HM Courts & Tribunals Service

Residential Property TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

ON AN APPLICATION UNDER SECTION 88 OF THE COMMONHOLD AND LEASEHOLD REFORM ACT 2002

Case Reference:	LON/00BK/LCP/2012/0020
Premises:	Marathon House, 174-204 Marlebone Road, London NW1 5PW
Applicant(s):	Proxima GR Properties Ltd
Representative:	Estates and Management Ltd
Respondent(s):	Marathon House RTM Co Ltd
Representative:	Adrian Mackaay, director
Date of decision:	14th November 2012
Leasehold Valuation Tribunal:	Mr Adrian Jack and Mr Luis Jarero BSc FRICS

Determination

1. By an application to the Tribunal dated 17th September 2012 the freeholder applied for determination of the RTM company's liability to pay costs in the sum of £425.89 under section 88 of the Commonhold and Leasehold Reform Act 2002 (exercise of the no-fault right to manage). The sum of £425.89 reflects 1 hour 50 minutes time of an in-house solicitor, Mr Richard Sandler, employed by Estates & Management Ltd, an associated company of the applicant.

2. The Tribunal gave directions on 25th September 2012. These were substantially complied with by the parties. The parties agreed that the matter be determined on paper and there was no request for an oral hearing.

The law

3. Section 88(1) of the 2002 Act provides that an "RTM company is liable for reasonable costs incurred by a person who is (a) landlord... in consequence of a claim notice given by the company in relation to the premises."

Issues and determination

4. The RTM company complains that the landlord was tardy in giving details of the costs which it claimed and that it issued the current proceedings prematurely. We consider this point below under costs, because it is does not in our judgment provide a substantive defence to the landlord's claim.

5. In paragraph 26 of its submissions the RTM company argues that:

> "In order to determine the amount of the reasonable costs, one must assess the costs 'incurred' by the applicant. In order to establish that the applicant has incurred cost, it is necessary for it to establish:
>
> (a) that E&M had a contractual relations with the applicant which enabled it to charge the applicant for the work undertaken; and
>
> (b) what such charges would have been so that there is no breach of the indemnity principle set out in section 88(2) of the Act."

6. The RTM company relied on two cases in the Leasehold Valuation Tribunal dealing with Mr Sandler's costs, 39-46 Gandon Vale CAM/11UF/LCP/2011/0001 and 1-2 Ripley Close and 29-39 Garatts Way

CAM/11UF/LCP/2011/0006. In both cases the Tribunal (comprising in each case Mr Edgington and Mr Brown, the president and vice-president of the Eastern Panel) held that Estates & Management Ltd had failed to show any contractual obligation on the part of the applicant freeholder to pay the costs claimed in respect of Mr Sandler's work.

7. The applicant relied on the recent Upper Tribunal decision in Merryfield Grange, Fairhold Mercury Ltd v Merryfield RTM Co Ltd [2012] UKUT 311, which also concerned the recoverability of costs for Mr Sandler's work. The point in issue is that case, however, was the holding of the Leasehold Valuation Tribunal that it was not lawful for Estates & Management Ltd to charge a landlord for the services of Mr Sandler because of the terms of the Solicitors' Code of Conduct. That is not an issue raised in the current case.

8. There is nothing in Merryfield Grange to cast doubt on the decisions in Gandon Vale and Ripley Close and these latter decisions are, if we may respectfully say so, clearly right as regards the point of law which they establish. If there is no contractual obligation on a landlord to pay Estate & Management Ltd, then the landlord cannot recover the cost from the RTM company.

9. In the current case the landlord has failed to show any contractual relationship between it and Estates & Management Ltd such as to give rise to an obligation on it to pay Estates & Management Ltd. Nor has it shown that it has actually paid Estates & Management Ltd. The current case is in our judgment on all fours with Gandon Vale and Ripley Close. The RTM company has put the applicant expressly on notice of the point; and Estates & Management Ltd are on notice of the point as a result of the other two cases. We infer that the failure of Estates & Management Ltd to meet the RTM company's objection is because it cannot.

10. It follows in our judgment that nothing is owed by the RTM company to the applicant. We therefore do not need to deal with the reasonable of the time and the hourly rate claimed in respect of Mr Sandler's costs.

Costs

11. The RTM company seeks to recover costs under paragraph 10 of Schedule 12 to the 2002 Act on the basis that the applicant has acted unreasonably in issuing the current application without having sought to agree the costs previously. The RTM company says that Estates & Management Ltd refused to reply to correspondence.

12. The landlord exhibits a letter from Canonbury Management of 2nd May 2012 in which that firm gives email addresses for Mr Geoffrey Taylor and Mr Roger Wood. The landlord subsequently wrote to Mr Taylor. In fact Mr Taylor was not a director of the RTM company and the email address given was not his. The applicant cannot, however, in our judgment be blamed for acting on

Canonbury's letter as it did. Accordingly it has not acted unreasonably and we refuse the application for costs.

DETERMINATION

The Tribunal accordingly determines:

(a) **that the RTM company owes the applicant nothing in respect of costs;**

(b) **that the RTM company's application for costs under paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002 be refused.**

Adrian Jack

Adrian Jack, Chairman 14th November 2012