



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

Case Reference : **BIR/OOCN/LRM/2015/0002**

Property : **46 – 48 Handsworth Wood Road,
Birmingham,
West Midlands, B20 2DT**

Applicant : **46 – 48 HWR (RTM) Ltd**

**Applicant's
Representative** : **Hill Hofsetter Ltd, Solicitors**

Respondent : **Blue Property Investment (UK) Ltd**

**Respondent's
Representative** : **Brady Solicitors**

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

Tribunal Members : **Mr G S Freckelton FRICS (Chairman)
Mr P J Hawksworth LLB**

**Date and venue of
Original Hearing** : **Monday 8th February 2016.
As neither party requested a hearing
the matter was dealt with by a
Paper Determination.**

Date of Decision : **16th February 2016**

DECISION

Background

1. On 9th December 2015 the Tribunal issued a Decision in respect of Application BIR/OOCN/LRM/2015/0002 which was an Application under Chapter 1, Section 84(3) of the Commonhold & Leasehold Reform Act 2002 (“the 2002 Act”) for a determination that on the relevant date, the Applicant was entitled to acquire the Right to Manage (“RTM”) of the property. The Tribunal reserved the question of legal costs pending its decision on the RTM issue.
2. The Tribunal decided on the 9th December last that the RTM had not been acquired (a decision which has not been appealed) and subsequently, therefore, the Tribunal issued Directions in respect of costs on 8th December 2015, following which, submissions were made on behalf of both parties.

Submissions

3. Both parties provided written submissions to the Tribunal. The only matter for determination by the Tribunal is the amount of costs payable by the Applicant under the provisions of the 2002 Act.
4. The costs concerned are set out in the Respondent’s Detailed Statement of Costs enclosed with the letter from Brady Solicitors, the Respondent’s Solicitors dated 17th December 2015 and totalling £6975.60.
5. The costs above are detailed as under:

Descriptions of fee earners	Rate
Grade	
Grade B	£ 250.00
Grade D	£ 155.00

Claim

Schedule of work on documents

Review Claim Notice

Grade B 0.3 hour @ £250.00 p/h	
Grade D 2.5 hour @ £155.00 p/h	£ 462.50

Prepare Counter Notice

Grade B 0.3 hour @ £250.00 p/h	
Grade D 1.0 hour @ £155.00 p/h	£ 230.00

Reviewing Tribunal Application

Grade D 0.5 hour @ £155.00 p/h	£ 77.50
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Preparing Respondent’s Reply to Applicant’s case

Grade B 0.5 hour @ £250.00	
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Grade D 3.5 hour @ £155.00	£ 667.50
<u>Instructions to Counsel</u>	
Grade D 1.3 hours @ £155.00	£ 201.50
<u>Further Instructions to Counsel</u>	
Grade D 0.3 hour @ £155.00	£ 46.50
Sub Total	£ 1685.50
Statement of Costs (summary assessment)	£1567.50
Counsel's Fees	£ 2500.00
VAT on Solicitors and Counsel's Fees @ 20%	£ 1150.60
<u>Disbursements</u>	
Office Copy Entries (not subject to VAT)	£ 72.00
TOTAL	<u>£6975.60</u>

6. In response to the Respondent's submission the Applicant submitted that in its opinion the hourly rate put forward by the Respondent's solicitors was above the rate set out in the Senior Courts Costs Office "Guide to Summary Assessment of Costs".
7. It was submitted that, using the Guide, the rate for a Grade B fee earner is £192.00 per hour and for a Grade D fee earner £118.00 per hour in the National One Banding. The Applicant submitted that if the guideline rates were applied then the statement of costs should be reduced by the sum of £773.00.
8. The Applicant submitted that it had received invoices directly from the Respondent, copies of which were attached to the written submission. These showed that VAT had been included in the claim although no evidence had been provided to the Applicant to indicate that the Respondent is not registered for VAT. It was therefore submitted that there should be no claim for VAT included in the claim which would again reduce the costs.
9. The Applicant also submitted that the amount shown in the invoices copied to them did not mirror the amounts claimed in the Statement of Costs.
10. In conclusion, the Applicant submitted that it did not act unreasonably in bringing its claim for the RTM and that the Tribunal found the Applicant's claim failed only on the basis of the description of the property in the RTM claim. However, the Applicant acknowledged that the Tribunal did not accept their arguments at the hearing regarding flat 9.

The Law

The question of whether costs can be claimed is covered by s.88 of the 2002 Act.

Section 88 of the Act states:

- (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 a leasehold valuation 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 a leasehold valuation Tribunal.

The Tribunal's Consideration and Determination

11. The Tribunal first considered the level of costs set out in the current Senior Court Costs Office Guide on hourly rates as submitted by the Applicant. The Tribunal does not consider these rates to be appropriate now for private client work if the Applicant is to be *'personally liable for all such costs'* as provided by Section 88 of the Act. In practice, a private client of a law firm would inevitably be charged more than the Costs Office guideline rate for private work, especially, as the guideline rates have not been adjusted since 2010.
12. The Tribunal also considered the level of costs submitted by the Respondent and determined that the level of costs charged was in excess of what would reasonably be expected for a provincial firm of Solicitors.

13. No reference was made by either party to the level of costs for a Grade A fee earner although the 'Schedule of work done on the documents' referred to some work being carried out by a Grade A fee earner.
14. The Tribunal then considered the level of fees it considered appropriate for Grade B and Grade D fee earners and determined that £225.00 per hour was appropriate for a Grade B fee earner and £125.00 for a Grade D fee earner.
15. The Tribunal proceeded to consider the work undertaken on behalf of the Respondent by Brady Solicitors. With regard to the '*Schedule of work done on the documents*' the Tribunal noted that 1.1 hours was claimed by a Grade A fee earner and 9.1 hours was claimed by a Grade B fee earner.
16. Having considered the case, the Tribunal determined that it was a relatively straightforward RTM matter, the issue being centred on whether the building concerned satisfied the statutory requirement of being a self-contained building or part of a building in the light of guidance to be obtained from recent case law. Thus, the Tribunal reduced the overall time spent by Brady solicitors to 7 hours.
17. As no submissions had been made by the parties in respect of the Grade A fee rate, the Tribunal disregarded this element of the claim as it considered that the matter could easily have been dealt with by Grade B and Grade D fee earners especially as Counsel was instructed to represent the Respondent at the hearing and inspection.
18. The Tribunal noted that the figures on the 'Schedule of work done on the documents' claim did not equate to the figures claimed. The Tribunal also noted that item 4 on the Schedule, 'Preparing Respondent's Reply to Applicants case' was quoted as being carried out by a Grade B fee earner whereas the Reply itself, submitted to the Tribunal, was actually completed and signed by Sam Andrews, a Trainee Solicitor who was thus, a Grade D fee earner. The Tribunal, therefore, determined to allow 3 hours at Grade D for this item with the remaining 4 hours being at a Grade B both at the rates set out in paragraph 14 above.
19. The Tribunal noted that the amount claimed for Counsel's fees was £2500.00 whereas there were only two invoices from Counsel totalling £2000.00. The Tribunal therefore allows £2000 for Counsel's fees.
20. The Tribunal noted that VAT was shown on the Statement of Costs submitted by Brady solicitors but that invoices copied by the Applicant to the Tribunal, as being from the Respondent to the Applicant, do not refer to VAT as a separate item.

21. The Tribunal determines that if the Respondent is registered for VAT and can re-claim the VAT on fees paid to Brady Solicitors and Counsel then it has suffered no loss and the Applicants are not required to pay VAT. If however the Respondent is not registered for VAT and cannot re-claim the VAT on fees as an input for VAT purposes, then the Applicant shall be liable to pay VAT incurred on fees paid by the Respondent.
22. Having determined a reasonable cost for the fee earners and a reasonable time for the work to be undertaken, the Tribunal therefore determines the costs as follows:

Schedule of work done on the documents

Grade D Fee earner 3 hours @ £125.00	£ 375.00
Grade B Fee earner 4 hours @ £225.00	£ 900.00

Statement of Costs

Attendance on Respondent

Grade B Fee earner 1 hour @ £225.00	£ 225.00
Grade D Fee earner 4.2 hours @ £125.00	£ 525.00

Attendance on opponents and others

Grade D Fee earner 4.3 hours @ £125.00	<u>£ 537.50</u>
Sub Total	£ 2562.50

Counsels Fees	£ 2000.00
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Office Copies	<u>£ 72.00</u>
Total	<u>£4634.50</u>

Plus VAT on Solicitors and Counsels Fees (if applicable)	<u>£ 912.50</u>
Total including VAT (if applicable)	<u>£5547.00</u>

The Tribunal thus determines that the reasonable legal costs of the Respondent in dealing with the matters set out in section 88 of the Act which are recoverable from the Applicant are the sum of **£4634.50** excluding VAT or **£5547.00** including VAT if the Respondent is not registered for VAT.

23. With regard to the invoices submitted by the Respondent to the Applicant and included at Exhibit 1 of the Applicant's submission dated 21st January 2016 there is no liability under Section 88 of the 2002 Act on the Applicant to pay the sums set out in those invoices which should now be withdrawn and replaced if necessary, with invoices setting out the amounts determined by the Tribunal above.

Appeal

24. Any appeal against this Decision must be made to the Upper Tribunal (Lands Chambers). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this Decision, (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Mr G Freckelton FRICS
Chairman
First-Tier Tribunal Property Chamber (Residential Property)