

## HM COURTS AND TRIBUNALS SERVICE

File Ref No. MAN/00BM/LCP/2012/0003

## RESIDENTIAL PROPERTY TRIBUNAL SERVICE

Leasehold Valuation Tribunal of the Northern Rent Assessment Panel (LVT)

## Chapter 1 The Commonhold and Leasehold Reform Act 2002 (the Act)

**Subject Property:** 26-34 Brookshaw Street Bury BL9 6EB

**Applicant/Lessee:** Freehold Managers (Nominees) Ltd represented by  
Freehold Managers PLC of Langdale House  
11 Marshalsea Road London SE1 1EN

**Respondent/Lessor:** Brookshaw Court RTM Company Limited of  
72 Holland House Road Walton-le-Dale Preston  
PR5 4JG

**LVT Members:** Roger Arden and Laurence Bennett

**Date of Determination:** *29<sup>th</sup> October* 2012

**1. The Application and preliminary**

- 1.1 The LVT received an application on behalf of Freehold Managers (Nominees) Ltd for a determination of costs incurred and payable by the Respondent in consequence of a claim notice given by the Respondent in relation to the subject property pursuant to the Act.
- 1.2 The Respondent's claim notice to acquire the right to manage the subject property was served on the Applicant on 17 November 2011. The Applicant served a counter-notice on 16 December 2011 resisting the application. As the Respondent has not made an application for determination to the LVT within the prescribed period of 2 months from when the counter-notice was given the claim notice is deemed to be withdrawn.
- 1.3 On 19 July 2012 the LVT issued directions for the procedure to be adopted by the parties before the case is determined;
- by a letter dated 6 August the Respondent's lodged its response to the application
  - by a letter dated 21 August the Applicant's solicitors declined to file a further statement and confirmed they wished the LVT to proceed with a determination
  - neither party requested an oral hearing

## 2. The Law

The relevant sections of the Act stated that 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 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 a professional services rendered to him by another are to be regarded as reasonable only if and to the extent the costs in respect of such services might reasonably be expected to be incurred by him if the circumstances had been such if he was personally liable for all such costs
- (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.

89 Costs were claim ceases:

- (1) This section applies where a claim notice given by a RTM Company:-
  - (a) is at any time ... deemed to be withdrawn ...
  - (b) (2)
- (2)
- (3) Each person who is or has been a member of the RTM Company is also liable for those costs (jointly and severally with the RTM Company and each other person who is also liable).
- (4)
- (5)

### 3. Consideration and Decision

- 3.1 The LVT carefully considered the Applicant's case set out in their application and the response made on behalf of the Respondent.
- 3.2 It is established in the view of the LVT that the consequence of the events with the claim notice and counter-notice referred to in paragraph 1.2 above lead to the deemed withdrawal of the claim. Although not specifically addressed in the Respondents written response, the requirement for a fresh claim notice was advised and actioned (paragraph 6 in their response refers).
- 3.3 The Respondents response explains their efforts to... "keep all costs to a bare minimum" and they were working... "on a shoestring" (their words e.g. paragraphs 5 and 6 of their response). It is said that members undertook their own research, using the internet and sought guidance from LEASE (the Leasehold Advisory Service – a well regarded independent agency government funded and staffed by officers with legal training) – this on its own with respect may not be an adequate substitute for employing your own legally qualified leasehold practitioner (names are accessible from the list maintained by LEASE on their website). Surely on any view the cost of such help would not be disproportionate to the value of the subject matter. The LVT, of course, is always intended to be an accessible forum and has a tendency to be lenient towards leaseholders conducting cases on their own.

As the Respondent must know, or should have known, there are a number of cost implications to consider before exercising RTM. It is not for the Applicant to advise the Respondent.

This is an extract of what LEASE publish:

"The Right to Manage"

"The landlords costs..."

"Costs are still recoverable if the RTM does not proceed. For example, if the claim notice is deemed to be withdrawn"

(which is the case in this instance)

"It must be appreciated that the liability for the landlords costs extends to all members of the RTM company; the liability for costs of an unsuccessful application cannot be avoided by winding up the company"

- simply put, why should the landlord be out of pocket for professional fees from the failure of the RTM to make a proper application. Is it not fair that the landlord should be properly reimbursed?

The LVT is not persuaded otherwise and the relevant legislation is plain – it means what it says and says what it means.

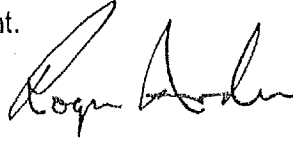
The LVT cannot, in this context, comment upon the Applicants alleged conduct or fees in other matters and does not take the Respondents assertion in these matters into account, nor that the Respondent may be a dormant company with no assets since the law does not allow the members to avoid personal liability for the Applicants costs.

Notwithstanding the Respondents comments in paragraph 9, it behoves the Applicant to take the Respondents claim notice seriously as they have done and prudently have it duly considered and tested with suitably experienced and competent professional advice. In the view of the LVT their action and the costs incurred in this regard is both reasonable and proper.

- 3.4 From this arises a liability to reimburse the landlord's reasonable costs incurred. The Applicant is therefore entitled to an award accordingly and in default of agreement between the parties, the amount shall be determined by the LVT.
- 3.5 The costs incurred are in respect of "professional services" (referred to and qualified as stated in sub-section 2 of the Section 88 of the Act but only as might be properly and necessarily tasked.
- 3.5 Notwithstanding the Respondent's representations, in view of the Tribunal the costs have been assessed at a fair hourly rate and the overall time said to be expended is not excessive given the care and attention which the task might require.

The costs are therefore allowed in the sum of £369.00 and determined for payment by the Respondent to the Applicant.

Roger H Arden  
Chairman

A handwritten signature in black ink, appearing to read 'Roger H Arden', written in a cursive style.