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

Case Reference : LON/00AY/LCP/2014/0005

Property : Brixton Court, Brixton Hill,
London SW2 1QX

Applicants : Springquote Limited

Representative : J B Leitch LLP

Respondent : Brixton Hill Right to Manage
Company

Representative : Crompton Solicitors LLP

Type of Application : Application for a determination in
respect of the cost payable by a
Right to Manage Company under
Section 88(4) of Commonhold and
Leasehold Reform Act 2002

Tribunal : Judge Daley

**Date and venue of
paper determination** : 14 May 2014 at 10 Alfred Place,
London WC1E 7LR

Date of Decision : 28 May 2014

DECISION

Decisions of the Tribunal

- (1) The tribunal makes the determinations as set out under the various headings in this Decision

The application

- a. The Applicant made an Application for costs pursuant to Section 88 (4) of the Commonhold and Leasehold Valuation Act 2002, dated 28 February 2014.
 - b. The background to this matter was that on 14 October 2013, the Respondent acting via its Solicitors, served two Claim notices upon the Applicant. The first claim notice related to flats 1-88 Brixton Hill Court and the second related to Flats 89-142 Brixton Hill Court.
 - c. On 28 October 2013 the solicitors acting on behalf of the Applicant wrote to the Solicitors acting on behalf of the Respondent, inviting the Respondent to withdraw the Claims Notices on the grounds that they were defective. By letter dated 29 October 2013, the Respondent's solicitor indicated that the notices were considered to be valid, and consequently would not be withdrawn.
 - d. Counter Notices were served upon the Applicant's solicitor on 15 November 2013.
 - e. On 23 December 2013 the Respondent served a Notice of Withdrawal (by which the Respondent withdrew the Claims Notices).
- (2) Directions were given on 13 March 2014. The directions stated that the matter was suitable for a paper determination and gave further directions for the conduct of the matter.

The background

- (3) The premises are a development of 144 flats. The development consists of two blocks. The Front block comprises flats 1-88 and the rear blocks comprise 89-144. Both properties are connected by a concrete walkway.
- (4) On 28 February 2014, the Applicant served two cost schedules. The schedules were entitled "*Applicant's Statement of Costs of and occasioned by Claim Notices dated 14.10.2013*". The first Schedule was served under cover of annex one (attached to the Application under Section 88 (4) of CLARA 2002) was in the sum of £6140.80. The second schedule served under cover of annex two was in the sum of £902.40

(16)The Tribunal in making its determination will follow the order set out in the Schedule of Costs. The Tribunal noted two Schedules of cost filed with the Application and a further two which appear to be for increased sums filed within the hearing bundle. The Tribunal noted that no explanation was provided for the further cost schedule or the increase in the amount claimed. The Tribunal considers that having issued its application, with the Schedule of cost dated 28 February 2014, which contains a declaration that these cost do not exceed the costs that the Applicant is liable to pay, then the cost set out therein are effectively the cost properly before the Tribunal and that the sums determined by the Tribunal are with reference to these schedules.

Time Claimed for Letters Out / telephone (attendance on the Applicant)

(17)The Applicant in their Applicant's Further Comment ("Reply") on the case states:- "*given the complicated nature of the right to manage process, it was necessary for JBL to advise the Applicant at length as to the implications of the Claim Notices...further it was necessary for JBL to liaise with the Applicant to ascertain that no persons who the Applicant believed were members of the Respondent were not detailed on the schedule to the Claim Notices JBL drafted and sent a lengthy email of advice...*" The Applicant's solicitor in their Reply stated that some of the dialogue took place on the phone.

(18)The Respondent's Solicitor objects to this on the basis that there is no evidence provided by the Applicant as to how 2 hours have been spent in corresponding with the Applicant. The Statement in reply states "*... in general terms there has already been significant litigation regarding this building with all the issues discussed extensively beforehand...*" The Respondent suggests, 0.5 hours for the letters out and 0.2 hours for the telephone attendance.

(19) The Tribunal finds that the Applicant's solicitor is an experienced grade B fee earner, who had prior knowledge of these matters which ought to have assisted him in dealing with these matters in a quicker and more effective manner. The Tribunal considers that the appropriate time taken should be limited to 1 hour for the letter out and 0.5 hours for the telephone attendance.

Total time allowed 1.5 hours Total sum payable £288.00

Time Claimed for Letters Out / telephone (attendance on the Opponent)

(20)The Respondent objects on the grounds that the only correspondence was a covering letter and a shorter letter asking questions and that the total time charged for this should be 3 units. The Applicant refers to paras 10, 11, 20 and 22. The Tribunal also noted that the letters are included in the bundle. The Tribunal based on the correspondence before it considers that the time taken by the Applicant's solicitor of 0.6 hours was reasonable

Total time allowed 0.6 units sum payable £115.20

Time claimed of 1 unit for telephone call to others

(21)The Respondent objects to paying this charge on the basis that there is no information as to who this letter was sent to, and the basis upon which this charge was incurred. The Tribunal noted that the Applicant had not expanded upon this in their reply, the Tribunal finds in the absence of further information, that the sum claimed of £19.20 is not reasonable and payable.

Time claimed of 1 unit for telephone call to others disallowed.

Schedule of Work done on Documents

Obtaining and storing Land Registry Office Copy Entries time claimed 4.2 hours

(22)In paragraph 9 the Applicant states- *"... In order to consider the Claim Notices, JBL had to obtain the Land Registry office copy entries relating to each of the leasehold units which where situate within the subject premises... In fact, Matthew McConville, a Grade D fee earner within the employ of JBL (with an hourly charge out rate of £118.00 plus VAT and disbursements) spent 4.2 hours obtaining, printing and storing Land Registry office copy entries..."*

At Point 1.3.1 of the reply, the Respondent states that this was an administrative task and according that this should be reduced by half. The Respondent relies upon Paragraph 6 of the Tribunal's determination in Case No LON/00AY/LRM/2013/0015, a case involving the same parties in which the Tribunal stated that as this work was undertaken by a fee earner-: *"... it was incumbent on the fee earner to add value and hence carry out the task quicker."*

(23)The Tribunal considered that there is nothing in the case before us which would suggest that it was appropriate to depart from the previous tribunal's findings on this point, and accordingly this Tribunal adopts the reasoning given in Case No LON/00AY/LRM/2013/0015 and finds that the time taken for this task should be limited to 3.00 hours. Having done this exercise before, the fee earner would have been more practised and familiar with what was required.

**Total time allowed 3.00 hours at total payable £354.00
Disbursement of £336.00 allowed in full**

(24)Perusal and considering claim notice in relation to flats 1-144, time taken 3.9 hours .Perusal and considering of Claim Notice in relation to flats 1-88 1.88 time taken 4.1 hours.

In paragraph 13 -15 the Applicant sets out the work undertaken, and the fact that they spotted a number of errors, this in their view justifies the time taken. The Respondent states that the time taken was excessive, and in support he relies upon the findings of the Tribunal in Case No LON/00AY/LRM/2013/0015. He then simply divided the time in half, this was not the approach taken by the Tribunal as should be clear from reading the reasoning in LON/00AY/LRM/2013/0015, in which the time taken was considered in relation to the issues in that case. The Tribunal have considered

(29)The Tribunal considers that as the Notice of Claim has been withdrawn, it is not appropriate for this Tribunal to comment on the merits of the issues raised, the sole issue is the time taken to draft the Counter Notices.

(30) The Tribunal have considered the issues raised and the Counter Notices which were included in the bundle, and in so doing considers that the time taken was excessive, and that an experienced fee earner who had considered the notice, and the documents referred to above should have taken no more than 7 hours for this task. The time taken is limited to 7.00 hours.

Total time allowed 7.00 Hours sum payable £1344.00

Perusal of withdrawal notice

(31)The time claimed for considering the Notice of Withdrawal was 0.2 hours At paragraph 1.3.6 the Respondent stated that -: "*The perusal and consideration of the Notice of Withdrawal is disputed in its entirety. The Claim Notices ceased to legal effect when they were withdrawn on 23rd December 2013 and no costs can be payable by the Respondent after this date...*"

(32)In reply the Applicant in paragraph 23 stated -: "*... the Respondent's suggestion that the cost of the present application are irrecoverable from the Respondent is denied. The costs of the present application were occasioned by the Claim Notices and it is not a practical reality to seek to divorce the costs of the present application from the costs which were occasioned up to the date of the said withdrawal of the Claim Notices. Indeed, the costs of the present application are inextricably linked (with the costs of and occasioned up to the date of the said withdrawal)...*"

(33)The Tribunal noted that section 88 needs to be read in conjunction with paragraph 89 (2) which states-: "*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.***" This in the Tribunal's view is different from the situation where the cost are occasioned under Section88 (3) of CLARA.

(34)The Tribunal considers that the correct application of the wording must mean that after a notice of withdrawal liability for cost ceases.

For that reason the Tribunal consider that the cost occasioned by consideration of the Notice of Withdrawal is not recoverable

Miscellaneous documents

(35) This was described by the Applicant as-: "*... considering incoming correspondence from the Respondent, the Applicant and the Tribunal which have not been captured by the schedule of cost*". The Respondent states that

these costs should be disallowed completely as no evidence has been provided as to what they comprise.

(36)The Tribunal has considered the schedule of cost, and the Applicant's detailed and meticulous approach to capturing the time spent, given this the Tribunal considers that such documents as have not been recorded elsewhere would be limited in number, in any event such documents should not include cost of correspondence to and from the Tribunal as these costs would have occurred post withdrawal of the notice. **The Tribunal have therefore determined that this item of cost is disallowed.**

The Further statement of costs

(37) The Applicant seeks to claim further cost in the sum of £902.40 these costs were associated with preparing the costs schedule and associated with this hearing.

(38)In response to this the Respondent stated in paragraph 2.1 that -: "...
The costs are not payable since they were incurred at a time in which the Claim Notices ceased to have legal effect. The Claim Notices ceased to have legal effect when they were withdrawn on 23 December 2013 and no costs can be payable by the Respondent after this date."

(40) The Tribunal considers that wording of Section 89 (2) CLARA 2002 means that the costs incurred after the service of the notice of withdrawal are not cost incurred in connection with the claim notice but rather are the cost of recovering the cost referred to above, as such they were not occasioned before the notice was withdrawn and cannot be recovered.

The Tribunal determine that the sums claimed in the further statement of cost are not recoverable.

The sum recoverable is £3099.60 plus disbursements of £336.00 plus VAT.

Name: Ms M W Daley

Date: 28.05.2014

Appendix of relevant legislation

A summary of the legislation is set out below

The Law

The Act sets out the procedural requirements that a right to manage company must follow before it can acquire the right to manage. The relevant sections for the purposes of this application are ss72 to 84.

Premises subject to the right to manage:

Section 72 defines the premises that maybe subject to the right to manage.

Right to manage companies:

Section 73 provides that the right to manage can only be acquired and exercised by a RTM company and the company must be a private company limited by guarantee that includes the acquisition and exercise of the right to manage as one of its objects. The company does not qualify if there is already a RTM company for the premises.

Membership of the company:

Section 74 75 and 76 provide that membership of the RTM company must consist of any qualifying tenant, defined as a residential tenant under a long lease of a flat in the premises and that there can only be one qualifying tenant per flat, no less than half the qualifying tenants (subject to a minimum of two must be members of the company on the date when the company serves the claim notice. From the time that the company acquires the right to manage the premises, any person who is a landlord under a lease of the whole or any part of the premises can be a member of the RTM company.

Notice of invitation to participate:

Section 78 - before making a claim to acquire the right to manage any premises, a RTM company must give notice to all qualifying tenants who are not members of the company inviting them to become members for the purposes of acquiring the right to manage.

Claim Notice:

Section 79 (1) – “A claim to acquire the right to manage any premises is made by giving notice of the claim and in this Chapter the relevant date in relation to any claim to acquire the right to manage means the date on which notice of the claim is given” and (6) The claim notice must be served on each person who on the relevant date is

(a) a landlord under a lease of the whole or any part of the premises,

(b) a party to such a lease otherwise than as landlord or tenant or

(c) appointed as manager of the premises under Part 2 of the Landlord and Tenant Act 1987.”

Counter Notice:

Section 84 “A person who is given a claim notice by a RTM company under section 79(6) may give a notice (referred to in this Chapter as a “counter notice”) under section 80(6)