



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

**Case Reference** : LON/00BE/LCP/2017/0005

**Property** : 1-6 Omega Gate, London SE16 7PF

**Applicant** : Proxima GR Properties Ltd

**Representative** : Estates & Management Ltd

**Respondent** : Omega Gate RTM Co Ltd

**Type of Application** : Costs on exercise of right to manage

**Tribunal** : Judge Nicol

**Date of Decision** : 15<sup>th</sup> January 2018

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**DECISION**

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The Tribunal has determined that the amount payable to the Applicant by the Respondent in respect of costs under section 88 of the Commonhold and Leasehold Reform Act 2002 is £402.

**Reasons for Decision**

1. The Applicant is the freeholder of the subject property. By a Notice dated 29<sup>th</sup> September 2016 the Respondent sought to exercise their right to manage under the Commonhold and Leasehold Reform Act 2002 ("the Act").
2. By letter dated 6<sup>th</sup> October 2016 the Applicant asked for various supporting documentation so that they could work out whether they wanted to serve a Counter-Notice. Presumably, the Respondent

provided the requested documents because the Applicant did serve a Counter-Notice dated 24<sup>th</sup> October 2016.

3. It would appear that the Respondent took no further steps to progress their claim. In any event, by letter dated 2<sup>nd</sup> February 2017 the Applicant sent the Respondent a claim for their costs of the RTM claim pursuant to sections 88-89 of the Act (which are set out in the Appendix to this decision).
4. The costs being claimed by the Applicant are £402, consisting of 1½ hours of the time of an in-house solicitor, Mr Milton McIntosh, at an hourly rate of £250, plus VAT.
5. The Applicant chased the Respondent about the costs by letters dated 15<sup>th</sup> March and 26<sup>th</sup> April 2017 but received no response.
6. On 3<sup>rd</sup> November 2017 the Tribunal received the Applicant's application for costs. The Tribunal issued directions on 10<sup>th</sup> November 2017. In accordance with those directions, the Applicant served (by special delivery and email) and filed their schedule of costs, copies of the relevant invoice and copies of the Claim Notice and the Counter-Notice.
7. Again, the Respondent did not reply. The Tribunal is satisfied that the Respondent has been properly served with all the above-mentioned documents using the address for service given in the Claim Notice.
8. The Applicant's schedule provides a breakdown of Mr McIntosh's time. The time he spent and his hourly rate were reasonable. The total claimed is modest. The Tribunal is satisfied that it is payable.
9. The Applicant referred to the costs of these proceedings in correspondence but the effect of section 88(3) of the Act is that the Tribunal cannot award any part of them.

**Name:** NK Nicol

**Date:** 15<sup>th</sup> January 2018

## **Appendix of relevant legislation**

### **Commonhold and Leasehold Reform Act 2002**

#### **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 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) A RTM company is liable for any costs which such a person incurs as party to any proceedings under this Chapter before the appropriate tribunal only if the tribunal dismisses an 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 the appropriate tribunal.

#### **Section 89**

##### **Costs where claim ceases**

(1) This section applies where a claim notice given by a RTM company—

- (a) is at any time withdrawn or deemed to be withdrawn by virtue of any provision of this Chapter, or
- (b) at any time ceases to have effect by reason of any other provision of this Chapter.

(2) The liability of the RTM company under section 88 for costs incurred by any person is a liability for costs incurred by him down to that time.

(3) Each person who is or has been a member of the RTM company is also liable for those costs (jointly and severally with the RTM company and each other person who is so liable).

(4) But subsection (3) does not make a person liable if—

- (a) the lease by virtue of which he was a qualifying tenant has been assigned to another person, and

- (b) that other person has become a member of the RTM company.
- (5) The reference in subsection (4) to an assignment includes—
- (a) an assent by personal representatives, and
  - (b) assignment by operation of law where the assignment is to a trustee in bankruptcy or to a mortgagee under section 89(2) of the Law of Property Act 1925 (c. 20) (foreclosure of leasehold mortgage).