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

Case Reference : **MAN/00FF/LCP/2014/0001**

Property : **FLORENCE HOUSE, ROME HOUSE, MILAN HOUSE & VENICE HOUSE, THE FORUM EBORACUM WAY, YORK YO31 7SQ**

Applicant : **TRINITY (ESTATES) PROPERTY MANAGEMENT LTD**

Respondent : **(1) THE FORUM (YORK) RTM COMPANY LTD
(2) THE FORUM 1 (YORK) RTM COMPANY LTD
(3) THE FORUM 2 (YORK) RTM COMPANY LTD
(4) THE FORUM 3 (YORK) RTM COMPANY LTD**

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

Tribunal Members : **A M Davies, LLB**

Date of Decision : **8 July 2014**

DECISION

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ORDER

1. Each of the Respondents shall pay the Applicant's costs pursuant to Section 88 of the Commonhold and Leasehold Reform Act 2002 ("the Act") in the sum of £859.85; total payment £3,439.40.

REASONS

2. The Respondent RTM companies were incorporated with a view to each of them taking over management of one of the blocks of flats (Florence House, Rome House, Milan House, and Venice House) forming (with Naples House) the Forum Estate, Eboracum Way, York. On 20 May 2013 the Respondent served on the Applicant, under section 79 of the Act, a Claim Notice in respect of Florence House, and on 10 June similar notices were served in respect of the other three blocks of flats.
3. The Applicant was served with the Claim Notices as a party to the lease of each flat and the company responsible for management of the properties. A Counter Notice was served by the Applicant in each case.
4. Following inspection of the common parts and a hearing on 14 October 2013, the application for Right to Manage in respect of Rome House was refused on the ground that the relevant Respondent had not complied with section 79(5) of the Act. A right to manage each of the remaining three properties was also refused, on the ground that they were neither separate buildings nor self-contained parts of the same building.
5. Section 88(1) of the Act provides that an RTM company which serves a Claim Notice shall pay the reasonable costs incurred by a recipient of the notice. Section 88(3) reads:
"A RTM company is liable for any costs which [a person served with a Claim Notice] incurs as party to any proceedings under this Chapter before a [tribunal] 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."
6. Where agreement as to costs cannot be reached, either party may apply for the amount of costs to be determined by this Tribunal. Accordingly, following correspondence in which agreement was not reached, the Applicant has applied for such determination.
7. The application is determined without a hearing, each party having supplied its arguments to the Tribunal in writing.
8. The Respondent argues firstly that section 88(3) provides for the RTM company to pay the costs of a party to the proceedings before the tribunal, only if the RTM company is successful in those proceedings. That is an incorrect reading of the Act. The Respondents' applications for right to manage having been dismissed, they are liable for the Applicant's reasonable costs.

9. The Respondents further argue that the Applicant's costs should reflect the actual cost of employing its in-house lawyers to deal with the matter, by reference to their salaries. They claim that the solicitors' guideline hourly rates published by the Master of the Rolls in 2010 (on which the Applicant's costs claim is based) allow for the expenses of running a legal practice, which would provide the Applicant with a bonus if applied to time spent by its salaried in-house lawyers.
10. The Applicant refers to the decision of the Upper Tribunal (Lands Chamber) on appeal against a costs decision by the Leasehold Valuation Tribunal of the London Rent Assessment Panel in relation to 36 Culpepper Close, London [2012] UKUT 102 (LC) in which His Honour Judge Mole QC determined that there should be no distinction made between the hourly rates payable by a third party in respect of (a) the work of the recipient's in-house lawyers and (b) fees paid – or which would have been paid - by the recipient to an external legal firm.
11. HHJ Mole QC's decision related to costs payable under the terms of a lease in relation to a dispute over service charges. There appears no reason to depart from the principle in connection with costs payable under section 88 of the Act.
12. The Tribunal concludes that the hourly rates applied to the time spent by the Applicant's lawyers in considering and responding to the Claim Notices and subsequently representing the Applicant before the tribunal are reasonable. The Respondent does not contest the amount of time for which payment is claimed. The train fare from London of the Applicant's advocate is also allowable. £859.85, being 25% of the Applicant's costs as claimed, is therefore payable by each of the Respondents.