 plus VAT and those of the surveyor were £650 plus VAT but no detailed invoice was provided by the surveyors.

DETERMINATION

6. Section 88(1) of the Act provides for a RTM company to be liable for reasonable costs incurred by the landlord as the consequence of a claim notice being served by it. This obligation applies even if the notice is withdrawn.
7. By section 88(2), the costs imposed for professional services should only be regarded as reasonable –
 - if and to the extent 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 to pay the costs.
8. The Respondents had failed to ensure that the Building was one that fell within the requirements of Section 79 entitling them to make the application for the Right to Manage. Even when the Applicants' solicitors served a counter notice stating that the Respondents were not entitled to acquire the right to manage no full inspection was undertaken until December 2008. The Respondent's solicitors appeared to wish to rely on assistance from the Applicants' solicitors rather than make their own assessment. The notice was in fact withdrawn immediately after the inspection had been undertaken.
9. The Applicants' solicitors were prepared to settle the matter on payment of £1750 plus VAT and £650 plus VAT for the surveyors. This was refused and the Tribunal considers that the original offer by the Respondents of £500 in legal fees and £200 in surveyors' fees plus VAT to be derisory.
10. The Applicants' solicitors have clearly set out the basis of their fees. The hourly rate is not considered to be excessive and the sum of £1953 plus VAT at the appropriate rates is allowed in full.
11. With regard to the surveyors' fee the Tribunal was hampered by the lack of a detailed invoice from Cluttons. There is no indication that the surveyors inspected at any other time than the joint inspection with the Respondent's representatives. There is no report in the file from Cluttons and the Tribunal

considers that the sum of £350 plus VAT would be sufficient for the exercise undertaken by them.

12. The Tribunal determines that the Applicants' solicitors fees are allowed in full and that the Applicants' surveyors' fees be reduced to £350 plus VAT.

**Mrs T Rabin
Chairman**

14th October 2009.