



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

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| Case Reference | : | LON/00AE/LCP/2016/0001 |
| Property | : | 34 St. Paul's Avenue, London NW2 5TE |
| Applicants | : | Robert Adam Dicks Melanie Jane Taylor |
| Representative | : | In person |
| Respondent | : | Longworth and Spencer RTM Company Limited |
| Representative | : | In person |
| Type of Application | : | To determined costs to be paid under s.88(4) of the Commonhold and Leasehold Reform Act 2002 |
| Tribunal Members | : | Judge Dickie |
| Date and venue of Hearing | : | 10 Alfred Place, London WC1E 7LR |
| Date of Decision | : | 16 August 2016 |

Summary of Decision

Costs of £1803.75 plus VAT and disbursements of £36 plus VAT are payable by the RTM company to the Respondent under section 88(1).

The Law

Section 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,
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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 service 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) A RTM company is liable for any costs which such a person incurs as a party to 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.
- (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.

The Application

1. Application has been made under section 88(4) of the Commonhold and Leasehold Reform Act 2002 ("the Act") for a determination of the amount of costs payable by the Respondent RTM Company in consequence of the Claim Notice given by it to the Respondent. Directions were issued by the Tribunal on 15 June 2016. Neither party has requested an oral hearing and I have determined this matter on the papers.
2. The Right to Manage Claim Notice was served on the Applicants by the Respondent on 17 September 2015. On 26 October 2015 a Counter Notice pursuant to the Act was served by the Applicants accepting the entitlement of the RTM Company to acquire the right to manage the premises as provided within the Claim Notice.
3. There has been no agreement as to the statutory costs payable by the Respondent to the Applicants. The Applicants were represented in respect of the Right to Manage application by Winckworth Sherwood LLP. Their charges (set out in an invoice dated 27 October 2015 to the Applicants) were £2,632.50 plus VAT and disbursements. The Applicants seek to recover their costs from the Respondent under s.88(4) as being incurred in consequence of service of the RTM Claim Notice. A Statement of Costs had been produced which totals £2782.50 plus VAT and disbursements (it includes £150 plus VAT for a costs lawyer).
4. Winckworth Sherwood LLP were instructed to make this costs application to the Tribunal, and provided a Statement of Case to accompany it, though this was written without detailed knowledge of the Respondents' disputes as set out in response to Tribunal directions. Those solicitors no longer act for the Applicants, who have themselves set out their position in response to the Respondents' challenges.

5. The Respondent disputes the Applicants' need to instruct a solicitor at all, since Miss Taylor herself is a solicitor (apparently no longer practising). However, I reject this challenge. The Applicants were entitled to instruct a solicitor of sufficient experience in this specialist and complex area of law, and Miss Taylor was not obliged to conduct this work herself.
6. The Applicants' solicitor's hourly rate of £325 is challenged as unreasonable, but I do not agree. This matter was handled by a Grade A fee earner within this centrally located London firm of solicitors. This hourly charging rate is within a reasonable range for a fee earner of that level and location. The Applicants were entitled to instruct the solicitor and firm of their choice, this being a firm they had previously instructed in other property matters, including the lease extension of flat 34b St Paul's Avenue.
7. The Respondents have challenged time spent on non routine letters, considering the Claim Notice, reviewing relevant case law and leases, determining the service charges and preparation of the Counter Notice and preparing, amending and finalising the statement of costs. I have considered the grounds for these challenges put forward. The Respondents directed my attention to the decision of the First Tier Tribunal in *Genesis Housing Association Ltd. v Park Lodge (Billericay) RTM Co. Ltd.* (CAM/22UB/LCP/2015/0001, but its facts are very different and I did not find it of great assistance.
8. The solicitors not having been instructed to respond to their disputes concerning their bill, their clients have mounted a defence of it. Unsurprisingly, the Applicants' general position is that they instructed solicitors in good faith, sought their advice when needed, and believe that they received appropriate legal advice at reasonable cost. They accepted the Right to Manage as soon as they received appropriate advice to do so. However, it seems clear that the solicitors themselves would have been better placed to defend their own bill.
9. The Applicants have referred to a number of points of complexity which their former solicitors were required to consider. The subject premises adjoin other freehold premises known as 28 Park Avenue. A plan of the two properties has been produced. The gardens have no boundary but surround both properties. The Applicants own both freehold titles and explain that they were at pains to make sure there would be no adverse effect on 28 Park Avenue. The letter from Winckworth Sherwood of 21 October 2015 refers to the following matters as relevant:
 - a) A motor and device for flood protection. In order to determine whether there was a right to manage, it was necessary to identify whether this constituted a "relevant service" for the purposes of the

legislation, whether it serves both buildings and could serve each independently, and associated enquiries.

b) Consideration of the lease terms and enquiries relating to the entitlement to use of the bin storage area and garden.

10. The relevant part of Winckworth Sherwood's Statement of Case includes the following in support of its costs:

"The Applicants were required to determine the validity of the Claim Notice by the qualifying tenants, Investigations of title were required along with checking the qualifying status of the tenants. The Applicants also required advice on the qualifying status of the tenants and the determination of title.

Due to the structure of the property within the Claim Notice it was paramount to determine the demise of the property to include the rear gardens. Advice was also required in this regard to protect the Applicants' interests. It was important and necessary to consider the leases to determine the extent of the demise and use of the gardens.

As this matter concerned a Right to Manage claim service charge arrears also needed to be calculated in respect of the qualifying tenants. Further investigations were required to collate all service contracts in order for them to be transferred over to the RTM Company.

Once the validity of the Right to Manage claim was determined, work was required to transfer management and lease covenants to the Respondent and a Counter Notice was prepared in respect of the same."

11. Only a rudimentary breakdown of time engaged is provided. A Transaction Listing of Work in Progress Postings (totalling 7:36 hours at £2,347.50) had been produced by the Applicants' solicitors. A single posting of 3 hours 18 minutes (£1,072.50) records:

"36 emails sent and received to 09 10 15 (18) and then meeting with RD to work through the various points he had included those from his letter of today including a review of the lease terms to advise as to the extent of the parts the tenants are entitled to use in common and the elements that the RTM company will acquire management control in respect of and discussion of arrears history and layout of building as regards qualification (10) and then amending the counter notice to reflect instructions to accept the right based on the structure of the building and working through my checklist to undertake a proper check of the claim notice and counter notice and diarising next steps (5)." (sic)

12. It appears to me that this time engaged was excessive. I have taken into account the explanation of the complexity of this matter, but it should not have been necessary for solicitor and client to exchange so many emails in respect of it. This number is not clearly reconciled with the Statement of Costs prepared. The entry is

insufficiently particularised to persuade me that such a long attendance on the client was reasonable and proportionate, and was in consequence of the Claim Notice rather than associated concerns of the client.

13. There were clearly some issues in this matter which were not straightforward. However, I consider that no more than 50% of the time recorded under this item could reasonably be recovered under s.88(4) – and thus I disallow £536.25.
14. On the facts of the case I also make the following deductions:
 - a) If indeed the Applicants are personally liable for the fees of the costs lawyer (which is not clear), these appear to be irrecoverable litigation costs, and in any event it was unreasonable to have instructed a costs lawyer in respect of this matter. These costs of £150 plus VAT are disallowed.
 - b) A Grade A fee earner would require less time than a less experienced solicitor. Time spent on legal research regarding appurtenant property is disallowed. The solicitor would have been familiar with the legislation and the leading cases on this matter. 48 minutes (£260) disallowed.
 - c) The cost of receiving a letter on 19 October 2015 is disallowed. (£32.50).
 - d) Disbursements are disputed and are not itemised or supported by invoices. Other than Land Registry search charges, these disallowed (£30 plus VAT) as normal office overheads.
15. Reasonable fees payable by the Respondent to the Applicant are therefore reached by reducing the Applicants' solicitor's bill by £978.75 plus VAT fees and £30 plus VAT disbursements.

Name: F. DICKIE

Date: 16 August 2016