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

Case Reference : **MAN/OOBM/LCP/2016/0003**

Property : **36 – 50 (evens only) Marine Crescent,
Buckshaw Village, Chorley,
Lancashire PR7 7AP**

Applicant : **Marine Crescent RTM Company
Limited**

Representative : **Managing Estates Limited
trading as Estates Property
Management**

Respondent : **Runshaw Management Company
Limited**

Representative : **Bond Dickinson LLP**

Type of Application : **Application under section 88(4) of
the Commonhold and Leasehold
Reform Act 2002**

Tribunal Members : **Judge G. C. Freeman
Mr John Faulkner FRICS Expert
Valuer Member**

Date of Decision : **06 April 2017**

DECISION

DECISION

The reasonable and proper costs of the Respondent relating to this matter pursuant to sections 88 and 89 of the Act are £1824.70 and Land Registry fees of £54.00

BACKGROUND

1. The Applicant has made an application for the determination of the Respondent's reasonable costs under section 88(4) of the Commonhold and Leasehold Reform Act 2002 ("the Act").
2. The Respondent is incorrectly named as Adriatic Land 2 Limited in the application dated 21 November 2016. However the Respondent was identified as Runshaw Management Company Limited ("Runshaw") by its solicitors, Bond Dickinson, by letter dated 12 January 2017 and the Tribunal directs that this company is to be substituted as the Respondent. The Applicant is a Right to Manage Company.
3. No copy of a lease of the Property was lodged in support of the application or the response, so it is not clear from the papers whether the Respondent is "*landlord under a lease of the whole or any part of any premises*" or "*party to such a lease otherwise than as landlord or tenant*" for the purposes of section 88 (1) (a) or section 88 (1) (b) respectively of the Act. For the purposes of this decision the Tribunal have assumed that either one or other subsection applies.
4. The Applicant served two Claim Notices on the Respondent seeking the right to manage the Property on 20 April 2016 and 27 July 2016. Both Claim Notices were met by counter-notices on behalf of the Respondent. An application to this Tribunal was made following the second counter-notice, which was ultimately settled by the withdrawal of the second counter notice. This application arises out of the Respondent's claim for costs in connection with the Notices and counter notices.
5. The Tribunal directed that the matter was to be dealt with on the papers unless either party requested a hearing within 21 days of 23 December 2016. Neither party did so. The Tribunal convened on 16th March to determine the application.

THE LAW

6. Section 88 of the Act provides:

"(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 the 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 a First-tier Tribunal Property Chamber (Residential Property) 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 any agreement, be determined by a First-tier Tribunal Property Chamber (Residential Property)”

7. Section 89 of the Act provides:

“(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 provisions 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)”

DETERMINATION

8. The Tribunal noted that no determination by them had been made following the issue of the two Claim Notices. The Tribunal accepted the Respondent’s contention that the First Claim Notice was deemed to be withdrawn pursuant to section 87(1)(a) of the Act. The Applicant did not contest this contention.
9. The Applicant asserts that the second counter notice was withdrawn on 2nd November 2016. The Applicant subsequently acquired the right to manage on 1 December 2016.
10. The Tribunal determined that the Respondent was entitled to the costs of their professional advisors in connection with the first Notice by virtue of section 89(1)(a) of the Act (deemed withdrawal).
11. The Tribunal further determined that the Respondent was not entitled to the costs of their professional advisors in connection with the second Notice by virtue of section 88(3) of the Act because the second Notice had not been deemed withdrawn and the subsequent application to the Tribunal had not been dismissed.
12. The Tribunal then turned to the Statement of Costs provided by the Respondent’s solicitors. The Tribunal makes the following comments on that statement.
 - 12.1 The work was carried out between 23 May 2016 and 26 October 2016 which predates the withdrawal of the Respondent’s objections on 2 November 2016.
 - 12.2 Four fee earners worked on the file; two at Grade A, one at Grade B and one at Grade D. Perhaps surprisingly, the hourly rate claimed for the Associate is higher than that of the Managing Associate. (£235 per hour as opposed to £290 per hour).
 - 12.3 The Guideline hourly rate for a National Grade 1 fee earner is £217 per hour. The rates for a Grade B and Grade D fee earner are £192 per hour and £118 per hour respectively.
 - 12.4 No evidence was put forward that the work was unduly complicated or detailed. The Tribunal accordingly reduced the hourly rates of the fee earners to the guideline national rates. The amount charged for letters is reduced proportionately.

- 12.5 The Tribunal considered the time taken of one hour and a half on the counter notice to be excessive. This is reduced to one hour.
- 12.6 Taking the above into account produces a figure for costs of £1824.70 plus Land Registry fees of £54.00 as per the Appendix.
- 12.7 The costs claimed by the Managing Agents are wholly disallowed. Most of the work would have been, or should have been, duplicated by the Respondent's solicitors. No basis was put forward as to how the expenditure was incurred or for the amount claimed or how it was calculated. Most of it appears to relate to costs to be incurred for which there is no statutory jurisdiction to order payment.

Appendix

IN THE FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

CASE REFERENCE: MAN/OOBM/LCP/2016/0003

BETWEEN:

MARINE CRESCENT RTM COMPANY LIMITED

Applicant

AND

RUNSHAW MANAGEMENT COMPANY LIMITED

Respondent

**RESPONDENT'S STATEMENT OF COSTS PURSUANT TO AN ORDER OF COURT
DATED 23 DECEMBER 2016**

Description of Fee Earners

David Hambler	Managing Associate	(MA)	Grade A	£235.00 per hour	217
Elsbeth Moncrieff	Associate		Grade A	£200.00 per hour	217
Jon Farthing	Associate	(A)	Grade B	£270.00 per hour	192
Janet Anderson	Paralegal	(PL)	Grade D	£180.00 per hour	118

All work undertaken by Elspeth Moncrieff unless otherwise stated.

Attendances on Respondent

(MA) 3 Letters written	185.00 (4)	359.00	
10 Letters written	200.00 217	485.00	

Attendances on Applicant

(A) 3 Letters written	87.50 65.10	130.20	
3 Letters written	87.00 65.10	484.50	688.50

Attendances on Documents

See attached schedule

Engaged in total:			
(MA) 1 hr 24 mins	455.00 303.80		
4 hrs 54 mins	1,421.00 954.80		
(PL) 12 mins	30.00 23.40	1,912.00	1,282.20

Total Profit Costs

Less: Restriction to amount billed to respondent

2,581.50	
(91.50)	
2,490.00	1,770.70

Disbursements

Land Registry fees

54.00

Total Costs Claimed

£1824.70
£2,544.00

The cost stated above do not exceed the costs which the respondent is liable to pay in respect of the work which this estimate covers.

Dated: 11 January 2017

Signed:
Bond Dickinson LLP
Solicitors for the respondent