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

Case Reference : **LON/00AU/LCP/2013/0018**

Property : **4 St John's Villas, N19 3EG**

Applicant : **Assethold Limited**

Representative : **Conway & Co Solicitors**

Respondent : **4SVJ RTM Company Limited**

Representative : **Collins Benson Goldhill LLP**

Type of Application : **Landlord's costs of RTM claim –
section 88 Commonhold and
Leasehold Reform Act 2001**

Tribunal Judge : **Mr M Martynski**

Date of Decision : **24 September 2013**

DECISION

Decision summary

1. The Tribunal decides that the costs payable by the Respondent to the Applicant in connection with its claim for the Right to Manage are as follows:

Conway and Co (first invoice)	£641.58
Conway and Co (second invoice)	£520.46

Eagerstates (first invoice)	£300.00
Eagerstates (second invoice)	£84.00

Background

2. The Applicant has applied to the Tribunal for a determination of the reasonableness and payability of solicitor's and managing agent's fees in connection with two aborted claims for the Right to Manage made by the Respondent RTM company.
3. Two Claim Notices claiming the Right to Manage were served by the Respondent company. The first is dated 13 March 2013, the second 24 May 2013. Counter-notices denying the Right to Manage were served in respect of each notice.
4. In respect of each set of notices, the Respondent claims solicitor's charges and managing agent's charges.
5. The directions given on this application set the matter down to be decided on the papers alone. Neither party requested an oral hearing.
6. I have decided this application on the basis of the Statements of Case and bundles submitted by each party in accordance with the directions and also after taking into consideration the witness statement and exhibits of Miss Lorraine Scott, a Solicitor at Conway and Co.

The issues on the fees claimed and the Tribunal's decisions

Fees of Conway and Co Solicitors – invoice dated 13 March 2013 - £641.58 - (For first Claim Notice)

7. The time claimed for and the disbursement in this invoice are not disputed by the Respondent. Rather the Respondent takes issue with the hourly rate claimed of £225.00 per hour.
8. The fee-earner in question at Conway & Co, the aforementioned Miss Scott, qualified in 2009. She has therefore four years post-qualification experience. The Respondent relied on and exhibited what was described as "the latest Solicitors' Guideline Hourly Rates". Those rates were however for 2010. Even if relevant therefore, they are out of date.
9. The Applicant states that Miss Scott has been dealing with RTM matters since September 2007, being at that time a non-practising barrister (who was called to the bar in 1999). Given her previous legal experience, she should be taken as someone having six years' experience - that would make her a Grade B fee-earner. This area of law is very specialised and I am aware that Conway & Co do a large amount of work in this area. I am satisfied that Conway & Co are

able to achieve a rate of £225.00 per hour in the open market. It is a relatively high rate and a rate at which one would expect work to be done very efficiently.

10. The invoice in the sum claimed is therefore payable by the Respondent.

Fees of Eagerstates – invoice dated 31 May 2013 - £360.00 - (For first Claim Notice)

11. The Respondent's objection here is that Eagerstates claimed fees of only £300.00 in another similar matter in March 2013.
12. In response to this, Eagestates said that there was more work involved in this property over and above the one where they only charged £300.00.
13. The time claimed on this matte by Eagerstates is three hours. This is more than the solicitors have claimed. The Counter-Notice in this case raised a single purely technical objection to the Right to Manage. Had the matter been pursued by the Respondent, The next step would have been an application to this Tribunal followed by a hearing.
14. The work set out in Eagerstates' invoice is first, notifying the freeholder and solicitor that a notice has been served. 20 minutes is claimed for sending 2 emails which appears to be wholly excessive.
15. Next there is a claim in the invoice for one hour for scanning a lease and for providing some information about the property and leaseholders. The provision of such information is justified. One hour in any routine small building should be more than sufficient for this work.
16. There is then a claim for a further hour's worth of work for preparation of RTM takeover. However, as stated above, an objection had been taken to the Claim Notice. It is far from certain as to whether there would be any handover. At this stage the Respondent company has not made any application to this Tribunal to challenge the counter-notice. Why this work is needed at this stage and why it takes another hour is not clear.
17. Finally this invoice contains a claim for a further 30 minutes for 'Consult and meet freeholder to advise of ramifications of RTM'. It is not clear why this work is done in addition to the solicitor's work.
18. I am conscious that the Respondent does not make any of the above points in challenging the invoice. I raise these issues however because I am far from certain as to the justification for the work claimed for even at a charge of £300.00. I do not accept therefore the explanation of further work being needed to justify an increased

charge from one property to another and accordingly I uphold the Respondent's objection.

*Fees of Conway and Co Solicitors – invoice dated 24 May 2013 - £578.96
- (For second Claim Notice)*

19. The Respondent's objection is that in respect of the second notice, the solicitors have all the background information. They are dealing with a notice in very similar terms to the first and so the work required of them is much more limited.
20. In response, the Applicant argues that less time was spent on this notice than on the first (2 hours and 7 minutes as opposed to 2 hours and 21 minutes) to reflect the fact that some information was already held on the matter.
21. I accept the point that less time was needed on the second notice. However a good deal of time still needs to be spent on the fine detail of the Claim Notice and Counter-Notice, this area of law is highly technical. The scope for saving of time is therefore limited.
22. On a general view however, I am not convinced that in the circumstance of this property, the time saving between the first and second notices is only 14 minutes. In particular I accept the Respondent's point that a claim for 10 minutes for a review of documents is excessive taking into account the work done on the previous notice and the time claimed for checking the second notice and preparing the second counter-notice.
23. To reflect that general and particular view, I therefore find that of the 2 hours and 7 minutes claimed, it would only be reasonable to allow 1 hour and 54 minutes.

Fees of Eagerstates – invoice dated 29 July 2013 - £300.00 - (For second Claim Notice)

24. The Respondent's objection to this invoice is that all the work claimed for is duplication from the first notice. Further, there is a claim for the hand delivery of the Counter-Notice, postal service having failed. This claim is for £50.00 whereas a courier would only charge £8.32.
25. In response, Eagerstates stated:-

When a second claim notice is received we have to carry out similar works to the first claim notice, but we have to review the file again to ensure that there is no new relevant information and also adjust the potential

cancellation dates in line with the new time scales of the second notice.

26. I consider that there would have been some, very limited work to be done by Eagerstates upon getting the second notice. In the light of the work done and claimed for in respect of the first notice, this could not reasonably amount to more than 30 minutes work (at £100.00 per hour).
27. As to delivery of the second notice, I accept that it was reasonable for this to be hand delivered in the light of the failure of postal service. It was not however reasonable to use the managing agent at a cost of £50.00 when the Respondent provided evidence that the cost of a courier from the office of Eagerstates to the subject property would be less than £10.00. I have allowed a charge of £20.00 to reflect the use of a courier and for the time of the managing agent in arranging the courier.

Costs

28. The Respondent claimed its costs of the application on the basis that the Applicant had behaved unreasonably in that;
- (a) it failed to give proper notice of the application to the Tribunal to determine costs
 - (b) it claimed unreasonable fees
29. I do not agree that there has been unreasonable behaviour such as would warrant an award of costs against the Applicant. It was entitled to make the application to the Tribunal and it is clear that costs were always going to be opposed. Whilst I have reduced the costs claimed by the Applicant, I do not believe that it was unreasonable conduct on the part of the Applicant to seek a determination of those costs.

Mark Martynski, Tribunal Judge