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

Case Reference : **LON/00 BJ/LCP/2013/0020**

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 : **Canonbury Management**

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

Tribunal Members : **Judge Pittaway
Mr P Casey**

Date of Decision : **4 December 2013**

**Determination without an oral
hearing in accordance with
Regulation 31 The Tribunal
Procedure (First-tier Tribunal)
(Property Chamber) Rules 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 served on or around 14 April 2013.
2. By a counter notice dated 13 May 2013, the Applicant opposed the Respondent's claim to acquire the right to manage the Property.
3. The Respondent failed to make an application to the Tribunal for a determination that it was entitled to acquire the right to manage the Property within two months beginning with the day on which the counter notice was given.
4. The claim notice was therefore deemed to have been withdrawn under section 87 of the Act.
5. The Applicant has applied to the Tribunal for the Applicant's in connection with the Claim Notice and the Costs Application in the sum of £3,439.50 exclusive of VAT.

Decision of the Tribunal

Allowed Costs

The Tribunal allow the following costs:

- | | | |
|----|--------------------------|------------------------------|
| 1. | Attendances on opponents | £800.00 plus VAT |
| 2. | Attendances on Applicant | £626.00(as claimed) plus VAT |
| 3. | Work done on documents | £584.00; plus VAT; and |
| 4. | Land Registry fees | £38 |

Reasons for the Tribunal's Decision

1. The Tribunal's determination in this matter took place on 4 December 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.
2. Section 88 (3) of the Act provides that an RTM company is liable for any costs which the landlord incurs as a party to proceedings before a Tribunal only if the Tribunal dismisses the application that the RTM company is entitled to acquire the right to manage. No such proceedings took place.
3. Section 89(2) of the Act provides that the liability of the RTM company under section 88 of the Act for costs incurred by the landlord where the

claim ceases is a liability for the cost incurred down to the time the claim ceased.

4. In this case because the RTM company did not apply under section 84(3) of the Act for a determination by a Tribunal that it was entitled to acquire the right to manage (despite the landlord's counter notice denying the right) the claim was deemed to be withdrawn by the end of the period of two months beginning on the date when the counter notice was given.

5. Accordingly the Tribunal determines that the Applicant is not entitled to any of the costs associated with bringing this application to the Tribunal for a determination of its costs.

6. Hourly rates

Two fee earners were involved in the conduct of the case. These were Mr Sweeney, a Senior Solicitor, whose hourly rate is £217 plus VAT, as a Grade B fee earner, and Miss Stukley, a Litigation Paralegal, whose hourly rate is £118 plus VAT, as a Grade D fee earner. These rates are allowed as claimed.

7. Costs allowed

All of the costs set out in the Applicant's statement of costs as allowed as reasonable, save for the following matters

7.1 Attendance on Opponents

While some of the correspondence was prior to the date of deemed withdrawal some clearly took place after that date. It is not entirely clear from the bundle to which period the costs relate. The Tribunal consider a total attendance of £800 would be reasonable in the circumstances.

7.2 Attendance on Others

These appear to relate entirely to the application in respect of costs to this Tribunal and are disallowed in total.

7.3 Work Done on Documents

The Tribunal considered that the attendance of £108.50 claimed for obtaining and storing of Land Registry Office Copies by Mr Sweeney was unreasonable and was disallowed.

Given that this claim followed shortly after a previous claim the perusal and consideration of the Respondent's corporate documents was in part duplication and £150 is allowed as reasonable.

7.4 Costs associated with this application

The Applicant's statement of case and costs associated with this application are disallowed.

8. The Law

The relevant statutory provisions are set out in the Appendix to this decision.

Judge Pittaway

4 December 2013

Appendix The Law

Section 84 Counter-notices

(1) A person who is given a claim notice by a RTM company under section 79(6) may give a notice (referred to in this Chapter as a "counter-notice") to the company no later than the date specified in the claim notice under section 80(6).

(2) A counter-notice is a notice containing a statement either—

(a) admitting that the RTM company was on the relevant date entitled to acquire the right to manage the premises specified in the claim notice, or

(b) alleging that, by reason of a specified provision of this Chapter, the RTM company was on that date not so entitled,

and containing such other particulars (if any) as may be required to be contained in counter-notices, and complying with such requirements (if any) about the form of counter-notices, as may be prescribed by regulations made by the appropriate national authority.

(3) Where the RTM company has been given one or more counter-notices containing a statement such as is mentioned in subsection (2)(b), the company may apply to a leasehold valuation tribunal for a determination that it was on the relevant date entitled to acquire the right to manage the premises.

(4) An application under subsection (3) must be made not later than the end of the period of two months beginning with the day on which the counter-notice (or, where more than one, the last of the counter-notices) was given.

Section 87 Deemed withdrawal

(1) If a RTM company has been given one or more counter-notices containing a statement such as is mentioned in subsection (2)(b) of section 84 but either—

(a) no application for a determination under subsection (3) of that section is made within the period specified in subsection (4) of that section, or

(b) such an application is so made but is subsequently withdrawn,
the claim notice is deemed to be withdrawn.

(2) The withdrawal shall be taken to occur—

(a) if paragraph (a) of subsection (1) applies, at the end of the period specified in that paragraph, and

(b) if paragraph (b) of that subsection applies, on the date of the withdrawal of the application.

Section 88 Costs: general

(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.

Section 89 Costs where claim ceases

(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 provision 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.