



371

**First-tier Tribunal
Property chamber
(Residential Property)**

Case reference : CAM/00MC/LCP/2013/0004

Property : 1-84 New Bright Street, Reading RG1
6QQ plus 7 other blocks of properties
in the locality

Applicant : Proxima GR Properties Ltd.

Respondent : Holybrook RTM Co. Ltd.

Date of Application : 14th May 2013

Type of Application : To determine the costs payable on
service of an RTM notice (Section 88
of the Commonhold and Leasehold
Reform Act 2002 (“the Act”))

Tribunal : Bruce Edgington (solicitor, chair)
David Brown FRICS MCI Arb

DECISION

1. The reasonable legal costs of the Applicant in dealing with the matters set out in Section 88 of the Act are £841 plus VAT on profit costs but subject to the consideration of whether VAT is recoverable by the Applicant. If it is, no VAT is recoverable from the Respondent.

Reasons

Introduction

2. The following facts are as set out in the hearing bundle. They are not challenged by the Respondent and are therefore accepted by the Tribunal.
3. The Respondent is a right to manage (“RTM”) company created for the purpose of exercising the right to manage leasehold properties and serving notices under Section 79 of the Act in respect of the properties in this case.
4. It served 8 notices of claim and counter-notices were served. By a decision of the Leasehold Valuation Tribunal (“LVT”) dated 17th July 2012 under case number CAM/00MC/LRM/2012/0002, the Respondent’s application for confirmation that it was entitled to manage the properties was dismissed which then engages Section 88(3)

of the Act. The Applicant's agents then sent an invoice in respect of its charges but no response was received. Hence, this application for the Tribunal to assess the reasonableness of the costs claimed.

The Law

5. Section 88(1) of the Act says that "*a RTM company is liable for reasonable costs incurred by a person who is....a landlord under a lease of the whole or part of any premises....in consequence of a claim notice given by the company in relation to the premises*"
6. Section 88(3) says that where an application to the LVT for confirmation that the RTM company is entitled to manage a property is dismissed, the RTM company becomes liable to another party for its costs incurred in the LVT proceedings.
7. The method of assessment is on the basis of what is sometimes called the indemnity principle. In other words the costs payable are those which would be payable by the client "*if the circumstances had been such that he was personally liable for all such costs*". (Section 88(2) of the Act)

The Applicant's claim

8. The Applicant's agents, Estates & Management Ltd. say that they were employed by the Applicant to deal with this matter. Their in-house solicitor, Richard Sandler, who was admitted in 1972, dealt with the case throughout. He claims a charge out rate of £190 per hour. So far as is known, the Respondent has not responded to the initial claim for costs.
9. The claim in the fee notes is for a total of 5 hours 30 minutes of time to include correspondence and telephone calls. The costs were set out in the fee note claiming £1,045 plus VAT and £16 Land Registry fees.
10. VAT is only payable by the Respondent if the Applicant is not able to reclaim the VAT and no doubt this will be considered by the parties. The reason, of course, is that the legal service has been supplied to the Applicant even though the costs are being paid by the Respondent. VAT on these fees is recoverable by the Applicant if it is registered for VAT purposes and it would therefore be unfair for the Respondent to have to pay this.

The Points of Dispute

11. The Respondent has not replied either to the Applicant or the Tribunal with any particular points of dispute in respect of the charges claimed. However, this does not mean that the Tribunal just approves the costs claimed because it has a duty to assess their reasonableness under Section 88(2) of the 2002 Act, particularly in view of the potential liability of others under Section 89(3).

The Procedure

12. In the directions order made by a Tribunal chair on the 4th June 2013, the Applicant was ordered to file a breakdown of those costs incurred in respect of the notices of claim only, which it did. The Respondent was then ordered to file and serve any objections to the costs claimed by 4.00 pm on 5th July 2013 which it did not.
13. In a letter to the Tribunal dated 11th June 2013, which was said to have been copied to the Respondent, the Applicants agents say “...we would point out that it has been agreed that this matter be dealt with by way of written representations...”. This was not contradicted by the Respondent. Rule 31 of **The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013** says that parties can agree to a Tribunal dealing with a case on the basis of what is in the papers to include any representations from the parties.

Conclusions

14. The solicitor representing the Applicant would be, if in private practice, what is known in the courts as a Grade A fee earner in view of his seniority and experience. He is well known to this Tribunal as being someone with a great deal of experience in dealing with these matters. The time he has taken for what is, in effect, compulsory acquisition of the right to manage from a freehold owner is reasonable. Based on the Tribunal’s considerable experience of these cases and the helpful breakdown of costs provided by the Applicant, the Tribunal concludes that the total of 5 hours 30 minutes of time spent is not so unreasonable as to warrant any deduction.
15. The next thing to consider is the Applicant’s solicitor’s charging rate of £190 per hour. It is generally recognised that ‘in-house’ solicitors can charge an hourly rate and £190 is certainly less than a Grade A fee earner would expect to be awarded in a court local to Reading.
16. However, charging rates for in-house solicitors are not the same as those allowed in the courts for solicitors in private practice. Those rates are worked out and agreed by the central costs office on behalf of the judiciary as guideline figures taking into account the overheads which would normally be paid by a solicitor in private practice. These overheads would include substantial sums which would not be incurred by an in-house solicitor e.g. professional indemnity insurance (tens of thousands of pounds per annum for most solicitors), an accounts department to ensure compliance with the Solicitors’ Accounts Rules and all of the reception, staff and telephone expenses necessary for a professional person dealing direct with the public.
17. The figures used by the costs office are calculated on what chargeable hours a solicitor would do in the day (normally 5 hours). Holidays etc. would then be taken into account to work out an annual number of chargeable hours which would usually amount to 1,000 – 1,250 hours. Overheads would then be calculated including salaries, rents, insurance and other usual overheads incurred by a solicitor in practice plus a profit element.

18. Based on a 5 hour working day, 7 weeks' holiday per year and assuming a salary for the solicitor of £75,000 per annum would mean an hourly rate of just under £67.00 (25 hours per week for 45 weeks per year – 1,125 hours - @ £75.000 per annum). If the cost of support staff and contribution towards the office overheads was a similar annual amount, then an overall hourly rate of £150.00 would be reasonable.
19. The Tribunal, of necessity, has to take a robust approach to this as neither the Applicant nor the solicitor has supplied any information about this issue. Taking all the above matters into account, the Tribunal determines that a reasonable award of costs for the Applicant's solicitor would be 5 hour 30 minutes at £150 per hour plus the Land Registry fees totalling £16.

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Bruce Edgington
Regional Judge
25th July 2013