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Section 88(4) Commonhold and Leasehold Reform Act 2002

Case Ref: LON/00BH/LCP/2009/0006
Property: 2 Cann Hall Road, Leytonstone, London E11 3HZ
Applicant: Regisport Limited
Represented By: Wallace LLP, Solicitors
Respondent: 2 Cann Hill Road RTM Company Limited
Application: 23 April 2009
Directions: 13 May 2009
Appearances: Paper determination
Date of hearing: None held
Date of decision: 29 June 2009

Tribunal: Ms J A Talbot MA

Summary of Decision

The Respondent is liable to pay to the Applicant legal costs of £415.50 to which VAT should be added as appropriate, together with disbursements of £16.00.

Preliminary

- 1) By an application received by the Tribunal on 23 April 2009 the Applicant seeks a determination of its costs payable by the Respondent pursuant to Section 88 of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act").
- 2) By Directions made on 13 May 2009 the case was considered suitable for a determination on the papers without a hearing. Neither party objected or requested a hearing. Accordingly the Tribunal carefully considered the written submissions of the Applicant together with its Schedule of costs. The Respondent did not comply with a Direction to provide a statement in response to the application.

Consideration

- 3) The Applicant is the landlord of the property 2 Cann Hall Road, Leytonstone, London E11 3HZ. The Respondent is a RTM Company, 2 Cann Hall Road RTM Company Limited.
- 4) By a Claim Notice dated 02/01/2007, the Respondent claimed to acquire the right to manage the property from 08/05/2007. The Applicant served a Counter-Notice dated 01/02/2007 under Section 84(2)(b) of the 2002 Act alleging that the Respondent was not entitled to acquire the RTM, because the RTM Company's Memorandum and Articles of Association did not comply with the Regulations made under Section 74(2) of the 2002 Act. Various other defects in the Claim Notice were set out.
- 5) There is no evidence of any action taken by the Respondent in response to the Counter-Notice. No application was made to the LVT pursuant to Section 84(3) of the 2002 Act for a determination.
- 6) Therefore, by virtue of Section 87(1)(a) of the 2002 Act, the Claim Notice is deemed to be withdrawn. By Section 87(2)(a), the deemed withdrawal is taken to occur at the end of the period specified in the Counter-Notice for an application to be made to the LVT under Section 84(4). This period is two months beginning with the day on which the Counter-Notice was given, i.e. 01/04/2007.

- 7) In these circumstances, Section 89 provides that the liability of the RTM Company for costs incurred by the landlord under Section 88, is limited to the costs incurred down to the deemed withdrawal of 01/04/2009.
- 8) Section 88 provides that the RTM Company is liable for the landlord's reasonable costs incurred in consequence of the Claim Notice. Such costs are to be regarded as reasonable only to the extent that they might reasonably have been expected to have been incurred by him if the circumstances had been such that he was personally liable for all such costs.
- 9) The Applicants have claimed their costs down to 28/10/2008, but for the reasons given above, as a matter of law they are not entitled to recover any costs incurred after the deemed withdrawal of the Claim Notice on 01/04/2007.
- 10) The legal costs incurred by the Applicant between 16/01/2007 and 01/04/2007 as set out in the Schedule are regarded by the Tribunal as reasonable. They concern costs of Wallace LLP for reasonable investigations of title and the RTM Company incorporation documents, a client care letter from solicitors, correspondence with the RTM Company's representative Canonbury Management, and the preparation of the Counter-Notice. The level of fee earner at Category C and D and their hourly rates are also considered not unreasonable. The total of those costs is £415.50 to which VAT should be added as appropriate. Disbursements are allowed of £4.00 Companies House search fee, £12.00 HM Land Registry Fee.
- 11) Photocopying and fax charges of £23.50 plus VAT are claimed for which no explanation is given; however, it seems more likely than not that these relate to copying of the costs Schedule, which is outwith the Section 89 time limit. It is not considered reasonable to raise separate charges for faxing documents, which is a standard part of any solicitor's office communication technology. These disbursements are therefore disallowed.

Decision

For each and every reason given above the Respondent is liable to pay to the Applicant legal costs of £415.50 to which VAT should be added as appropriate, together with disbursements of £16.00.

Dated 29 June 2009

A handwritten signature in black ink, appearing to read 'J A Talbot', written in a cursive style.

Ms J A Talbot

Chairman of the Tribunal