

368



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

Case Reference : LON/OOBH/LCP/2013/0016

Property : 25-48 Bridge Court
340 -3544 Lea Bridge Road
Leyton, London E10 7JS

Applicant : Triplerose Ltd.

Representative : Conway & Co. Solicitors

Respondent : Bridge Court One RTM Company
Ltd.

Representative : Lopian Wager Solicitors

Type of Application : RTM costs pursuant to S88(4) of
the Commonhold and Leasehold
Reform Act 2002.

Tribunal : Judge Nicol

Date of Decision : 24th September 2013

DECISION

Decision of the Tribunal

The Tribunal determines that the sum of £1,248.60 is payable by the Respondent to the Applicant in respect of RTM costs.

The application

1. The Applicant seeks a determination under section 88(4) of the Commonhold and Leasehold Reform Act 2002 (“the Act”) for a determination in relation to the amount of costs payable by the Respondent as a RTM company.
2. The Respondent’s Claim Notice was dated 23rd January 2013 and the Applicant’s Counter Notice was dated 28th February 2013. Copies of both Notices were before the Tribunal.
3. The fees in issue are £1,469.92 in respect of solicitors’ fees and £300 for managing agent’s fees, both inclusive of VAT.
4. Directions of the Tribunal were issued on 12th July 2013. The Tribunal did not consider an oral pre-trial review to be necessary.
5. 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.
6. The relevant legal provisions are set out in the Appendix to this decision.

The Applicant’s case

7. Written representations dated 24th July 2013 were received from the Applicant’s Solicitors, Conway & Co in which it was stated,
 4. The Applicant submits that at the date the claim notice was given Conway & Co Solicitors was retained by the Applicant in relation to various matters and the fees billed in the present matter represents that the Applicant would normally pay to the firm upon an instruction and includes provision for payment of disbursements.
 5. Conway & Co Solicitors were instructed to assess the validity of the claim notice served, to advise the Landlord and to take the appropriate steps on the Landlord’s behalf. Given the ramifications of a Right to Manage Claim, particularly the handing over of management responsibility and monies held on trust, the Applicant submits that it is reasonable for a Landlord to take steps to protect its property interests. In this case the RTM claim notice claiming the right to acquire the Right to Manage the Property was issued directly to the managing agent who acted on behalf of the Applicant. Given the automatic nature of the RTM process the Landlord was obliged to respond in this matter notwithstanding its reservations of the validity of the claim. The Respondent continued to assert its entitlement to

the RTM upon the claim notice and issued LVT proceedings for a declaration of same which were only recently withdrawn.

8. It was also stated that the work was undertaken by an Associate of Conway & Co who had dealt with RTM matters at the firm since September 2007 "initially as a transferee trainee solicitor being a non practising barrister at law called to the Bar.. in 1999 and thereafter having converted to solicitor in 2009. It was contended that her fee rate of £225 per hour reflected the Associate's pre-conversion experience and specialisation within Landlord and Tenant matters.
9. In respect of the managing agent's fees these were in respect of:
 7. ... additional tasks which are non-standard management activities and for which additional fees are charged. This includes taking action on behalf of the Landlord and providing assistance to the Landlord's solicitors with provision of information in relation to the property and leaseholders as held within the agent's records. Works are also necessary to commence the processes of handover of management.
10. The work carried out by the managing agents was stated to be:
 12. ... The agent ... needs to take various steps in anticipation of RTM, in relation to management and reporting to the Freeholder upon same. This involves checking if there are any regular services being provided for which notice has to be given, placing insurers on notice and checking if there are ongoing insurance claims and the effect upon same of cancellation of the insurance policy; checks are carried out with reference to scheduled works and any Section 20 procedures in progress to enable decisions to be taken by the Freeholder in relation to same. The accounts also have to be prepared at early stage by arrears collection upon individual accounts and also by collection of outstanding invoices from contractors.
 13. The managing agent is also instructed to liaise and assist solicitors in the process of assessment of the claim. Information regarding the property including details relevant to the qualifying tenants, nature of the premises and details pertaining to the receipt of notices are held by the agent and require their participation in the assessment process notwithstanding the instruction of solicitors. Copy documentation upon assignments, leases and correspondence addresses are held by the agent and who provide documentation on behalf of the Freeholder or directly to the solicitor upon the Freeholder's instruction.
11. The Tribunal was provided with the relevant invoices, a copy of the management agreement and an extract of the RICS Service Charges and Residential Management Code, together with a breakdown of the legal fees and disbursements, together with case law cited in support.

12. The Tribunal had concerns which it raised by letter dated 21st August 2013. Conway & Co answered by letter dated 22nd August 2013, in particular conceding that there had been no previous Tribunal proceedings regarding the right to manage and their previous assertion to that effect had been incorrect (see paragraph 7 above).

The Respondent's case

13. The Tribunal had also been concerned at the lack of written representations from or on behalf of the Respondent. Eventually, Mr Y Bishun, a director of the Respondent company, sent a letter dated 20th September 2013 with his representations. He made four points:-
- a) Mr Bishun pointed out that the lessees are dissatisfied with the management of their building and felt they had no alternative but to pursue their right to manage. He pointed out that the lessees had incurred their own costs. Unfortunately, these matters are irrelevant. The Respondent started on the RTM process but then withdrew, leaving the Applicant having spent money unnecessarily and for which the Respondent is liable under ss.88 and 89 of the Act.
 - b) Mr Bishun said this was the first attempt to acquire the right to manage and has been restarted in order to respond to the Applicant's allegation that the original notice had not been properly served. That may be the case but it remains that the notice was withdrawn. Withdrawal carries with it the penalty of paying the Applicant's costs. If there truly was a problem with service, that is the Respondent's own fault. If there was no problem, they should not have withdrawn.
 - c) Mr Bishun objects that the Applicant waited until the last possible day to serve their counter-notice resulting in a courier charge which in any event is supported by a credit card statement which has been redacted. He also says he received three copies of the counter-notice, all of which have been billed.
 - d) Mr Bishun argues that this property was well-known to the Applicant and the documents appear to be generic. He challenges the necessity of taking photographs which appears to have been charged for.

The Tribunal's Decision

14. The Tribunal has considered the invoice from Conway & Co. dated 11th March 2013, which was in the total sum of £1,469.92, being fees of £1,155 plus VAT of £231 and disbursements of special delivery of £66.94 plus VAT of £13.38 and land registry fees of £3 plus Vat of 60p. The narrative on the invoice was "undertaking works to date in relation to RTM claim notice on Bridge Court, Lea Bridge Road, Leyton London E10 7JS. 5hours and 8 minutes @ £225 per hour". A note at the foot of the invoice stated "Not valid unless receipted". The invoice did not appear to bear a receipt. The narrative is sparse and there was no reference on the invoice as to what period was covered or a breakdown of the time spent.

15. The invoice in relation to the special delivery disbursement in respect of a transaction dated 1st March 2013 (£66.94 plus VAT of 13.38 has been redacted) and is not evidence of any such payment being made in respect of this property. Also, the Tribunal accepts Mr Bishun's point that this charge need not have been incurred if the counter-notice had been prepared earlier. It is therefore disallowed.
16. The Tribunal has considered the invoice from Y & Y dated 26th April 2013, which was in the total sum of £300, being fees of £250 plus VAT of £50. The narrative on the invoice was "Notifying our clients Triplerose Ltd of RTM notice served. Discussing ramifications of same. Taking Freeholder instructions and instructing solicitors. Providing solicitors with information regarding the property and leaseholders". The narrative is sparse and somewhat vague. There was no reference on the invoice as to what period was covered or a breakdown of the time. No evidence was provided in support of the submissions as to the actual work carried out by the managing agents in this case (see paragraph 10 above) and there was no reference thereto in the invoice.
17. The Applicant was entitled to make the necessary enquiries in respect of the Notice of Claim. However, the Tribunal considers that it is possible that there is a duplication in work carried out and also possible that some work carried out by the managing agents could have been carried out by the Applicant's solicitors. The Tribunal is not bound by decisions of other Tribunals. The Associate Solicitor's charge-out rate is within an acceptable band but the Tribunal reduces the time from 5 hours 8 minutes to 3½ hours in light of the above issues, reducing the solicitors' fees to £787.50 plus VAT.
18. The amount to be paid to the Applicant by the Respondent is therefore a total of £1,248.60, being fees of £787.50 plus VAT of £157.50 and a disbursement of £3 plus VAT of 60p, plus the managing agents fees of £250 plus VAT of £50.

Name: NK Nicol

Date: 24th September 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 premisesin 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.

Section 89

- (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.
- (3) Each person who is or has been a member of the RTM company is also liable for those costs (jointly and severally with the RTM company and each other person who is so liable).
- (4) But subsection (3) does not make a person liable if—

- (a) the lease by virtue of which he was a qualifying tenant has been assigned to another person, and
 - (b) that other person has become a member of the RTM company.
- (5) The reference in subsection (4) to an assignment includes—
- (a) an assent by personal representatives, and
 - (b) assignment by operation of law where the assignment is to a trustee in bankruptcy or to a mortgagee under section 89(2) of the Law of Property Act 1925 (c. 20) (foreclosure of leasehold mortgage).