



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

Case reference : **LON/00BE/LCP/2014/0010**

Property : **1 and 2 Haven Way London SE1 3FJ**

Applicant : **Grange Gardens (Block A) RTM
Company Limited and Grange
Gardens (Block B) RTM Company
Limited**

Representative : **Urban Owners Limited**

Respondent : **Hazlewood Properties Limited**

Representative : **Nicholas & Co Solicitors**

Type of application : **Application to determine the costs
to be paid by a RTM company
under s88(4) of the Commonhold
and Leasehold Reform Act 2002**

Tribunal member : **Judge N Hawkes**

Venue : **10 Alfred Place, London WC1E 7LR**

**Date of paper
determination** : **4th November 2014**

DECISION

Decision of the Tribunal

The Tribunal determines that costs in the sum of £813.76 (inclusive of VAT) are payable by each applicant.

The Background

1. The Tribunal has received an application under section 88(4) of the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”), to determine the costs payable by the applicant RTM companies. No party has requested an oral hearing and this application has been determined on the papers.

2. Sub-sections 88(1) and 88(2) of the 2002 Act provide:

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 any premises,

(b) party to such a lease otherwise than as landlord or tenant, or

(c) a manager appointed under Part 2 of the 1987 Act to act in relation to the premises, or any premises containing or contained in 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 professional services rendered to him by another are to be 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.

3. Statutory notices claiming the right to manage were given by each applicant on 12th December 2013. The respondent served counter notices on 10th January 2014.
4. The applicants state in their written submissions to the Tribunal: “The applicant felt that one of the points raised in the counter notice was potentially valid and as such decided to withdraw the claim notices”. The applicants gave notice of their withdrawal on 7th March 2014.

5. The respondent is claiming costs in the total sum of £3,238.74 (on the basis that each applicant is liable to pay 50% of these costs).
6. Directions were issued by the Tribunal on 2nd September 2014. Paragraph 4 of the directions includes provision that the respondent shall send the applicant an explanation of its costs schedule by 3rd October 2014 and provides that “the explanation should identify and explain any unusual or complex features of this case.”
7. The appropriate level of solicitors’ and counsel’s fees is in dispute. The respondent claims solicitors’ fees of £1,475 plus VAT (£1,770 in total) and counsel’s fees of £1,200 plus VAT (£1,440 in total). The applicants accept that disbursements in the sum of £34.52 are payable.

The determination

8. The solicitors’ fees of £1,770 represent five hours’ work at £295 per hour plus VAT. The applicants argue that the amount charged by the solicitor and the amount of time spent on this matter was excessive; that no breakdown has been provided to explain how this time was spent; and that the matter should have involved 3-4 hours’ work. The applicants also argue that nothing should be recoverable in respect of counsel’s fees.
9. The respondent states: “The Notices were withdrawn only after counter-notices had been served and the matter had been considered in detail by the Respondent’s solicitors. The solicitors’ fees relate to the time spent by Philip Philippou, Partner/Solicitor and Grade A fee-earner at Nicholas & Co, in perusing and considering the relevant documents, including: the Notices, company searches, property schedules and leases; collating relevant plans and further evidence collected with respect to the properties; instructing counsel; attending meetings; correspondence and telephone calls with the Respondent and counsel, preparing amending and serving the counter-notices; and general care and conduct throughout.”
10. The respondent also states that Mr Philippou’s charge out rate is substantially below the guideline rate for a solicitor of this level, which should be £317 per hour for a “London 2” band solicitor. The respondent relies upon the Solicitors’ Guideline Hourly Rates 2010.
11. I accept that Mr Philippou’s hourly rate of £295 plus VAT is reasonable. However, as regards the amount of time which he spent in dealing with this matter, I note that this included time spent instructing and otherwise communicating with counsel.
12. The respondent states that counsel was instructing to consider the relevant documentation and to advise on the content and validity of the

claim notices. However, despite the clear direction that the respondent should identify and explain any unusual or complex features of this case, the respondent does not identify and explain the point on which counsel was instructed to advise.

13. The respondent states that the fact that such instruction was reasonable in the circumstances is borne out by the withdrawal of the claim notices by the applicants. However, it is not clear from the fact of the withdrawal of the claim notices whether the issue which resulted in the withdrawal was an unusual and/or complex issue which would justify instructing counsel or whether it was, for example, the result of a simple oversight on the part of the applicants.
14. In the absence of a feature of this case which is considered to be unusual or complex having been identified by the respondent, I am not satisfied on the basis of the very limited material before me that it was reasonable to instruct counsel.
15. Accordingly, I disallow counsel's fees. I also allow four and a half rather than five hours of Mr Philippou's time (a total of £1,593 including VAT) because part of his time was spent communicating with counsel. The payability of the disbursements in the sum of £34.52 is not contested and therefore the total sum payable is £1,627.52, including VAT, 50% of which (£813.76) is payable by each applicant.

Judge N Hawkes

4th November 2014