

RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
LONDON RENT ASSESSMENT PANEL &  
LEASEHOLD VALUATION TRIBUNAL



**Residential  
Property**  
TRIBUNAL SERVICE

**S.88 Commonhold and Leasehold Reform Act 2002  
Right to Manage – Landlord's Costs**

**DECISION**

Case Number: CHI/00HA/LCP/2009/0014  
Property: The Moorings, Sydney Wharf, Bathwick Hill, Bath BA2 4AZ  
Applicant: Fairhold Homes (No 3) Limited  
Respondent: The Moorings (Bath) RTM Company Limited  
Application: 18 December 2009  
Directions: 23 December 2009  
Consideration: 10 March 2010  
Decision: 15 April 2010  
Tribunal: Ms J A Talbot MA  
Mr R T A Wilson LLB

**Summary of Decision**

The total amount payable by the respondent to the applicant in respect of the landlord's costs payable by the RTM company pursuant to Section 88 of the 2002 Act is £2,697.00.

**Case No: CHI/00HA/LCP/2009/0014**

**Property: The Moorings, Sydney Wharf, Bathwick Hill, Bath BA2 4AZ**

**Application**

1. On 18/12/2009 the applicant made an application to the Tribunal pursuant to Section 88 of the Commonhold and Leasehold Reform Act 2002 ("The 2002 Act") to determine the reasonableness of costs payable by the respondent in connection with its acquisition of the right to manage the property under the 2002 Act. Directions were issued by the Tribunal on 23/12/2009. By agreement the matter was set down for a determination on the papers.
2. The applicant sought costs of £3,920.94 solicitors fees (Wallace LLP).

**Law**

3. The law is to be found at Section 88 of the 2002 Act, which deals with costs incurred in connection with the acquisition of the statutory right to manage, and provides, insofar as is relevant:
  - (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 a 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.*

**Facts**

4. In summary the facts were as follows. The respondent, Fairhold Homes (No 3) Ltd ("Fairhold"), owned the freehold of the property, which was sheltered accommodation managed on its behalf by Peverel. The Directors of The Moorings (Bath) RTM Company Ltd ("The Moorings" served a total of 5 Claim Notices between 27 October 2008 and 6 May 2009 to acquire the right to manage. The respondent instructed solicitors, Wallace LLP, who served 4 Counter Notices denying the RTM on various grounds, following which the first 4 Claim Notices were withdrawn. The final Counter Notice admitting the RTM was served on 09/07/2009.
5. The Moorings was represented throughout the transaction by Mr Steve Cieslik. He submitted that Fairhold's legal costs were unreasonably high because Wallace LLP had unreasonably objected to the previous Claim Notices and deliberately delayed the Moorings' attempts to acquire the RTM. In particular, he disputed an objection in one Counter Notice that The Moorings was not a self-contained building, and quoted the case

of Barden Court where Wallace LLP argued the opposite on behalf of different clients. He further submitted that Wallace LLP had failed to mention previously that the Notice of Intention to Participate had not been served on all the qualifying tenants. Mr Cieslik believed that the delay in admitting the RTM was motivated by Fairhold's desire to generate management fees income from the elderly leaseholders for as long as possible, including rental income from the house manager's flat. However, he accepted that The Moorings had not applied to the LVT to uphold any of these legal arguments because of the risks attached to litigation and the attendant costs. Mr Cieslik disputed some specific items referred to below. He made a counter-claim for certain costs incurred by The Moorings, namely, a report fee, rental for the house manager's flat when empty, and a Peverel management fee.

6. Wallace LLP provided a schedule of costs together with a brief Statement and documents in support. In a further Statement in reply to the respondent's arguments, it was submitted that Fairhold's decision to accept the RTM in respect of Barden Court was irrelevant to the current application. The Moorings had had the opportunity to apply to the LVT but had failed to do so. Fairhold was entitled to charge for its costs incurred in connection with the 4 defective Claim Notices. However, Wallace LLP conceded 2 points made by Mr Cieslik: (1) that costs in respect of work carried out to and including 28 May 2009 should be limited to £1,600 plus VAT and disbursements, and (2) disputed items charged for work done on 18 June, 28 June, 7 July, 8 July, 16 November and 20 November 2009.

### Consideration

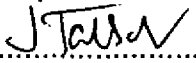
7. The Tribunal gave careful consideration to the application and all documents provided by the parties, in light of the provisions of Section 88 of the 2002 Act. It noted the points of dispute raised by Mr Cieslik in relation to the history and the previous 4 Claim Notices. However, these were not within the jurisdiction of the Tribunal in this application which related solely to the question of Section 88 costs. The Moorings had chosen not to apply to the LVT in connection with the RTM. Fairhold through its solicitors was entitled to maintain its position in denying the RTM in relation to those earlier Notices. It would be inappropriate for the Tribunal to comment on the merits of those points but it was justified and within scope of Section 88 for Fairhold to recover its reasonable costs of all the Claim Notices including those which were withdrawn.
8. The Tribunal scrutinised the schedule of costs claimed by Wallace LLP. This was simply a printout of the firm's time recording computer programme, but it did give a brief breakdown of the work done, time taken, hourly rate charged and the cost. There was no client care letter or evidence of the terms of retainer. However, the Tribunal inferred that the hourly rate of £225 was that of an assistant solicitor with conduct of the case. On this assumption, it was not unreasonable for Fairhold to retain a specialist firm of solicitors with experience in landlord and tenant matters. In view of the importance of the matter to the client and the compulsory nature of the transaction, the hourly rate was not unreasonable for a central London firm.
9. The costs claimed were legal fees of £3,375 plus VAT of £506.25 and disbursements of £39.30 being a company search fee, HM Land Registry fee, and fax & photocopying charges plus VAT on the latter. The total was £3,920.94.
10. The Tribunal accepted the concessions made by Wallace LLP set out at paragraph 6 above. This had the effect of reducing the costs by £357.50 to 28 May 2009, plus a further reduction of £180 for the itemised dates.
11. Overall, the Tribunal considered that the time taken was acceptable and proportionate to the case bearing in mind the importance of the matter to the client and the complexity of the legislation. However, in the Tribunal's view, undue time was charged for certain items and the costs were therefore reduced as follows.
12. The Tribunal allowed 0.6 hours (£135) for work done on 22 January 2009 in respect of the Claim Notices and Counter Notice instead of 1.2 hours. This work was relatively

straightforward. £135 was thus disallowed. It allowed 0.6 hours (£135) as reasonable for work in relation to contractor notices on 5 August 2009. In the absence of any information as to the number and nature of these notices, the Tribunal inferred that this work was standard, straightforward and not time critical. £202.50 was thus disallowed. The Tribunal allowed 0.4 (£90) hours for work done 20 November 2009 in preparing the schedule of costs (basically a computer printout) and disallowed £180. Finally the Tribunal disallowed the separate disbursement charge for fax and photocopying of £9.30 as this should properly be included in the hourly rate but allowed the other disbursements. The total reduction was £1,055 from £3,375, leaving a total allowed of £2,320 plus VAT @ 15% of £348 and disbursements of £29. The grand total payable was therefore £2,697.

#### **Determination**

13. The tribunal determines for each and every reason stated above that the amount payable by the respondent to the applicant in respect of the landlord's costs payable by the RTM Company shall be £2,697.00 inclusive of VAT and disbursements

**Dated 15 April 2010**

  
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**Ms J A Talbot  
Chairman**