



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

Case Reference : LON/00BD/LCP/2018/0006

Property : Evesham Court, TW10 6HJ

Applicant : Proxima GR Properties Ltd

Representative : Estates & Management Ltd

Respondent : Evesham Court Richmond RTM Co Ltd

Representative : Redmans solicitors

Type of Application : Costs on exercise of right to manage

Tribunal : Judge Nicol

Date of Decision : 10th September 2018

DECISION

The Tribunal has determined that the amount payable to the Applicant by the Respondent in respect of costs under section 88 of the Commonhold and Leasehold Reform Act 2002 totals £709.

Reasons for Decision

1. The Applicant is the freeholder of the subject property. By a Notice sent by letter dated 8th February 2017 the Respondent sought to exercise their right to manage under the Commonhold and Leasehold Reform Act 2002 ("the Act").

2. By letter dated 16th March 2017 Estates & Management Ltd replied on behalf of the Applicant enclosing a counter-notice objecting to a number of aspects of the claim. However, by letter dated 5th April 2017, they withdrew the counter-notice and acknowledged that the right to manage would be acquired on the date in the original claim notice, namely 1st July 2017. The letter was accompanied by a bill of costs for £1,300 for an in-house solicitor at Estates & Management Ltd plus a disbursement of £9.
3. The parties engaged in email correspondence about the liability for and the quantum of the costs but were unable to resolve the dispute. Therefore, the Applicant has sought an order from the Tribunal in accordance with section 88(4) of the Act (the legislation is appended to this decision).
4. In accordance with the Tribunal's directions dated 28th June 2018 the Tribunal has been provided with a bundle of relevant documents and has proceeded to determine the application on the papers, without a hearing.
5. The Respondent objects to their liability for the costs on the basis that there is allegedly a breach of the indemnity principle encompassed in section 88(2) of the Act. Estates & Management Ltd spoke in terms of the Applicant being their "client" whereas, in fact, they are associated companies and Estates & Management Ltd represented the Applicant without a retainer or formal contract.
6. In *Lloyds Bank Ltd v Eastwood* [1975] Ch 112 the Court of Appeal held that the costs of a salaried solicitor may be claimed in the same way as an independent solicitor. In the Tribunal's opinion, there is no objection in principle to the use of Estates & Management Ltd's services; the indemnity principle does not require professionals to be at arm's length from their clients. The relevance of the lack of a retainer or contract is not to liability but evidential – without evidence as to rates of pay and terms of payment, the Applicant may find it more difficult to establish what their bill may consist of.
7. In relation to quantum, the Respondent makes two objections. Firstly, it is said that the hourly rate is too high. Estates & Management Ltd say their employee, Ms Charmaine McQueen Price, should be charged as a Grade A fee earner at £250 per hour, although no evidence has been provided as to whether or how this relates to the actual cost of her services. The Applicant's Response to the Respondent's Statement of Case says they employ solicitors with specialist knowledge but no indication is given of Ms McQueen Price's qualifications, knowledge or experience.
8. The Applicant's Response also points to the Respondent's use of a Grade A fee-earner but this fails to take into account the purpose of the

current exercise. Any party may use a professional's services at any price they like but that does not mean the other party must pay for that choice. The paying party's liability is limited by section 88(1) to "reasonable" costs, subject to the indemnity principle in section 88(2).

9. This appears to have been a standard RTM case. The Applicant eventually acknowledged the Respondent's right to manage and no attempt has been made to justify or explain their initial approach of strongly objecting on a number of grounds. It is understandable that a landlord would want a senior practitioner available in case there are aspects which require such input but most of a standard RTM case can be handled by a fee-earner at a lower grade. Both parties have referred to the guideline rates used by the courts but ignored the possibility of using a team of practitioners of different grades working together.
10. In the circumstances, the Tribunal is not satisfied that the hourly rate of £250 is the correct one and determines that, if they had to pay themselves, the Applicant would have paid no more than £200 per hour.
11. The Respondent's second objection is to the time claimed. Estates & Management Ltd do not use time recording software and so must have compiled their costs breakdown some time after the event. The total time claimed is 5 hours and 12 minutes, with each element rounded up to the nearest 6 minutes.
12. This assessment is a summary process and going through every element is disproportionate. Doing the best it can, and taking a step back, it appears to the Tribunal that the time claimed is excessive and 3½ hours would be more appropriate.
13. For the above reasons, the Tribunal determines that the Applicant is entitled to recover £700 and the disbursement of £9.

Name: NK Nicol

Date: 10th September 2018

Appendix of relevant legislation

Commonhold and Leasehold Reform Act 2002

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 the appropriate 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 the appropriate tribunal.