

387



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **MAN/00DA/LCP/2013/0008**

Property : **Brackenhurst Place and Brackenhurst Drive,
Moor Town, Leeds, LS17 6WE**

Applicant : **Proxima GR Properties Limited**

Respondent : **Brackenhurst (Leeds) RTM Company Limited**

Type of Application : **Commonhold & Leasehold Reform Act 2002 –
Section 88(4)**

Tribunal Members : **N Ali
L Bennett**

Date of Decision : **15th October 2013**

DECISION

© CROWN COPYRIGHT 2013

Background

1. The Applicant has made an application for the determination of the landlord's reasonable costs under section 88 of the Commonhold and Leasehold Reform Act 2002 ("the Act").
2. The Applicant is the freeholder of Brackenhurst Drive and Brackenhurst Place ("the Property"). The Respondent is a Right to Manage Company.
3. The Respondent served a Claim Notice dated 13th August 2012 on the Applicant seeking the right to manage the Property on the 12th September 2012. By a counter-notice dated 5th September 2012 the Applicant denied that the Respondent was entitled to exercise the right to manage the Property particularising the reasons as to why the application failed to comply the relevant provisions of the Act.
4. The Respondent served a notice of withdrawal dated 30th January 2013 pursuant to the Act withdrawing the notice of claim to acquire the right to manage the Property.
5. The Respondent accepts that it is liable for costs incurred by the Applicant in relation to the RTM application but disputed that the costs of £806.00 claimed by the Applicant are reasonable.
6. The Respondent asked for evidence for the contractual relationship between the freeholder and its representative referring to the decision in the matter of Woodcock Road RTM (*CAM/26UF/LCP/2011/0013*) in which the agent was asked to show evidence of their retainer.
7. The Applicant forwarded a statement saying that they were the authorised agents of the freeholder and have authority to act on their behalf in RTM matters.
8. The Applicant made an application dated 19th April 2013 to the Leasehold Valuation Tribunal for an order to formally dismiss the Application, in order to ensure that the freeholder was not deprived of their costs.
9. The Tribunal on 15th May 2013 noted that as the Notice and Application had been withdrawn; there was no application to be dismissed.
10. The Applicant made an application dated 26th June 2013 to the Residential Property Tribunal Service in respect of the costs of £806.00 to be payable by a RTM Company.
11. Pursuant to this application the Applicant sent to the Respondent an amended invoice of £521 dated 4th July 2013.
12. The Tribunal issued directions on 25rd July 2013.

The Hearing

13. A determination was made on the documents filed at the Tribunal.

The Law

14. Section 88 (1) of the Act states that a Right to Manage 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
 - (b) [not applicable]
 - (c) [not applicable]in consequence of a claim notice given by the company in relation to the premises.
15. Section 88 (2) the costs incurred by such a person for professional services should only be regarded as reasonable “only if and to the extent 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”.
16. Section 88 (3) states that 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 the application by the company for a determination that it is entitled to acquire the right to manage the premises.
17. Section 89- Costs where the claim ceases.
18. Section 89 (1) This section applies where a claim notice given by a RTM company
 - (a) is at any time withdrawn or deemed to be withdrawn by virtue of any provision of this Chapter, or
 - (b) at any time ceases to have effect by reason of any other provision of this Chapter.
19. Section 89 (2) The liability of the RTM company under section 88 for costs incurred by any person is a liability for costs incurred by him down to that time.
20. Section 89 (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 so liable).
21. Commonhold and Leasehold Reform Act 2002 Schedule 12 Paragraph 10 – Costs.
22. A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).

23. The circumstances are where—
- (a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
 - (b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.
24. The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed— .
- (a) £500, or
 - (b) such other amount as may be specified in procedure regulations.
25. A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.

Decision

26. The Tribunal accepts the principle that a landlord should not be out of pocket as to costs where a RTM company seeks to exercise the right to manage. The landlord is entitled to oppose that right where the application is defective. The landlord is further entitled to choose whomsoever it wishes to represent it, irrespective of the location of that representative. The only constraint on such choice is the reasonableness of the representative's costs.
27. The Tribunal considered the invoice submitted by the Applicant and determined that the inaccuracies in Claim Notice were such that time billed in dealing with the application was deemed reasonable.
28. The Applicant has however reduced the costs from £806.00 to £521.00.
29. The Tribunal determines that the reasonable and proper costs of the Applicant in connection with the notice are £ 521.00 pursuant to section 88(4) of the Act.
30. The Tribunal then considered the Applicants' application for the costs pursuant to paragraph 10(2)(b) of Schedule 12 of CLRA 2002 and the Respondents application for an order pursuant to section 20(c) of the Landlord and Tenant Act 1985. The Tribunal noted that the conduct of both the Applicant and Respondent had equally contributed to this application being made and as such no Cost Orders are to be made.