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

Case Reference : LON/OOAL/LCP/2013/0011

Property : 7 to 10 Amhurst Walk, London
SE28 8RJ

Applicant : Holding and Management
(Solitaire) Ltd.

Representative : Estates and Management Ltd.

Respondents : Amhurst 7-10 RTM Company Ltd
Mr Imran Khan (Flat 7)
Mr Sean Murphy (Flat 8)
Mr Steven Davies (aka Davis) (Flat
9)
Mr Christopher Davies (aka Davis)
(Flat 10)

Representative : None notified

Type of Application : S88(4) of the Commonhold &
Leasehold Reform Act 2002

Tribunal : Judge Goulden

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

Date of Decision : 8 July 2013

DECISION

Ref: LON/OOAM/LCP/2013/0011

1. The Applicant, Holding and Management (Solitaire) Ltd. has, through its agents, Estates & Management Ltd., applied to the Tribunal by an application under S88(4) of the Commonhold and Leasehold Reform Act 2002 (“the Act”) for a determination of the Respondents’ liability to pay the Applicant’s costs and the amount thereof. The application was dated 17 April 2013 and was received by the Tribunal on 22 April 2013. The Respondents are Amhurst 7-10 RTM Company Ltd., Mr Imran Khan (Flat 7), Mr Sean Murphy (Flat 8), Mr Steven Davis (aka Davis) (Flat 9) and Mr Christopher Davies (aka Davis)(Flat 10).
2. The application stated that *“The respondent is a right to manage..company created for the purposes of exercising the right to manage leasehold properties and serving notices under S79 of the Act in respect of the property”*.
3. By a Claim Notice dated 27 March 2012 under Schedule 2 of the Act, the Respondent RTM Company stated that it intended to acquire the right to manage Flat 7-10 Amhurst Walk, London SE28 8RJ (“the premises”) on 30 July 2012. A copy of the Claim Notice was provided.
4. By a Counter Notice dated 25 April 2012, the Respondent’s right to acquire the premises was denied for the reasons as stated therein. A copy of the Counter Notice was provided.
5. The Applicant’s representatives stated that since no application had been made to the Tribunal within two months of the counter notice, the claim was deemed withdrawn.
4. In respect of costs, written submissions dated 17 April 2013 were received from Mr R J Sandler, in house Solicitor, Estates & Management Ltd.
6. Directions of the Tribunal were issued on 29 April 2013 without an oral Pre Trial Review in which it was stated, inter alia *“the 1st Respondent RTM company is said to have been dissolved. The remaining Respondents were listed as being members of the RTM company in its claim notice”*.
7. The Applicant had requested a paper determination, and the Tribunal’s Directions had listed the matter for a paper hearing unless any party had requested an oral hearing. No application had been made for on behalf of any of the Respondents for an oral hearing. This matter was therefore determined by the Tribunal by way of a paper hearing which took place on Monday 8 July 2013.
8. The Tribunal did not consider that an inspection of the property would be of assistance and would be a disproportionate burden on the public purse.

The Applicant's case

9. In written submissions dated 17 April 2013, Mr R J Sandler, in house Solicitor, Estates & Management Ltd, and in support of the application for Estates & Management ("E & M") costs totalling £300 stated, inter alia, "*E & M is not and did not purport to be a firm of solicitors. E & M provides professional services to landlords, including the Applicant, inter alia dealing with right to manage claim notes. E & M employs...Mr Richard Sandler who is a grade A fee earner admitted as a solicitor in October 1972. As such, Mr Sandler is an employee of E & M, and is one of their in house solicitors. E & M provided professional services to the Applicant and dealt with right to manage claim notice served on the Applicant by the Respondent. The relevant work was carried out for E & M, by E & M's employees.....The Applicant was liable to pay E & M and Peverel Property Management for the said professional services rendered to by E & M.....the work and costs set out in the..invoice are work and costs consequent upon the service of the claim notice. The work carried out was no more than that which would reasonably be expected to be carried out in consequence of receipt of a claim notice, the costs are no more than would reasonably have been expected to be incurred by the Applicant had the circumstances been such that it would have been personally liable for such costs.....the Respondent is liable for the costs incurred by the Applicant, which costs are reasonable. The Applicant has written to the Respondent on divers occasions, and submitted the invoices requesting payment. Copies have also been sent to each member of the RTM company as it is believed that the RTM company has now been dissolved. The Respondent has failed to make payments. In consequence thereof the Applicant has been obliged to make this application pursuant to S88(4) of the Act*".

The Respondents' case

10. It appears from the case file that none of the Respondents had requested an oral hearing, and there was no correspondence or other communication with the Tribunal from any of the Respondents. No written representations were received by the Tribunal from or on behalf of any of the Respondents.

The Tribunal's determination

11. S 88 of the Act provides, inter alia:

- (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 t=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.

12. The Tribunal has considered the E & M invoice dated 20 July 2012 which was in the sum of £300 (being £237.50 plus VAT of £47.50 and disbursements (company search fee) of £15).

13. The burden of proof is on the Respondent (s) to establish that the landlord would not have paid the costs if liable to pay for them personally.

14. No evidence has been provided for or on behalf of any of the Respondents.

15. The Tribunal considers the charge out rate to be within an acceptable band.

16. The Tribunal determines the Applicant's costs of £300 inclusive of VAT and disbursements are to be paid by the Respondent(s)

.....**J...Goulden**.....

..... **8.. July..2013**.....