



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

Case Reference : **MAN/00CJ/LCP/2013/0009**

Property : **Mill House, Hanover Street,
Newcastle upon Tyne NE1 3AG**

Applicant : **Triplerose Limited**

Representative : **Conway & Co Solicitors**

Respondent : **Mill House RTM Company Ltd**

Representative : **Quality Solicitors Punch Robson**

Type of Application : **Costs payable following withdrawal of
notice of claim - Sections 88 & 89
Commonhold & Leasehold Reform
Act 2002**

Tribunal Members : **Mr S Moorhouse LLB (Chairman)
Mr J Platt FRICS FIRPM**

**Date and venue of
Hearing** : **15 April 2014 - Manor View House,
Kings Manor, Newcastle upon Tyne
NE1 6PA**

Date of Decision : **16 April 2014**

DECISION ON COSTS

DECISION

1. Legal fees of £958.46 (inclusive of VAT) are payable.
2. Managing agents fees are not payable.

REASONS

3. The costs at issue relate to a claim notice issued by the Respondent Right To Manage company on 14 May 2013 and withdrawn upon the Respondent issuing a revised claim notice on 19 August 2013.

4. Section 88 of the Commonhold and Leasehold Reform Act 2002 ('the Act') provides that a RTM company is liable for the reasonable costs of the landlord in consequence of a claim notice. Section 88 (2) states:

'Any costs incurred by such a person in respect of professional services rendered to him by another are 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.'

5. Section 88(4) provides for any question in relation to the amount of costs to be determined by a tribunal, in default of agreement. At section 89(1) and (2) the Act stipulates that where a claim notice is withdrawn, the liability under section 88 is for costs down to the time of withdrawal.
6. The costs in issue total £1,258.46, made up of legal fees of £958.46 (including VAT) and managing agents fees of £300 (including VAT). The Applicant states that it is not registered for VAT and submits that, accordingly, the Respondent is liable for the VAT inclusive amounts.
7. The Respondent challenges the legal fees on the basis that both the time incurred and the hourly rate are excessive. The Respondent submits that the work did not need to be undertaken by an associate level solicitor with the background and experience of the individual in question. The Respondent further submits that if the Tribunal finds that this was appropriate, the time incurred by someone at that level should have been considerably less. Other points were raised by the Respondent concerning numbers of letters and postal costs but the amounts at issue were very small.
8. The Tribunal finds on the issue of legal costs that these are reasonable and that the full amount (inclusive of VAT) is payable. Any challenges on the part of the Respondent that might be considered to have merit were not material in terms of the amounts involved.

9. The key issues on legal costs were whether Conway & Co were reasonably able to charge £225 per hour for the work of their associate solicitor and whether the time incurred was reasonable. The Tribunal considers that it is reasonable for the work to be handled by an experienced solicitor, that the hourly rate for the particular fee earner is reasonable and that the total time incurred of 3.5 hours appears to be justified. Conway & Co claim only 30 minutes for drafting their counter-notice and where time was incurred in examining documents, it appears that this work was relevant and the time incurred was not excessive.
10. Turning to the agent's fees, the Applicant's statement of case sets out numerous duties to be fulfilled by the agent in connection with the claim notice however these do not correlate with the narrative within the invoice. The invoice by Y&Y Management Limited dated 25 November 2013 relates to the following:

'Perusing the RTM claim notice and discussing the matter at length with Triplerose and taking instructions as to which law firm to be appointed to deal with the claim; advising the landlord in respect of the claim notice and taking further instructions; liaising with the lawyers appointed and providing them with instructions accordingly and providing them with all necessary information and documentation in order to deal with the claim on the landlord's behalf,'
11. The Tribunal does not consider that the agent's fees meet the test in section 88(2) of the Act. The claim notice was handled by Conway & Co. Solicitors who, it appears, regularly represent the Applicant. It was unnecessary for Conway & Co. Solicitors to be appointed via a managing agent. The Tribunal does not consider that the Applicant would pay for the services referred to in the invoice narrative if it was liable for these costs itself. The Respondent is not therefore liable for these costs.

S Moorhouse
Chairman