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

Case Reference : **Man/00DA/LCP/2013/0003**

Property : **Mackenzie House, Chadwick Street Leeds
LS10 1PJ**

Applicant : **Charlton Nominees Limited
(represented by Conway & Co Solicitors)**

Respondent : **Mackenzie House RTM Company Limited
(represented by Town & City Management
Limited)**

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

Tribunal : **Habib Aziz LLB (Hons), MBA.**

Date of Decision : **11 July 2013**

DECISION

Background

1. This is an application (dated 3rd April 2013), made by Charlton Nominees Limited, as landlord, under section 88(4) of the Commonhold and Leasehold Reform Act 2002 for costs in connection with a claim notice. The total claimed were the costs of the professional services rendered to the landlord by Conway & Co Solicitors. The work undertaken is detailed on the invoice dated 12 December 2012 from Conway & Co solicitors, which accompanied the application form. The invoice describes the work as "*undertaking works in response to the RTM claim served on Mackenzie House, providing advice to the client, assessment of claim notice and associated documentation, preparation and service of counter notice and correspondence with various parties.*" The total cost claimed is £1830.06 (inclusive of disbursements and VAT).
2. The Leasehold Valuation Tribunal gave directions on 16 May 2013. The directions provided that this matter was suitable to be dealt with as a paper determination, but the parties were able to apply for an oral hearing if they so wished. No application has been made and therefore the matter has been determined on the papers. The Tribunal also directed that the Respondent shall, within 21 days of the direction, serve a response to the application upon the Applicants representative with 3 copies to the Tribunal.
3. On 20 May 2013, in response to this direction, Town and City Management Limited, on behalf of the Respondent wrote to the Tribunal setting out their objections to the application. This is a short submission but essentially they object to the application on the grounds that no detailed breakdown had been provided, the charges in question were "*excessive*" and included attendance at the Leasehold Valuation Tribunal (LVT) which was excluded under s88(3) of the Act. Furthermore, in their view, the error in the original claim notice was obvious and "*therefore time in producing the counter notice should not be excessive.*"
4. In the Applicants statement of response (prepared by their solicitors Conway & Co) dated 4th June 2013, the Applicant submits that a breakdown of costs had been provided before the issue of the current proceedings. A notification of costs was sent out on 12th February 2013 together with a copy of the invoice. Furthermore, the costs do not include attendance at the LVT. This was communicated to the Respondent on 2nd April and the reference to the inclusion of such costs in their letter dated the 17th April 2013 was a "*typographical error*".
5. The Applicant submits, that the fees billed in this matter represent what would usually be payable in such circumstances. The Applicant refers to the building consisting of 179 units which reflected the time spent in assessing the claim. Their work consisted of assessing the validity of the claim notice served, advising the landlord and taking the appropriate steps on behalf of the landlord. The Tribunal were provided with an extract of the terms under

which the services were provided, which was set out at an hourly rate of £225.00. The Tribunal did not have sight of the full terms of the agreement.

The Law

The relevant law is set out in section 88 of the Commonhold & Leasehold Reform Act 2002 which states;

- (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] ¹ 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] .

The Decision of the Tribunal

6. The Tribunal having carefully considered the submissions of both the Applicant and Respondent, made the following determination;
 - (a) The Respondent had been provided with a breakdown of costs and these along with the information on the invoice made reference to works carried out. The Tribunal and the parties had the added benefit of a further breakdown which was served with the Applicants statement of response which further detailed the work undertaken. However, the additional breakdown expanded on the information in the invoice/earlier breakdown and did not add a great deal to what was already known by the Respondent. The Tribunal having considered the work undertaken, accepted the Applicants submissions that the work to be done and the time spent was reasonable. Whilst the Respondent disagreed, no persuasive evidence was provided in the form of a comparable transaction which would have been helpful.

- (b) The Respondent submits that the error in the original claim notice was obvious and therefore time in producing the counter notice should not be excessive. However, the Tribunal determined that it would be inappropriate for the Applicant to be penalised for thoroughly investigating and successfully opposing the notice.
- (c) The Tribunal noted that although the Respondent raised the issue of the costs of attendance at the LVT being included in the final costs, this is a typographical error and the Applicant has confirmed that such costs are not included in the final figure.
- (d) The Tribunal have therefore determined that solicitors costs of £1515.00 (excluding VAT) were reasonable and payable.
- (e) The Tribunal further determines that disbursement costs of £10.05 (excluding VAT) were reasonable and payable.

Costs of these proceedings

7. The Tribunal has power to award costs under paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002 which provides:

‘(1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).

(2) The circumstances are where—

(a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or

(b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.

(3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—

(a) £500, or

(b) such other amount as may be specified in procedure regulations.

(4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.’

8. The Applicant has asked for an order of costs on the grounds that the Respondent’s approach has been unreasonable and vexatious. In particular, they have pointed out that there is little substance to the Respondents objections.
9. The Tribunal considered the Applicants submission but did not consider that any of the prescribed circumstances arose in this particular case and concluded that it would not be appropriate to award costs. The Respondents conduct in asking for further information regarding a breakdown of costs and for clarifying a typographical error does not in the view of the tribunal amount to conduct which would bring it within the ambit of this provision.

Decision.

10. Accordingly, the Tribunal determines that the total sum payable as the Applicants cost under section 88 of CLARA is £1830.06 (inclusive of VAT)