



Property : 1-15 Farthing Court,
Ninety Broomfield Road,
Chelmsford,
Essex CM1 1SS

Applicant : Triplerose Ltd.

Respondent : Ninety Broomfield Road RTM Co. Ltd.

Date of Application : 22nd January 2013

Type of Application : To determine the costs payable on
service of RTM notice (Section 88 of the
Commonhold and Leasehold Reform Act
2002 ("the Act"))

Tribunal : Bruce Edgington (solicitor, chair)
David Brown FRICS MCI Arb

DECISION

1. The reasonable costs of the Applicant in dealing with the matters set out in Section 88 of the Act are £1,063.70 plus VAT subject to the consideration of whether VAT is recoverable by the Applicant.

Reasons

Introduction

2. The Respondent is a right to manage ("RTM") company created for the purpose of exercising the right to manage leasehold properties and serving the necessary notices under Section 79 of the Act in respect of the property in this case.
3. Two claim notices were served as were two counter-notices denying the Respondent's right to manage the property. Matters were put before this Tribunal on the 13th December 2012 under case number CAM/22UF/LOA/2012/0003 when it was ruled that the Respondent was not entitled to manage the property. This application is made presumably because the parties could not agree the amount of costs payable by the Respondent.

4. This is the second time that these circumstances have arisen i.e. that the Respondent has attempted to exercise the right to manage the property and has failed. On the previous occasion, the assessment of costs was dealt with by this Tribunal on the 13th June 2011 under case reference CAM/22UF/LCP/2011/0003 ("the previous costs determination").

The Law

5. An RTM company becomes liable for the landlord's reasonable costs "*in consequence of a claim notice given by the (RTM) company in relation to the premises*" (Section 88(1) of the Act). Section 88(3) provides that if, as in this case, an LVT dismisses an application for a right to manage, then the RTM company becomes liable to the landlord's reasonable costs.
6. The method of assessment is on the basis of what is sometimes called the indemnity principle. In other words the costs payable are those which would be payable by the client "*if the circumstances had been such that he was personally liable for all such costs*". (Section 88(2) of the Act). The costs must be reasonable incurred and reasonable in amount.

The Applicant's claim

7. The Applicant's solicitors are Conway & Co. of Henley-on-Thames and the fee earner in charge is said to be Miss. Lorraine Scott who became a solicitor in 2009 having previously been a barrister. She is described as an 'associate'. She claims at the rate of £225 per hour whereas in the previous costs determination, in 2011, she claimed £185 per hour. The Applicant has its registered office in Edgware, Middlesex which is reasonably close to Henley. No objection has been raised to the use of Henley solicitors. The Tribunal therefore agrees that it was reasonable for the Applicant to instruct Conway & Co.
8. A claim is also made for fees incurred by the managing agents. This is discussed below.
9. A solicitor with less than 4 years post qualification experience is graded by the courts in detailed assessments of costs as a Grade C fee earner. The starting point for rates being awarded to Grade C fee earners in County Courts in the Thames Valley area in 2012 was £161 per hour, to Grade B fee earners £192 per hour and Grade A, £217 per hour. As the fee earner in this case had previously been a barrister, it was the view of this Tribunal in the previous costs determination that £185 per hour was reasonable being slightly less than a Grade B fee earner.
10. Miss Scott is just over a year more experienced than for the previous costs determination but she is now claiming more than a Grade A fee earner. An increase of 22% in that time may be considered excessive. However, the Respondent has not raised the issue of

charging rates and as these are adversarial proceedings, this Tribunal will not interfere.

11. The profit costs claimed now are £1,196.25 profit costs (5 hours 19 minutes) plus agreed disbursements of £17.45. In the previous costs determination, the claim was for £1,831.49 (9 hours 45 minutes).
12. VAT is only payable by the Respondent if the Applicant is not able to reclaim the VAT and no doubt this will be considered by the parties. The reason, of course, is that the legal service has been supplied to the Applicant even though the costs are being paid by the Respondent. VAT on these fees is recoverable by the Applicant if it is registered for VAT purposes and it would therefore be unfair for the Respondent to have to pay this.

The Procedure

13. In the directions order made by the Tribunal chair on the 30th January 2013, it was said that the Tribunal considered that it could deal with this matter on paper with the necessary written representations from the parties. The parties were informed that they could seek an oral hearing at any time prior to the matter being considered on or after the 26th March 2013. No such request was received.

The Points of Dispute

14. The Respondent's points of dispute allege, in broad terms:-
 - (a) That all the points raised by the Applicant in the counter-notice were found by the LVT to be unmeritorious and the costs should therefore be reduced substantially
 - (b) That the points in the counter-notice were vague and without detail which meant that the Respondents had to enter into unnecessary correspondence to obtain details which should not be allowed
 - (c) That a claim from the managing agents for £250 plus VAT is unreasonable and not claimable
 - (d) That the time spent with the client is excessive
 - (e) That the time spent on the RTM notices is excessive, particularly as the counter-notice were found to be ineffective

Conclusions

15. The claim by managing agents. A similar claim was made in the previous costs determination and was disallowed. The Applicant will therefore not be surprised when this claim for agents' fees is also disallowed for the same reasons as before. The following paragraphs are similar to the previous costs determination as they are equally as relevant.
16. The time allegedly spent by the managing agent was, according to their 'pro-forma invoice' for "*Notifying our clients Triplerose Ltd. of RTM notice served. Discussing ramifications of same. Taking freeholders instructions & instruction solicitors. Providing solicitors with*

information regarding the property and each leaseholder. Dealing with documentation as requested'. £250 plus VAT is claimed and this appears from a schedule in the bundle to be their minimum charge for this sort of work. It appears that the Applicant and the managing agents have common shareholders.

17. Section 88 of the Act provides that a RTM company is liable for reasonable costs incurred by the landlord. In the Tribunal's view, it simply cannot be said to be reasonable for a landlord to do anything other than 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.
18. With regard to the remainder of the claim for legal costs, it is noted that it is substantially less than in the previous costs determination despite the hourly rate increasing by 22%. Overall, the Tribunal did not consider that the times claimed were excessive save for the one substantive point made by the Respondent which is discussed below.
19. The counter-notices were not detailed and, in effect, just put the Respondent to proof on 2 technical points neither of which were accepted by the Tribunal. It is worth reminding the Applicant of the following passages taken from the RTM decision:-

"The Tribunal also takes note of the Upper Tribunal's decision in **Assethold Ltd. V 14 Stansfield Road RTM Co. Ltd.**[2012] UKUT 262 (LC); LRX/180/2011. That was a decision of the President based on a counter-notice drawn by Conway & Co, solicitors, who happen to be the same solicitors who prepared the counter-notices in this case.

The Upper Tribunal in that case noted the very technical matters raised and dismissed them. As to an alleged defect in the members register, the President said, at paragraph 21 "*...a defect in the register would not be sufficient to show that section 79(5) was not complied with, and indeed it could be insufficient even to raise a doubt as to compliance*".

At the end of the judgment, when dismissing the landlord's appeal, the President remarked:-

"It is not sufficient for a landlord who has served a counter-notice to say that it puts the RTM company to 'strict proof' of compliance with a particular provision of the Act and then to sit back and contend before the LVT (or this Tribunal on appeal) that compliance has not been

strictly proved. Saying that the company is put to proof does not create a presumption of non-compliance, and the LVT will be as much concerned to understand why the landlord says that a particular requirement has not been complied with as to see why the RTM company claims that it has been satisfied."

In this case, the detail in the counter-notices was sparse save for the allegation that the registered office of the RTM company was not in the Claim Notices. There were simple allegations of non-compliance without any detail. This has the same effect as putting the RTM company to strict proof. Mr. Diamond (counsel), in his submissions, said that he was indeed saying on behalf of the Respondent that it was up to the Applicant to satisfy the Tribunal that all the technicalities had been satisfied. The Tribunal chair read out the above passages from the **Assethold Ltd.** case to which there was no response."

20. Accordingly, it is this Tribunal's view that there should be a reduction in the amount of time spent on corresponding with the Respondent and in drawing the counter-notices. Taking a broad brush approach, the Tribunal deducts 40 minutes of time i.e. £150.00 which reduces the claim from £1,213.70 to £1,063.70 plus VAT if appropriate.

.....
Bruce Edgington
President
8th April 2013