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

Case reference : CAM/22UG/LCP/2014/0004

Property : 114-132 (evens) Gavin Way,
Colchester,
Essex CO4 9FP

Applicant : Gavin Way RTM Co. Ltd.

Respondent : Hayne Securities Ltd.

Date of Application : 25th September 2014

Type of Application : To determine the costs payable on
service of RTM notices (Section 88 of
the Commonhold and Leasehold
Reform Act 2002 ("the Act"))

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

DECISION

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1. The reasonable legal costs of the Respondent in dealing with the matters set out in Section 88 of the Act are £1,042.00 plus VAT on profit costs but subject to the consideration of whether VAT is recoverable by the Respondent. If it is, no VAT is recoverable from the Applicant.

Reasons

Introduction

2. The Applicant has served a Claim Notice claiming the right to manage the property. Unfortunately, what happened after that is not explained in this application but the Applicant agrees that it is liable to pay the Respondent's legal costs arising from the service of such notice.
3. A statement of costs dated 3rd November 2014 was filed by the Respondent's solicitors, Messrs. Altermans in the sum of £1,332.00 plus VAT for dealing with the Claim Notice.
4. This application was made on the 25th September 2014. A directions order was issued on the 7th October 2014. This ordered the Respondent to serve full details of its solicitors' costs and the Applicant was then ordered to serve any objections. The Tribunal said that it

was content for the matter to be dealt with on a consideration of the papers to include the parties' submissions and it would do so on or after 25th November 2014. This was subsequently extended to the 9th December. The parties were told that if they wanted an oral hearing, they could apply for one and it would be arranged. No such request was received.

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)

Conclusions

8. The Upper Tribunal has said in several recent cases that the Tribunal process is adversarial and Tribunals should therefore be cautious about raising issues which are not taken by parties. In this case, for example, there is only one objection raised by the Applicant namely:-

"the total claim for work done on documents by the grade C fee earner is excessive. A reasonable allowance in respect of perusing and considering the claim notice, 10 leasehold titles and 2 title plans, the RTM Company's Articles of Association, drafting detailed advice to the respondent, drafting a counter notice, corresponding with the Respondent and corresponding with the Applicant's agent is 2.2 hours. The conclusion is based upon our experience with the landlord's costs in other similar matters. By way of example we attach a copy of landlord's solicitors invoices (Exhibit's marked "A" and "B") received in respect of very similar work"

9. The Respondent's solicitors' response, in effect, is to say that the exhibits are not comparing like for like and the costs claimed are reasonable. The part of the claim for costs being referred to is:-

*"1.2 hours perusing and considering Claim Notice
1 hour perusing and inspecting 10 leasehold titles and 2 title plans, including ordering them from the Land Registry
0.4 hours perusing and considering the RTM company's Memorandum of Association and Articles of Association*

1.1 hours drafting detailed advice to client regarding the Claim Notice

0.5 hours drafting the Counter-notice

0.8 hours corresponding with the director of Hayne Securities Ltd.

0.9 hours corresponding with the RTM company/its agent”

10. Neither the charging rate nor the remainder of the work and disbursements are challenged and they will therefore be allowed as claimed.
11. The first point to make is that this is specialised work. However, the relevant law is set out in relatively few sections of the Act and a client would not expect to have to pay its solicitor to learn the relevant law. No-one has sent a copy of the Claim Notice to the Tribunal but they are relatively straightforward documents and, to the trained eye, should take no longer than 30 minutes to consider in detail if separate time is claimed for checking the names of the members against the titles to see the identities of the qualifying tenants.
12. Arranging for 10 leasehold titles and 2 filed plans to be obtained should not take long as the ordering itself should be delegated to a non fee earner. Looking at the said titles when they arrived and comparing the names with the members etc. should really not take very long either. The Tribunal allows 45 minutes in total.
13. All the remaining times claimed seem to the Tribunal to be reasonable which means that the time claimed of 5.9 hours (£1,180) is reduced by 1.45 hours (£290). The total claim for profit costs is therefore allowed at £995 plus the claimed disbursements of £47 making a total of £1,042.00.
14. VAT is only payable by the Applicant if the Respondent 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 Respondent even though the costs are being paid by the Applicant. VAT on these fees is recoverable by the Respondent if it is registered for VAT purposes and it would therefore be unfair for the Applicant to have to pay this in those circumstances.

...
Bruce Edgington
Regional Judge
9th December 2014