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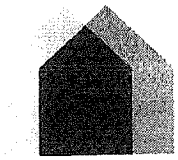
DECISION OF THE LEASEHOLD VAUATION TRIBUNAL
The Commonhold and Leasehold Reform Act 2002, s.88

Case Reference:	LON/00AU/LCP/2012/0003
Premises:	Imperial Hall, 104-122 City Road, London EC1V2NR
Applicant:	Columbia House Properties (No. 3) Ltd
Respondent:	Imperial Hall RTM Company Ltd
Date of decision:	17th August 2012

Leasehold Valuation Tribunal:

Miss A Seifert FCI Arb
Mr P Tobin FRICS MCI Arb
Mr C S Piarroux JP CQSW



HM Courts & Tribunals Service

Decision of The Leasehold Valuation Tribunal

LON/00AU/LCP/2012/0003

Re: Imperial Hall 104-122 City Road, London, EC1V 2NR

The Tribunal's Decision

Preliminary

1. This is an application dated 20th January 2012 by the landlord, Columbia House Properties (No.3) Ltd ("Columbia") under s.88 of the Commonhold and Leasehold Reform Act 2002 ("the Act").

2. Columbia is the freehold owner of Imperial Hall ("the property"), in which there are 63 residential leasehold units. The property is listed by English Heritage as a Grade II listed building.

3. The respondent to the application is Imperial Hall RTM Company Ltd ("the RTM company"). Amongst the documents provided were copies of the RTM company's Certificate of Incorporation and Articles of Association. The RTM company is a private limited company incorporated on 5th October 2006, which commenced management of the property on 4th April 2011.

4. Columbia appointed Sterling Estates Management Ltd ("SEM") as managing agents for the property from October 2006 onwards. The Tribunal were told that SEM has been retained to continue to represent Columbia following the handover of management of the property to the RTM company.

The Claims

5. The application is for sums set out in documents from SEM headed "RTM Administration Fee Invoice". There was more than one version provided. The initial document was dated 21st March 2011 (p.55 of the hearing bundle). This did not state to whom it was addressed, but was sent under cover of a letter dated 15th July 2011 from SEM to Mr S McCabe, in his capacity as a Director of the RTM company.

6. A revised version of the invoice (at page 166 of the hearing bundle) was dated 2nd March 2012. This stated that it had been reissued and amended on that date. This was addressed to 'Columbia House Properties (No. 3) Ltd', and stated that the sums were payable by 'Imperial Hall RTM Company Ltd'.

The revised version stated:

.....Description: Fees for RTM Applications as detailed below:

1. *RTM Application No. 1 – (Claim Notice served 20th November 2006)*

Review and Preparation of Documents and Case Material, Liaison with Client & Client's Solicitors, Professional Advice

i) XI Property Manager – 7 hours

ii) XI Director – 10.5 hours

2. *RTM Application No. 2 - (Claim Notice served 10th February 2010)*

Review and Preparation of Documents and Case Material, Liaison with Client & Client's Solicitors, Professional Advice

i) XI Property Manager – 28 hours

ii) XI Director – 25 hours

3. *RTM Application No.3 – (Claim Notice served 23rd August 2010*

Review and Preparation of Documents and Case Material, Liaison with Client & Client's Solicitors, Professional Advice.

i) XI Property Manager – 18 hours

ii) XI Director – 18 hours

Note: Property Manager @ £85 plus VAT per hour

Director @ £150 plus VAT per hour *Total £12,530.00*

VAT @ 20% £2,506.00

Total £15,036.00

7. The invoice in its original form dated 21st March 2011 was for the total figure of £16,488.00. The main difference was that in the revised invoice a purported charge for SEM's attendance at the 2007 hearing had been removed. It was noted that VAT had been charged in both the initial and revised invoices at 20% for all years since 2006, rather than at the rate applicable at the time. It was also noted that the hourly rate had not changed throughout.

8. Directions were issued by the Tribunal in this case dated 26th January 2012. This included a direction that the applicant should provide as part of a full statement of case, a full breakdown of the costs in issue. Columbia has provided a statement of case and a statement of case in reply with some explanations, but has not provided a full breakdown of the costs claimed as directed.

9. Included in the hearing bundle was the applicant's statement of case dated 9th February 2012 and the applicant's statement of case in reply dated 2nd March 2012, both of which were signed by Mr Sherreard AIRPM Property and Systems Manager of SEM. Mr McCabe signed the respondent's statement in reply dated 23rd February 2012.

The Hearing

10. At the hearing of this application, Columbia was represented by Ms S Smith of Counsel, instructed by Brethertons LLP. The RTM company was represented by Mr Bruce Maunder-Taylor, FRICS MAE.

11. Mr Scott Lewis McCabe, lessee of Flat 42, Imperial Court, provided a witness statement dated 9th March 2012 at pages 169 to 178 of the hearing bundle together with exhibits.

12. Mr Shalim Ahmed ("Mr Ahmed"), managing director of SEM attended the hearing and gave oral evidence. Mr Ahmed is a Fellow of the Institute of Legal Executives, a Member of the Institute of Residential Property Management and an Associate of the RICS.

13. In Columbia' statement of case it was stated that where the initial or revised invoice refers to the involvement of a director, this was Mr Ahmed.

14. During the hearing a copy of the management agreement between Columbia and SEM was produced. Mr Ahmed said Columbia was seeking to recover sums for additional work which was charged at an hourly rate, undertaken by

SEM outside the core management arrangements. Mr Ahmed said that no additional instructions were sent to SEM by Columbia.

15. He produced a copy of the current management agreement and said that such an agreement existed in the past in similar terms.

16. Mr Ahmed described the late charging by Columbia as a 'procedural error'. For instance for alleged fees arising in 2007 being charged in 2011.

17. When asked for a full breakdown of the charges and the documents relied on in support the contention that work had carried out by SEM and charged to Columbia, Mr Ahmed was unable to provide a breakdown. He said that the charges stated in the original and revised invoice had been 'assessed' by SEM having been discussed with Columbia.

18. Mr Ahmed said that the time spent by SEM and claimed for in the initial and revised invoice was more extensive than claimed. The costs would have been higher had these not been 'assessed'. The application had been complex in terms of who qualified or who did not. Mr Ahmed submitted that the sum claimed had been substantially reduced following agreement with Columbia. It was also stated that a reduced charging rate had been used of £150 plus VAT, rather than £180 plus VAT for a director. However no invoices from SEM to Columbia (other than the revised invoice in 2012), correspondence or file notes were produced to support the discussions or agreement contended for.

19. According to the revised invoice, Mr Ahmed as a director had carried out a similar number of hours to the property manager. However, when Mr Ahmed was asked how much of the work he had carried out (as a director) he said that this was 90% of the work in respect of each of the claim notices. This was inconsistent with the hours charged in the initial and revised invoice. When asked for an explanation Mr Ahmed said he had done the majority of the work on the applications and that the invoice and costs were discussed with Columbia some time in 2011, but could not give the date.

20. Mr Ahmed said that he had a note on his firm's file of how the hours charged had been calculated. However this was not in the hearing bundle and was not produced at the hearing. He also said that SEM could not produce any time sheets or other records to support the sums claimed as none had been prepared by SEM or Columbia at the time. There were no invoices from SEM to Columbia (apart from the revised invoice) in respect of the hours of work or identifying the particular work the charges were in respect of.

21. It was noted that the description of the work claimed to have been carried out in respect of each of the claim notices was identical *Review and Preparation of Document and Case Material, Liaison with Client & Client's Solicitors, Professional Advice.*

22. In respect of the respondent's view that some of the work carried out by SEM was legal work, Mr Ahmed commented that this was not usually the work of managing agents, but SEM would deal with this if the client asked them to do so. Mr Ahmed said that as managing agents his firm often do work connected to acquisition of the right to manage.

The Management Agreement

23. A copy of a management agreement dated 1st September 2010 between Columbia and SEM ("the management agreement") was produced by the applicant during the hearing. This included the following terms.

At clause 4.2 of the management agreement:

The Client authorises SEM Managing Agents to act for it in its name and on its behalf at its expense:

4.2.1 To perform or do anything referred to in clause 6 hereof.

4.2.2 To do and executed and perform any other act or thing not specified in clause 6 hereof which the Client [Columbia] *could lawfully do itself in respect of the management of the Estate and Communal Areas acting always in the best interest of the Client.*

Columbia's obligations included under clause 5.4: *To authorise SEM Managing Agent to collect via the service charge, payable by the leaseholders or such other persons who have the legal right to use or occupy the Estate*

(i) Quarterly in advance one quarter of the agreed Management Fee in respect of the services outlined in Clause 6.1 to 6.5 hereof.

(ii) Such other sums that may become payable for any additional services that are incurred as a direct result of additional instruction by the Client in managing the Estate in an efficient and proper manner other than those services outlined in Clause 6.6 hereof.

SEM's obligations included clause 6.5: *To perform the services detailed in parts 1, II and III of the summary of services shown at Appendix 1.*

Clause 6.6: *To perform any of the other services detailed in part IV of the* summary *shown as instructed by the Client.*

The Summary of Services covered in the management fee at Appendix 1 was provided. These included various day to day normal management services in parts I, II and III.

Part IV of Appendix 1 specified additional services may be provided by SEM, if instructed, for which additional fees would be charged or earned. This included:

e) Dealing with non-routine matters arising under the terms of the Landlord and Tenant Act 1985 and 1987 and the Housing Act 1996 and as and where amended/updated.

f) Preparation of documents and administrative work in connection with Court appearances.

g) Appearance in Court as a witness in respect of service charge arrears etc.

h) Preparation of documentation and information and attendance at a Leasehold Valuation Tribunal or such other Court in the management of the Estate.

i) Involvement in litigation related to the management of the Estate and by the duties contained within this agreement.

i) Instructing and liaising with Surveyors or other professional consultants in respect of refurbishments .....

k) Preparation of handover information and documents following termination of management.

For the above

The following basis of charges will apply

a) Fees to be agreed with SEM Managing Agent building surveying department based on contract cost.

b)-c) To charge reasonable fees/earnings for the work being carried out.

f)-k) to be charged on a time and materials basis subject to prior agreement.

An Addendum to Part IV of the Management Agreement -

Schedule of Additional Management Fees or Earnings

This stated that the hourly rates for additional work charged by 15 minute increments were:

For a Partner/Director *£180-220*

For a Senior Property Manager £150

For a Property manager/ Clerk £85

Plus VAT at the prevailing rate.

The charges did not include any relevant material or disbursements incurred.

24. The term of the above agreement was for the fixed period of a year and a day from 1st September 2010. There was no copy of the management contract between Columbia and SEM for the relevant periods prior to 1st September 2010. However, Mr Maunder-Taylor accepted for the purposes of this decision that the management agreement relating to earlier relevant periods was in similar terms.

25. It was not contended by Columbia that there was any other or separate contract between that company and SEM other than the management agreement.

Issue of jurisdiction in respect of the costs claims

2006 RTM Claim

26. It was submitted by Mr Maunder-Taylor on behalf of the respondent that the Tribunal has no jurisdiction in respect of this part of the application as the issue of s.88 costs had been determined by the Tribunal in a decision in respect of the 2006 RTM claim (Case Ref: LON 00AQ/LSC/2005/0322) on 20th April 2007 ("the 2007 decision").

27. A copy of the 2007 decision was provided (pages 146 and 147 of the hearing bundle). Columbia had been represented by Mr D Nicholls of Counsel, instructed by SEM. Mr M Tamuta of Wood Management had represented the RTM company.

28. In the RTM company's statement in reply, it was stated that 2006 Claim notice was withdrawn on 20th April 2007 during the Tribunal hearing. The Tribunal made a Section 88 costs order and determined that Columbia's reasonable costs incurred in respect of the 2006 RTM Claim were £700 plus VAT (comprising £500 plus VAT for Counsel and £200 plus VAT for additional costs).

29. The RTM company had paid the costs within the time limit set out in the order (although this was disputed in the Columbia's statement of case). Columbia did not seek to appeal the 2007 decision. It was submitted that the

issue of statutory costs in respect of the 2006 RTM claim had already been determined and there was no jurisdiction to reconsider the issue of s.88 costs.

30. Ms Smith, on behalf of the applicant, submitted that the Tribunal had jurisdiction to consider the current application. She submitted that the 2007 decision concerned only the costs of the application before it under s.88 (3), and not the costs of and incidental to the managing agent's response to the claim notice itself.

31. She submitted that there was no prejudice to the parties or the procedure and the Tribunal's role is to assess whether the costs for which the RTM company is liable (under s.88 (1) and s.88 (2)) are reasonable. She referred to *Henley v Bloom* [2010] 1WLR 1770 C.A, and submitted that there has to be an abuse of process before a claim is stuck out and that the burden of establishing that the application was oppressive or an abuse of process was on the respondent. Further it was impracticable for Columbia to prepare for and the Tribunal to seek to summarily assess the extent of the reasonable costs of managing agent's work in respect of a claim notice for the purposes of an ex tempore costs award in circumstances where the Tribunal may determine that the RTM claim should succeed, and the preparation would have been for nothing. Hearings would take an inordinate amount of time if such matters were required to be determined at the substantive hearing. At the same time, those costs which are easily assessed should be sought expeditiously, and there is nothing abusive in this approach. She submitted that it was wrong of the respondent to contend that just because Columbia was seeking additional costs now that they should not be allowed to have them.

2010 RTM Claims

32. Mr Maunder-Taylor submitted that the Tribunal does not have jurisdiction to hear a dispute in respect of the consent order, and that this is a matter for the court.

33. A consent order between the parties dated 27th October 2011 was signed by representatives of the RTM company (SEM) and Columbia (DKLM LLP, Solicitors), in LVT case reference: LON/00AU/LRM/2010/0009. This document was headed 'Consent Order' and stated:

UPON the parties having agreed the terms herein

AND UPON the Landlord agreeing in writing that the Applicant has acquired the Right to Manage pursuant to the Commonhold and Leasehold Reform Act 2002 (hereafter referred to as "the Act") as evidenced by the attached letter dated 27th

October 2010 issued for an on behalf of the Landlord by their duly appointed managing agents, Mssrs Sterling Estates Management Limited ref: SA, IH.settlement.

AND UPON the Applicant agreeing to pay the Respondent the sum of £6,312.69 to be paid no later than 28 February 2011 in full and final settlement of its surveyors and legal costs arising from or in connection with the Applicant's Claim Notice dated 10 February 2010 for the Right to Manage

IT IS ORDERED that the Applicant's application for determination made pursuant Section 84(3) to the Act herein dated 28 April 2010 is withdrawn.

The order of the Tribunal dated 28th October 2010 stated:

Having read the attached document recording the terms reached between the parties and the accompanying letters from the parties' solicitors it is ordered by consent that this application shall be treated as withdrawn with effect form 27 October 2010 on the terms set out in the attached Consent Order, the applicant having acquired the right to manage Imperial Hall on 23 August 2010.

34. It was submitted on behalf of the RTM company that the parties settled the 2010 proceedings on the basis that £6,312.69 would cover all of Columbia's s.88 costs in connection with the 2010 RTM claims (10th February 2010 claim notice and the subsequent notice on 23rd August 2010). The agreed sum of £6,312.69 was paid on 18th February 2011. The RTM company fully complied with its obligations pursuant to the consent order.

35. Further, following the acquisition of the right to manage the property SEM was paid £5,037 in addition to its usual managing agent's fees in conducting the handover process.

36. Alternatively, if the Tribunal did have jurisdiction, the RTM company challenged the payability of the sums claimed in respect of both 2010 claims notices.

37. In respect of the Tribunal's jurisdiction, Ms Smith submitted that the consent order concerned only those costs incurred in respect of the surveyors and legal costs arising from or in connection with the 10th February 2010 claim notice, and that the costs did not include the costs of the managing agents in dealing with that claim notice. The respondent had submitted that the sum of £6,312.69 covered all the s.88 costs. However Ms Smith submitted that this was not the case on the face of the order. Accordingly she submitted that the Tribunal had jurisdiction in respect of s.88 costs in respect of both the 10th

41. The Tribunal finds that the respondent has shown that, in so far as this application includes a further application for such costs, the issue of s.88 costs has been finally determined by the Tribunal, and that there is no jurisdiction to make a further determination.

42. However, for completeness, if contrary to the Tribunal's finding there is jurisdiction, the Tribunal has gone on to consider the additional costs claimed in respect of the 2006 RTM claim in the Substantive Costs section of this decision below.

Issue of Jurisdiction (2010 RTM Claims) – the Tribunal's conclusions

43. In respect of 2010 consent order, it was specifically stated that: *IT IS ORDERED that the Applicant's application for determination made pursuant Section 84(3) to the Act herein dated 28 April 2010 is withdrawn.*

44. The Tribunal considers that by entering into the consent order and the fulfilling of the terms of that order by the withdrawal of the application relating to the 10th February claim notice, and the payment of the sum agreed by the RTM company, the s.88(3) costs of Columbia relating to the 10th February claim were compromised. However this does not exclude a further application in respect in respect of s.88 (1) and (2), or in respect of the 23rd August 2010 claim notice.

Substantive Costs Claims

2006 and 2010 RTM Claims

Applicant's main submissions

2006 RTM claim

45. In respect of the 2006 RTM claim, Ms Smith submitted that there is ample evidence that the costs had been incurred in the applicant's statement of case and that the amount of the costs were demonstrated on the invoice in its original and amended form.

46. For example, it was claimed that SEM were instructed by Columbia to undertake full examination of the 2006 Claim notice and prior procedural notices and ancillary matters, review legislation, examine the freehold title and leases, reconcile the register of members of the RTM company against SEM's records, obtain and consider the Memorandum and Articles of Association and Certificate of Incorporation and request further information. It was claimed that SEM gave advice to Columbia about the RTM's failure to comply with the Act, assisted with correspondence (with an example being a

letter dated 11th December 2006 to Wood Management Ltd at exhibit IH/03), assisted with preparation and service of the counter-notice, corresponded with the Tribunal, considered the application and directions, obtained professional advice, prepared and served submissions, briefed counsel, prepared the statement of case and documents, attended hearing with counsel. Also mentioned were email exchanges, telephone conversations, liaison with the applicant and its solicitors.

2010 RTM claims

47. In the applicant's statement of case Mr Sherreard claimed that various steps had been undertaken in respect of the 10th February 2010 claim notice, some of which mirrored the steps that he described had been taken in respect of the 2006 claim notice. Amongst other matters it was claimed that there had been a full assessment of the claim notice, a review of the legislation, examination of the freehold title and the leases, a reconciliation between the register of members of the RTM company against the records of SEM, obtaining the Memorandum and Articles of Association and Certificate of Incorporation of the RTM company. It was stated that there was also investigations in respect of whether there had been compliance with s.72 of the Act, which included such matters as floor plans, advice from Counsel and liaising with and instructing McBains Cooper, Chartered Surveyors. It was stated that SEM assisted in preparing and issuing a counter-notice, and were in contact with Columbia's solicitors by email and telephone, with an example provided. It was also stated that SEM had assisted in such matters as preparing the statement of case, liaising with Columbia's solicitors and instructed and briefed Counsel in respect of the application to the Tribunal.

48. In respect of the 23rd August 2010 claim notice, Ms Smith submitted that the applicant had to carry out the same due diligence in relation to assessing the validity of this notice which was served without prejudice to the other claim Secondly, she submitted that the consent order did not concern any costs of or incidental to the 23rd August 2010 claim notice. Thirdly, she submitted that the costs were reasonable having regard to the on-going proceedings and Columbia had to prepare to respond to the second notice up to 27th October 2010 when the matter came before the LVT, until which time the 10th February 2010 had not been withdrawn. She confirmed that the costs of the handover had not been sought in the current application.

49. In respect of the 2010 RTM claims, Ms Smith submitted that the volume of work done is subject to legal and professional privilege and hence the absence of specific corroborative invoices or documents. She submitted that there was

no double recovery. The consent order showed that the sum of £6,312.69 comprised surveyors' costs and legal costs in relation to the second notice only. She also submitted that there was no duplication of work as contemplated in *Triplerose*.

50. Generally, in respect of rates claimed Ms Smith submitted that the Tribunal in LON/00AU/LSC/2011/0520 determined that the rates charged are not above industry norm and are reasonable in amount. Given the size of the block and the complexity of the issue she submitted that it was not unreasonable to expect SEM to have carried out the amount of hours of work by the persons concerned recorded, in the revised invoice.

Respondent's main submissions

51. In the alternative to its submissions on jurisdiction, in the respondent's statement in reply and in Mr Maunder-Taylor's submissions, the RTM company opposed the claim for additional costs.

52. It was submitted that the RTM company has no liability for SEM's costs claimed in the initial or revised invoice as there is no satisfactory evidence that Columbia has incurred such costs. Alternatively even if Columbia has incurred such costs, these are not reasonable costs as required under s.88(2) of the Act.

53. It was submitted that the description of the work performed in the applicant's statement of case is general and was not a full breakdown as required by the Tribunal's directions. There was no specific evidence of instructions by Columbia to SEM in respect of the 2006 RTM claim or 2010 RTM claims.

54. The RTM company submitted that if Columbia was going to be personally liable for SEM's costs (in addition to the costs of Columbia's Solicitors) then it is reasonable that Columbia would have taken various steps, of which examples were provided. These included sending a letter of instruction to SEM and requesting SEM to have provided them with a scope of work and an estimate of fees to ensure that the work to be performed by SEM would not duplicate the work performed by Columbia's solicitors. Columbia and/or SEM had not produced any invoices or receipts, bank account statements evidencing payment, income tax records, VAT returns or other evidence that Columbia in fact 'incurred' costs as claimed in the initial or revised invoice. Columbia and/or SEM have not produced any time sheets or billing records with narratives showing the time spent, work completed and costs allocated.

55. It was submitted that there is no evidence that SEM had been specifically appointed under the management agreement in respect of the work for which fees were claimed in the initial and revised invoices. It was submitted that the sums claimed cannot be said to have been 'incurred' by Columbia within the meaning of Section 88(2) of the Act. Columbia had not discharged the burden of showing that costs had been incurred as claimed or that the reasonableness test was met.

56. The RTM company challenged why so many hours were charged by the property manager in the initial and revised invoice. Amongst other matters the decision of the Tribunal in *Triplerose* (at page 152 of the hearing bundle) was referred to. In this the Tribunal expressed the view that it could not be said to be reasonable for a landlord to do anything other than to receive a RTM notice and then instruct solicitors to deal with it. In particular when it is clear that solicitors are to be instructed, it is not reasonable for a RTM company to have to pay for a managing agent to discuss legal issues with the landlord or to instruct the solicitors on behalf of such landlord.

57. Further the RTM company submitted that it does not have any statutory obligation under s.88 to pay costs of a managing agent unless appointed under Part 2 of the LTA 1987 (managing agents appointed by the Tribunal). SEM was appointed by landlords and did not fall in that category.

58. In the applicant's statement of case s.89 of the Act was referred to. Mr Maunder-Taylor submitted (correctly in the Tribunal's view) for reasons set out in the RTM company's reply, that s.89 did not provide an additional basis of claim in the circumstances of this case.

Substantive costs claims - The Tribunal's conclusions

59. We turn now to our conclusions in respect the substantive claim for costs in the revised invoice. Having considered the evidence and the parties' submissions, Tribunal finds that Columbia has not shown on the evidence presented that it is entitled to the sums claimed on the revised invoice dated 21st March 2011.

60. The application is for fees set out in documents from SEM headed "RTM Administration Fee Invoice". Initially the document was dated 21st March 2011. The invoice did not state to whom it was addressed, but was sent under cover of a letter dated 15th July 2011 from SEM to Mr S McCabe, a Director of the RTM company. Mr McCabe said that he received the invoice for £16,488 under cover of a letter dated covering letter 9th August 2011, which was on SEM headed notepaper. The letter was sent by registered post and the post

mark was 8th August 2011, notwithstanding that the letter was dated 21st March. On 18th August 2011 Mr McCabe replied to SEM denying liability for the sums. A further copy of that invoice was sent to Mr McCabe under cover of a letter dated 28th December 2011, to which he did not reply.

61. A revised version of the invoice (at page 166 of the hearing bundle) was dated 2nd March 2012. This stated that it had been reissued and amended on that date. This was addressed at the head of the invoice to Columbia House Properties (No. 3) Ltd, and was stated to be payable by Imperial Hall RTM Company Ltd. This was for a revised total of £15,036 for the 2006, February 2010 and August 2010 RTM claims.

62. The Tribunal notes that in respect of each of the heads of claim included in the revised invoice, that the description of the work carried out is substantially the same.

63. It was the submission by the RTM company that Columbia had not produced any or any satisfactory evidence that the costs claimed had been incurred. The main witness was Mr Ahmed, the managing director of SEM, who, the Tribunal was told was the person who had undertaken the hours of work as a director in the invoice.

64. However, there was no documentary supporting evidence to support what work had been undertaken in the hours claimed. There were no time sheets, no contemporaneous or other invoices to Columbia for the work, no file notes, no correspondence with Columbia accepting the work or paying any sums to SEM for this. There was no clear identification of the clauses in the management agreement relied on by SEM supporting contractual liability to pay for the alleged work. Further, the Tribunal considers that there was no satisfactory evidence that any work undertaken by SEM exceeded what would come within normal management duties.

65. The hours claimed in the initial and revised invoice were inconsistent with the oral evidence of Mr Ahmed in respect of the person undertaking the work. His evidence was that 90% of the work was carried out by him as a director, which is inconsistent with the hours claimed in respect of the property manager in the revised invoice. Overall, the evidence of Mr Ahmed was that the hours, and therefore the sums claimed by multiplying these with the rates charged, had been 'assessed' by SEM and Columbia, rather than reflecting an accurate claim for identifiable items of work. No full breakdown of the costs in issue was provided as required by the Tribunal's directions.

65. The test of reasonableness under Section 88(2) encompasses that any costs incurred by a landlord in respect of professional services rendered to him or her 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 or her if the circumstances had been such that he was personally liable for such costs. Having considered the evidence provided, we find that Columbia has not shown that the costs claimed were incurred by the categories of persons under s.88(1) or that this claim meets the test of reasonableness under Section 88(2).

66. In the circumstances, having considered the evidence as a whole, the Tribunal finds that Columbia has not shown that the costs claimed have been incurred or that the reasonableness test has been met.

S20C Landlord and Tenant Act 1985 and paragraph 10 schedule 12 costs

67. The Tribunal was informed by Mr Maunder-Taylor, that the request by the RTM company included in the respondent's statement in reply was irrelevant and was not proceeded with. In the circumstances the Tribunal makes no order under section 20C.

68. The Tribunal, having considered all the circumstances of the case does not consider it appropriate to make an order under paragraph 10 of schedule 12 of the 2002 Act, as it does not find that taking the case as a whole, that the applicant has acted overall vexatiously and/or unreasonably in connection with the proceedings.

Summary of conclusions

69. The Tribunal concludes for the above reasons, that no sums are awarded in respect of the revised invoice dated 21st March 2012.

Chairman: A Seifert

Date: 17th August 2012

Members of the Leasehold Valuation Tribunal

Miss A Seifert FCIArb
Mr P Tobin FRICS MCIArb

Mr C S Piarroux JP CQSW