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

Case Reference : **LON/00/BJ/LCP/2013/0013**

Property : **27-29 Balham High Road, London,
SW12 9AL**

Applicant : **Dunward properties Ltd**

Representative : **J B Leitch, Solicitors**

Respondent : **27-29 Balham High Road RTM Co
Ltd**

Representative : **Cononbury Management**

Type of Application : **Section 88(4) of the Commonhold
& Leasehold Reform Act 2002**

Tribunal Members : **Judge I Mohabir**

**Date and venue of
Hearing** : **10 Alfred Place, London WC1E 7LR**

Date of Decision : **28 August 2013**

DECISION

Introduction

1. This is an application made by the Applicant under section 88 of the Commonhold and Leasehold Reform Act 2002 (as amended) (“the Act”) for a determination of the costs payable by the Respondent as a consequence of giving a claim notice dated 24 October 2012.
2. By a counter notice dated 27 November 2012, the Applicant denied that the Respondent was entitled to acquire the right to manage the property known as 27-29 Balham High Road, London, SW12 9AL.
3. By an application dated 25 January 2013, the Respondent made an application to the Tribunal seeking a determination that it was entitled to acquire the right to manage.
4. On 4 March 2013, the Respondent withdrew the application on the basis that the claim notice, in error, had included houses and spaces and was defective.
5. By an application dated 10 June 2013, the Applicant made this application to the Tribunal seeking a determination in relation to the costs it had incurred in responding to the Respondent’s abortive application.
6. On 11 July 2013, the Tribunal issued Directions in this case, which included a direction that the matter be dealt with by a paper determination. These have been complied with by the Applicant. The Respondent has failed to comply with the Directions at all or participated in the proceedings.
7. The costs claimed by the Applicant are in the sum of £4,493.20 and are set out in the statement of costs annexed hereto. The Applicant’s submissions are set out in its statement of case dated 23 July 2013.

The Law

4. The statutory test to be applied in relation to the costs that may be recovered by a landlord as a consequence of a claim notice given by the (RTM) company is set out in section 88(2) of the Act. This provides:

“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.”

Decision

5. The Tribunal’s determination in this matter took place on 28 August 2013 and was made solely on the basis of the statement of case and other documentary evidence filed by the Applicant pursuant to the Tribunal’s Directions. Although the Respondent has not challenged the Applicant’s costs, it is nevertheless incumbent on the Tribunal to determine the reasonableness of the costs.

Fee Earners

6. Two fee earners were involved in the conduct of the case. These were Mr Sweeney, a Senior Solicitor, whose hourly rate is £192 plus VAT, as a Grade B fee earner. Miss Stukley, a Litigation Paralegal, attendance is also claimed at £118 plus VAT, as a Grade D fee earner. These rates are allowed as claimed.
7. All of the costs set out in the Applicant’s statement of costs as allowed as reasonable, save for the following matters

Attendance on Applicant

Letters Out/Emails

7. The Tribunal considered that a total attendance of 7.1 hours by Mr Sweeney to be excessive and allowed 4 hours in the sum of £768 as reasonable.

Attendance on Others

Letters Out/Emails

8. The attendance of £59 claimed in respect of Miss Stukley is disallowed on the basis that an attendance of £153.60 has been claimed by Mr Sweeney.

Work Done on Documents

9. The Tribunal considered that the attendance of £59 claimed for obtaining and storing of Land Registry Office Copies by Miss Stukley was unreasonable and was disallowed.
10. The perusal and consideration of the Respondent's corporate documents was considered to be excessive and 1 hour at £192 was allowed as reasonable.
11. The attendance of 1.5 hours claimed for the counter notice was excessive. The document itself is no more than a prescribed form and required minimal completion. Moreover, Counsel's opinion had been obtained in relation to the claim form. 1 hour at £192 was allowed as reasonable.
12. The attendance for preparing Instruction to Counsel was excessive and 1 hour at £192 was allowed as reasonable.
13. The Applicant's statement of case is comprised of barely more than 2 pages and does no more than recite the bare facts of this matter. The preparation time of 2 hours cannot be justified. An attendance of 1 hour at £192 was allowed as reasonable.
14. An attendance of 4.5 hours claimed in respect of Miss Stukley for the preparation of the hearing bundles is excessive. Having regard to the totality of the bundles, an attendance of 2 hours was considered to be reasonable and the sum of £236 was allowed.

15. The total costs allowed in relation to the work done on documents was £1,122.

16. Accordingly, the Applicant's total costs determined by the Tribunal to be reasonable and payable by the Respondent is £2,851.40 plus VAT of £570.29 (at 20%) plus the disbursement of £38 for land Registry fees, totalling £3,459.69.

Judge I Mohabir

28 August 2013

Statement of Costs

In the London Residential Property First-Tier Tribunal	
Case Reference	LON/00BJ/LCP/2013/0013

Case Title: Dunward Properties Limited
v 27-29 Balham High Road RTM Company Limited

Applicant's Statement of Costs for the hearing on 28 August 2013

Description of fee earners*

(a) <i>(name) (grade) (hourly rate claimed)</i>	Paul Sweeney, Senior Solicitor (LLB) – Grade B – £192.00 plus VAT
(b) <i>(name) (grade) (hourly rate claimed)</i>	Lisa Stukley, Litigation Paralegal (CILEx Level 3) – Grade D – £118.00 plus VAT
(c) <i>(name) (grade) (hourly rate claimed)</i>	
(d) <i>(name) (grade) (hourly rate claimed)</i>	

Attendances on Applicant

Personal attendances

(a) <i>(number)</i>		hours at £		£	
(b) <i>(number)</i>		hours at £		£	
(c) <i>(number)</i>		hours at £		£	
(d) <i>(number)</i>		hours at £		£	

Letters out/emails

(a) <i>(number)</i>	7.1	hours at £	192.00	£	1,363.20
(b) <i>(number)</i>	0.5	hours at £	118.00	£	59.00
(c) <i>(number)</i>		hours at £		£	
(d) <i>(number)</i>		hours at £		£	

Telephone

(a) <i>(number)</i>	1.1	hours at £	192.00	£	211.20
(b) <i>(number)</i>		hours at £		£	
(c) <i>(number)</i>		hours at £		£	
(d) <i>(number)</i>		hours at £		£	

Attendances on opponents (including negotiations):

Personal attendances

(a) (number)		hours at £		£	
(b) (number)		hours at £		£	
(c) (number)		hours at £		£	
(d) (number)		hours at £		£	

Letters out/emails

(a) (number)	2.3	hours at £	192.00	£	441.60
(b) (number)		hours at £		£	
(c) (number)		hours at £		£	
(d) (number)		hours at £		£	

Telephone

(a) (number)		hours at £		£	
(b) (number)		hours at £		£	
(c) (number)		hours at £		£	
(d) (number)		hours at £		£	

Attendance on others:

Personal attendances

(a) (number)		hours at £		£	
(b) (number)		hours at £		£	
(c) (number)		hours at £		£	
(d) (number)		hours at £		£	

Letters out/emails

(a) (number)	0.8	hours at £	192.00	£	153.60
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(b) (number)	0.5	hours at £	118.00	£	59.00
(c) (number)		hours at £		£	
(d) (number)		hours at £		£	

Telephone

(a) (number)	0.5	hours at £	192.00	£	96.00
(b) (number)		hours at £		£	
(c) (number)		hours at £		£	
(d) (number)		hours at £		£	

Site inspections etc.

(a) (number)		hours at £		£	
(b) (number)		hours at £		£	
(c) (number)		hours at £		£	
(d) (number)		hours at £		£	

Work done on documents, as set out in schedule:

£2109.60

Attendance at hearing:

(a) (number)		hours at £		£	
(b) (number)		hours at £		£	
(c) (number)		hours at £		£	
(d) (number)		hours at £		£	
(e) Fixed costs				£	

(a) (number)		hours travel and waiting time £		£	
(b) (number)		hours travel and waiting time £		£	
(c) (number)		hours travel and waiting time £		£	
(d) (number)		hours travel and waiting time £		£	

Sub Total £ 4493.20

* 4 grades of fee earner are suggested:

- (A) Solicitors with over eight years post qualification experience including at least eight years litigation experience.
- (B) Solicitors and legal executives with over four years post qualification experience including at least four years litigation experience.
- (C) Other solicitors and legal executives and fee earners of equivalent experience.
- (D) Trainee solicitors, para legals and other fee earners.

“Legal Executive” means a Fellow of the Institute of Legal Executives. Those who are not Fellows of the Institute are not entitled to call themselves legal executives and in principle are therefore not entitled to the same hourly rate as a legal executive.

Brought forward £ 4493.20

Counsel's fees (name) (year of call)

Fee for [advice/conference/documents] £

Fee for hearing £

Other expenses

Court fees £

Others (give brief description) £ 38.00

Total £ 4531.20

Amount of VAT claimed on solicitors and counsel's fees £ 906.24

on other expenses £

Grand Total £ 5437.44

The costs stated above do not exceed the costs which the Applicant is liable to pay in respect of the work which this statement covers. Counsel's fees and other expenses have been incurred in the amounts stated above and will be paid to the persons stated.

Applicant
Dunward Properties Limited

J B Leitch

Signed

Dated

JONATHAN B J LEITCH

Name of Partner signing

J B Leitch LLP

Name of firm of solicitors

