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**HM Courts
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LEASEHOLD VALUATION TRIBUNAL

**Section 88 of the Commonhold and Leasehold Reform Act 2002
("the Act")**

Case Number:	CHI/00ML/LCP/2012/0008
Property:	Kingsmere, London Road, Brighton BN1 6UY
Date of Application:	1 June 2012
Applicant:	Anstone Properties Limited
Respondents:	(1) Kingsmere RTM Company Limited (2) Members of Kingsmere RTM Company Limited
Date of consideration:	23 October 2012
Tribunal:	Ms E Morrison LLB JD (Lawyer Chairman) Miss C D Barton BSc MRICS (Valuer Member)
Date of the Tribunal's Decision:	1 November 2012

The Application

1. This is an application by the freeholder/landlord of Kingsmere for costs pursuant to section 88 of the Act. A letter accompanying the application form states that the claim is made both against Kingsmere RTM Company Ltd (“the RTM Company”) and its individual members.

Summary of Decision

2. The costs payable by the RTM Company to the Applicant are assessed in the sum of £12820.80 as detailed in paragraph 26 below.
3. There is no determination that individual members of the RTM Company are liable for all or any of these costs.

Procedural Background

4. The application for costs arises from notices claiming the right to manage which were served by the RTM Company in July and September 2011, and subsequent proceedings commenced by the RTM Company before the leasehold valuation tribunal under section 84(3) of the Act. These proceedings culminated in a decision dated 29 March 2012 which held that the RTM Company was not entitled to acquire the right to manage. In other words, the RTM Company’s application was dismissed.
5. This application for costs is made pursuant to section 88(4) of the Act. Directions were given on 12 June 2012 in which it was stated that the application would be determined on the basis of written representations unless any party objected. Neither party having so objected, the Tribunal has determined this case on the basis of written representations without an oral hearing.

The Law and Jurisdiction

6. The right to claim costs arises under section 88 of the Act which provides as follows:

Section 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,*

....

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.

7. On any basis of assessment, costs must be both reasonably incurred and reasonable in amount.

The Applicant's Submission on Costs

8. The solicitors for the Applicant, ODT, submitted a Statement of Costs with the application in the total sum of £16,645.80, of which £8211.50 consisted of solicitors' profit costs exclusive of VAT. In response to the Tribunal's Directions dated 12 June 2012 a more detailed Statement of Costs was provided which was in the total sum of £16304.80, with the solicitors profit costs figure reduced to £7929.00 exclusive of VAT. Letters from ODT to the Applicant were produced setting out the relevant fee-earners hourly rates.
9. In his statement of case Mr Donegan, the partner in ODT who dealt with this matter, explained that his firm introduced computerised time-recording on 1 October 2011 but as much work was undertaken prior to this date the statement of costs had been 'manually costed'. No underlying time records have been provided. He also explained that ODT have not yet billed the Applicant for their work.
10. In reply to the Respondent's Points of Dispute, Mr Donegan argues that his firm's costs are entirely proportionate given the substantial size of the Kingsmere estate (120 flats) and the complicated legal issues that arose. He states that it was entirely appropriate for him to undertake most of the work, and to engage specialist Counsel. In a letter to the Tribunal dated 15 October 2012 ODT confirmed that the Applicant is not registered for VAT and therefore cannot recover VAT it pays as input tax.

The Respondents' Submission on Costs

11. It should first be noted that the Directions provided only for the RTM Company (not the Members) to serve Points of Dispute with regard to the costs.
12. The RTM Company, acting in person, wrote to the Tribunal on 6 August 2012 setting out its objections on costs. The RTM company queried the need of the Applicant to employ such highly paid staff or to incur such high Counsel's fees before the issue of LVT proceedings. Objection was made to the amount charged for lower grade fee-earners and the 'considerable and unsubstantiated reliance on

Counsel'. Believing that Mr Donegan had spent 3 hours in a meeting with the managing agents, this was challenged as unnecessary cost inflation. An overall challenge was made against the reasonableness and proportionality of the costs, together with a plea for sympathy for the RTM and its members.

The Determination

13. Given the importance of this matter to the Applicant, and its specialised nature, it was reasonable for the Applicant to engage Mr Donegan of ODT to act on its behalf. His hourly rate of £230 + VAT is not outside the range of reasonable rates for a Grade A fee-earner engaged on this type of case and accordingly it is upheld. The rates charged for the work done by more junior fee-earners are also within normal ranges. The hourly rates charged in ODT's bill are therefore upheld.
14. For the same reasons, it was reasonable of Mr Donegan to instruct Counsel who had specialist experience to deal with the matter from the outset. However the heavy reliance on Counsel throughout affects some aspects of the costs, as will be discussed further below.
15. Mr Donegan sought to explain the difference in the profit costs figure between the original and detailed statement of costs as attributable simply to removing charges that did not relate specifically to this case. However that is not borne out by a careful comparison of the two statements which reveals other changes. By way of example: (1) The first statement included charges for letters in totalling 2.85 hours; letters in are not usually allowed as a chargeable item on assessment and these were later removed in their entirety. (2) The first statement listed 4.4 hours spent on perusals; in the latter bill the time spent on perusals/reviewing documents is increased to 5.9 hours. These points raise some doubt as to the complete accuracy of ODT's 'manual costing'.
16. Mr Donegan seeks to charge for 1.5 hours of his time after the Decision was issued, spent perusing it and then communicating with the Applicant, Counsel etc. In line with court practice on costs assessment, this time is disallowed. The proceedings were over at that point. However the 0.8 hours spent preparing a Statement of Costs is allowed, again in line with current practice on costs assessment. (1.5 hours disallowed)
17. The discrepancy in time spent on perusals has been noted. Ignoring post-decision work, the discrepancy is 1 hour. Some of the times claimed for perusals appear excessive: 0.6 for perusing the Claim Notices, 0.5 hours for perusing the RTM Company Register and Articles. Given this, and the heavy reliance on Counsel, 1.0 hour is disallowed on the perusal items of Mr Donegan's time. Thus 4.4 hours is allowed, in line with the original statement of costs. (1.0 hours disallowed)
18. Time has been claimed for non fee-earner work: 0.2 hours for downloading Land Registry entries and 0.2 hours for serving a Counter Notice by hand. This time is disallowed. (0.4 hours disallowed)
19. 1.5 hours has been claimed for drafting and reviewing 3 Counter-Notices on 25 August 2012. Counsel had been instructed to advise on these, and his Advice had been considered by Mr Donegan the previous day. The Counter-Notices are

identical (save as to Flat numbers) and the grounds of opposition were set out in two paragraphs. It is unclear that ODT had to do anything other than rely on Counsel's advice as to the contents. This work should not reasonably have taken more than 0.8 hours and the allowable time is therefore reduced by 0.7 hours. (0.7 hours disallowed).

20. A very significant amount of time has been claimed for attendances and communications with the Applicant and its managing agents Parsons Son and Basley ("PSB"). While there will be no reduction for client attendances, on the basis that this matter was of importance to the Applicant, it is not reasonable for the Respondents to have to pay for time spent keeping PSB updated. Mr Donegan's submission that this was reasonable "given that PSB's management of Kingsmere would have been terminated had the claims succeeded" is rejected. PSB was not ODT's client. The initial meeting of 0.3 hours with PSB will be allowed but the further communications at 1.2 hours are all disallowed. (1.2 hours disallowed)
21. Mr Donegan has charged for 5.4 hours of his time on 14 February 2012 when he attended the hearing and pre-hearing inspection. There is no explanation as to why his presence was required in addition to Counsel who had been involved in the matter throughout and who represented the Applicant at the hearing. The only documents drafted by Mr Donegan were the Counter-Notices back in September 2012 and it appears the contents of these were settled by Counsel, who had also settled the Applicant's statement of case. There had been very heavy reliance on Counsel throughout. The hearing concerned only legal submissions; there were no witnesses or issues of fact. Therefore the Tribunal cannot see what Mr Donegan's attendance added to the presentation of the Applicant's case. It would have been known that the Tribunal would not give a full decision that day, and Counsel could have provided a full report regarding the hearing. Applying the overarching requirement of reasonableness of costs and the specific requirement of section 88(2) to consider whether a person in the Applicant's position would reasonably have expected to incur these costs if he had to pay them himself, the Tribunal determines that Mr Donegan's attendance was unnecessary and that it would be unreasonable for the Respondents to have pay for it. (5.4 hours disallowed).
22. The total time disallowed in respect of Mr Donegan's time is therefore 10.2 hours which equates to £2346.00 + VAT.
23. A total of 2.9 hours has been charged for work carried out by Erica Rea, an assistant solicitor, shortly before the hearing. This is described as Research 1.5 hours and Preparing Bundle of Authorities and 3 letters 1.4 hours. It is unclear what research was done by Ms Rea or what it can have added at this point. Much earlier on 5 previous Tribunal/Upper Tribunal decisions had been identified as relevant in the RTM Company's statement of case. These were all included in the hearing bundle prepared by the solicitors acting for the RTM Company, which bundle the Applicant had already agreed. There is no evidence that any other other authorities were found by Ms Rea and in any event Counsel was instructed to deal with the legal arguments. The Tribunal therefore cannot be satisfied that any of Ms Rea's work was reasonable or should be paid for by the Respondents (2.9 hours disallowed which equates to £464 + VAT).
24. A total of 2.2 hours has been charged for work carried out by Danielle Rigg, a paralegal. This is described as "checking Claim Notices against OCEs". As ODT

only had official copy entries for the freehold, this check can only have consisted of crosschecking details of the leases in the Claim Notices against the notices of leases noted on the freehold title register entries. This should not reasonably have taken more than 1.2 hours. (1 hour disallowed which equates to £100 + VAT).

25. The disbursements including all of Counsel's fees are allowed. Given the importance and value of the matter, it was reasonable to instruct a barrister of Mr Gallagher's call and experience and his fees are within the range of what can be expected for this type of work. It was also reasonable to instruct him at the outset after the service of Claim Notices which related to only 3 of the 4 blocks at Kingsmere and this gave rise to questions about their validity.
26. As detailed above ODT's profit costs are reduced by £2910 from £7929.00 to £5019.00. The total amount of costs payable by the RTM Company as First Respondent to this application is therefore £12892.80

ODT profit costs	5019.00
VAT thereon	1003.80
Disbursements	5650
VAT thereon	1130
TOTAL	12802.80

27. No order is made against the Members of the RTM Company as Second Respondents because Section 88 of the Act refers only to the RTM Company itself being liable for costs.

Chairman: Elizabeth Morrison
E Morrison LLB JD

Dated: 1 November 2012