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**H M COURTS & TRIBUNALS SERVICE
LEASEHOLD VALUATION TRIBUNAL**

Case Reference: LON/00BE/LCP/2013/0007

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN
APPLICATION UNDER SECTION 88 OF THE COMMONHOLD AND
LEASEHOLD REFORM ACT 2002**

Applicant: Assethold Ltd
Respondent: 104 Choumert Road RTM Co. Ltd.
Property: 104 Choumert Road, London, SE15 4AA
Date of determination: 3 April 2013

Leasehold Valuation Tribunal
Mr I Mohabir LLB (Hons)
Mr P Tobin FRICS

Introduction

1. This is an application made by the Applicant under section 88 of the Commonhold and Leasehold Reform Act 2002 (as amended) ("the Act") for a determination of the costs payable by the Respondent as a consequence of giving a claim notice dated 21 March 2012.

2. The costs claimed by the Applicant are:
 - (a) Legal costs in the sum of £516 including VAT and disbursements.
 - (b) Managing agent's costs in the sum of £360 including VAT.

3. The Applicant's submissions are set out in its statement of case dated 11 February 2013. Similarly, the Respondent's submissions are set out in its statement of case dated 22 February 2013. The submissions made by each party that are relevant to this Decision are set out below.

The Law

4. The statutory test to be applied in relation to the costs that may be recovered by a landlord as a consequence of a claim notice given by the (RTM) company is set out in section 88(2) of the Act. This provides:

"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."

Decision

5. The Tribunal's determination in this matter took place on 3 April 2013 and was made solely on the basis of the statements of case and other documentary evidence filed by the parties pursuant to the Tribunal's Directions,

Legal Costs

6. A breakdown of the work undertaken by the Applicant's solicitors, Conway & Co, is set out at paragraph 10 of the Applicant's statement of case. Having carefully considered this, the Tribunal found that the hourly charging rate of £225 of the fee earner with conduct, the total attendance of 1 hour and 48 minutes and the disbursement of £25 had all been reasonably incurred.
7. The Respondent's submission that an earlier RTM notice dated 10 March 2011 served in respect an earlier unsuccessful attempt to acquire the right to manage was identical, was irrelevant. On each occasion a claim notice is served, the landlord is obliged to ensure that the notice has been validly served and the RTM is had been properly constituted. The landlord cannot make this assumption simply on the basis that an earlier claim notice was served by the same company.
8. Accordingly, the Applicants legal costs of £516 including VAT and disbursements were allowed by the Tribunal.

Managing Agent's Costs

9. These costs were incurred as a consequence of the agent, Eagerstates Ltd, taking various steps in anticipation of the RTM in relation to the management and reporting to freeholder. This included carrying out various checks and preparing at an early stage service charge accounts for collection and liaising and assisting the Applicant's solicitors in assessing the claim.
10. The Tribunal found that none of the costs in respect of the above activities had been reasonably incurred. The only determination to be made by the landlord in respect of a claim notice being served is whether the RTM company is *entitled* to acquire the right to manage. It is purely a legal issue and has nothing to do with the mechanics of managing the prospective or anticipated handover once the right had been acquired. It would also be difficult to imagine any circumstance in


which a managing agent would have to assist solicitors in making a legal assessment as to whether an RTM company can acquire the right to manage. The Tribunal, therefore, concluded that none of the managing agent's costs were recoverable.

Schedule 12 Paragraph 10 Costs

11. The Applicant also made an application that the Respondent pay a contribution of £500 costs to the Applicant on the basis that it had previously given no indication as to whether the substantive costs had been agreed or not. It was submitted that this amounted to unreasonable behaviour.

12. The Tribunal was satisfied that the Respondent's conduct did not amount to unreasonable behaviour within the meaning of schedule 12 paragraph 10 of the Act. The test to be applied is a high one and the Tribunal concluded that it had not been met by the Respondent simply failing to agree or disagree the costs claimed by the Applicant. In any event, having regard to the obvious antipathy between the parties, it is highly unlikely that the Applicant's costs would have been agreed and this application would have been necessary. Accordingly, the application for costs is refused.

Dated the 3 day of April 2013

CHAIRMAN.....
Mr I Mohabir LLB (Hons)