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

**Case Reference** : **LON/OOAY/LSP/2013/0014**

**Property** : **216 Kennington Road, London,  
SE11 6HR**

**Applicant** : **Proxima GR Properties Ltd.**

**Representative** : **Estates & Management Ltd.**

**Respondent** : **216 Kennington Road RTM  
Company Ltd.**

**Representative** : **Chainbow Ltd.**

**Type of Application** : **RTM costs pursuant to S84(4) of  
Chapter 1 of the Commonhold and  
Leasehold Reform Act 2002.**

**Tribunal** : **Judge Goulden**

**Date and venue of  
Hearing** : **Thursday 8 August 2013 at 10  
Alfred Place, London WC1E 7LR**

**Date of Decision** : **8 August 2013**

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**DECISION**

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## **Decision of the Tribunal**

- (1) The Tribunal determines that the sum of £317.00 is payable by the Respondent to the Applicant in respect of RTM costs.

## **The application**

1. The Applicant seeks a determination pursuant to S 84(4) of Chapter 1 of the Commonhold and Leasehold Reform Act 2002 (“the Act”) for a determination in respect of any question in relation to the amount of costs payable by a RTM company. The application was dated 11 June 2013, and was stamped as having been received by the Tribunal on 17 June 2013.
2. Directions of the Tribunal were issued on 20 June 2013. The Tribunal did not consider an oral pre-trial review to be necessary.
3. Neither party requested an oral hearing as referred to in paragraph D of the Tribunal’s Directions. This matter was therefore determined by way of a paper hearing which took place on Thursday 8 August 2013 at 10 Alfred Place, London WC1E 7LR
4. The relevant legal provisions are set out in the Appendix to this decision.

## **The Applicant’s case**

5. Written representations dated 14 June 2013 were received from Mr R Sandler, in house Solicitor with Estates & Management Ltd. who are the Applicant’s appointed agent for the purpose of administering its freehold portfolio. It was stated that the Respondent had served on the Applicant a Claim Notice dated 9 February 2012 pursuant to S79 of the Act and following an investigation of the claim by Estates & Management Ltd. to deal with the claim on behalf of the Applicant, it was confirmed that a counter notice would not be served and right to manage would pass on 14 June 2012. Estates & Management Ltd will be referred to in the body of this Decision as E & M.
6. The written representations 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 notices. E & M employs inter alia 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 for the said professional services render to it by E & M". A copy of the relevant invoice dated 31 August 2012 was provided.*

7. *It was also stated that 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 invoice requesting payment. The Respondent has failed to make payment. In consequence thereof the Applicant has been obliged to make this application pursuant to S88(4) of the Act".*

### **The Respondent's case**

8. *Written representations dated 15 July 2013 were received from Mr Roger James Southam, Company Secretary of Chainbow Ltd. on behalf of the Respondent company, in which it was stated, inter alia "the first the respondent knew of the invoice was receiving a letter from the Residential Property Tribunal Service dated 26 June with directions enclosed....the applicant's statement of case is dated 26 June further by their own admission the respondent has not followed the directions. This shows a glib approach of merely refilling their application slightly amended as their statement of case. The lack of index or correct page numbering makes it difficult as there are duplications of page numbers 1 to 3. The respondent has therefore had to reproduce the extracts it refers to below and incorporated into its statement as appendices".*
9. *It was contended that nothing should be paid by the Respondent as the Applicant had not complied with directions, the application had not been in the correct form and information had not been easy to gather from the manner in which it was presented.*
10. *As to the reasonableness of the invoice, it was stated "at first glance the fees appear in the bounds of reasonable until one looks at the chronology and the breakdown of time given in the statement of case....". The claim notice had been served on 9 February 2012 and included a register of members and the lease details as required with the claim notice. The 35 minutes checking the register of members and checking discrepancies was challenged as was the need for land registry entries. E & M collected ground rent for the Applicant and therefore should keep up to date records and would not need land registry entries. The time taken to check "standard information" was challenged. It was stated "the Respondent considers the invoice to be unreliable...it is felt a reasonable fee for the matter given the*

*inconsistencies and the lack of communication with the respondent apart from a standard list of information requested would be 30 minutes and no disbursement. This would give a figure of £95 plus VAT, a total of £114” .*

### **The Tribunal’s Decision**

11. The Tribunal has considered the invoice from E & M dated 31 August 2012, which was in the total sum of £450, being £348.33 plus VAT of £69.67 and disbursements of £32.
12. The narrative on the invoice was *“to acting on your behalf in connection with an application for Right to Manage in respect of 216 Kennington Road, London SE11 6HR. Perusing all documents and obtaining various Land Registry entries. Raising enquiries and reporting to you and subsequently confirming that right to Manage Application would not be opposed. Dealing with all necessary formalities on your behalf. Solicitor (Grade A fee earner) engaged a total of 1 hour 50 minutes as an in house hourly rate of £190 per hour (inclusive of all letters, emails and telephone calls).*
13. The Tribunal rejects the Respondent’s contention that nothing should be paid to the Applicant and the reasons put forward for that contention have little merit.
14. However, the Tribunal has noted the challenges made in respect of the reasonableness of costs. Whether or not the Applicant had instructed E & M in another capacity, the Respondent was entitled to make the necessary enquiries in respect of the Notice of Claim. However, it was the Respondent’s case said that it had been unaware of the invoice until notification of the application from the Tribunal. Mr Sandler stated that the Applicant had written to the Respondent on divers occasions requesting payment of the invoice, but no copies of such letters had been provided by him.
15. The Tribunal considers Mr Sandler’s charge out rate to be within an acceptable band, but reduces the time from 1 hour 50 minutes to I hour 15 minutes. The amount to be paid by the Applicant to the Respondent is therefore a total of £317.00, being fees of £237.50 plus VAT of £47.50 and disbursement of £32.

**Name:** J Goulden

**Date:** 8 August 2013

## **Appendix of relevant legislation**

### **Commonhold and Leasehold Reform Act 2002**

#### **Section 88**

- (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 RTM 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 a landlord incurs as party to any proceedings under Part 2, Chapter 1 of the Act, before a tribunal if the tribunal dismisses an application by the RTM 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.