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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AR/LCP/2015/0001**
Property	:	**Kingswood Lodge, 63 Main Road, Romford, Essex, RM2 5EH**
Applicant	:	**Assethold Limited**
Representative	:	**Scott Cohen Solicitors**
Respondent	:	**Kingswood Lodge RTM Company Limited**
Representative	:	**SLC Solicitors**
Type of application	:	**Costs pursuant to section 88(4) Commonhold and Leasehold Reform Act 2002**
Tribunal members	:	**Judge Robert Latham**
Date and venue of determination	:	**17 July 2015 at 10 Alfred Place, London WC1E 7LR**
Date of decision	:	**17 July 2015**

DECISION

The Tribunal determines that the Respondent is to pay the Applicant's costs under section 88(4) of the Commonhold and Leasehold Reform Act 2002 in the following sums:

(i) Solicitor's Fees (Conway & Co Solicitors) of £475.50 + VAT for time spent in connection with the RTM claim notice;

(ii) Solicitor's Fees (Conway & Co Solicitors) of £1,530.00 + VAT for time spent on proceedings before the FTT;

(iii) Management Fees of Eagerstates Limited in the sum of £350 + VAT for work undertaken in response to the RTM claim notice and in connection with the Tribunal proceedings.

The Application

1. The Applicant seeks a determination pursuant to section 88(4) of the Commonhold and Leasehold Reform Act 2002 ("the Act") in respect of the costs incurred by the Applicant landlord in relation to a claim notice, dated 27 August 2014, which was dismissed on 19 February 2015 in Case No. LON/00AR/LEE/2014/0003 by a First-tier Tribunal ("FTT").

2. On 12 May, the Tribunal gave Directions. Pursuant to those Directions the Applicant provided its Statement of Case, dated 28 May. The following costs are claimed:

(i) Solicitor's Fees (Conway & Co Solicitors) of £475.50 + VAT for time spent in connection with the RTM claim notice (2 hours and 2 minutes);

(ii) Solicitor's Fees (Conway & Co Solicitors) of £1,530.00 + VAT for time spent on proceedings before the FTT (6 hours and 48 minutes);

(iii) Management Fees of Eagerstates Limited ("Eagerstates") in the sum of £350 + VAT for work undertaken in response to the RTM claim notice and in connection with the Tribunal proceedings.

3. On 10 June, the Respondent provided its Statement of Case. The Respondent contends that had there been proper pre-application correspondence, many of the issues could have been resolved. The Respondent takes issue with two matters:

(i) Eagrestates' Management Fees the sum of £350 + VAT. The Respondent does not dispute that such costs are recoverable, but contends that on the facts of this case, all the costs should fall within their standard managing agent's fee.

(ii) The element of the Solicitor's fees claimed in respect of engaging with its agent. The Respondent contends that this work was not appropriate and was not reasonably incurred.

4. On 25 June, the Applicant provided a Statement in Response.

The Law

5. Section 88 of the Act provides:

> (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 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.

6. The effect of this provision is to entitle a landlord to recover reasonable costs incurred in consequence of a notice of claim to acquire the right to manage subject to two qualifications. The first, contained in subsection (2), is that any costs incurred in respect of professional services will only be reasonable to the extent that the landlord could reasonably have been expected to incur them if he were personally liable for the costs. The second, contained in subsection (3), is that costs incurred as a party to any FTT proceedings can only be recovered if the claim to acquire the right to manage is unsuccessful. It follows that, subject to the ceiling imposed by subsection (2), a landlord whose right to manage his own property may be expropriated is entitled to investigate and deal with a claim to acquire the right to manage up to the point at which FTT proceedings are commenced, whether the claim is ultimately

successful or not. However, thereafter, if the landlord chooses to contest the claim but in the event is unsuccessful, he is not entitled to recover his costs of the FTT proceedings.

The Background

7. On 27 August 2014, the Respondent served their Section 42 Notice (at p.73 of the Bundle). The date by which the landlord was obliged to respond was 3 October 2014. The Respondent sought to acquire the right to Manage on 4 January 2015.

8. On 1 October (at, p.82), the Applicant served its Counter-Notice disputing that the right to manage had been successfully claimed. The Respondent argued that when the notice to claim was given, an earlier Claim Notice was in force. The Respondent also argued that there were a number of defects in the Notice

9. On 19 February 2015, the FTT determined the application (at p.64). rejected the first of the Applicant's arguments on the ground that the earlier Notice was a nullity as the correct address of the RTM Company had not been given. However, Judge Carr found that the Respondent had failed to provide a completed Register of members as a result of which the Respondent had failed to comply with Section 79(5) of the Act.

10. Had the Applicant succeeded in establishing its Right to Manage, the acquisition date would have been three months after the determination became final (s.90(4)).

The Submissions of the Parties

11. The Respondent raises two points of principle:

(i) Much of the work undertaken by the landlord was unnecessary as the landlord had challenged the validity of the claim. Until that was determined, there was no need for the landlord to assess the impact of the claim in relation to services and contracts in place. All of this work should have been left until the application had been determined by the FTT. Had the Respondent's Right to Manage application succeeded, the Applicant would then have had a window of three months to take the practical steps of reviewing existing service contracts, insurance policies and pending insurance claims.

(ii) By reason of the above, the work undertaken by the managing agent fell within its standard management agreement. In particular, it is contended that the managing agent was required to do no more than forward the Section 42 Notice to the landlord and provide a list of tenant. The moment that the landlord had elected to serve its Counter-

Notice, no further action was required until the application had been determined.

12. The Applicant has provided an extract from the RICS Service Charge Residential Code (at p.42-5 of the Bundle). Paragraph 2.4 sets out the tasks which would normally fall within the scope of the management agreement for which the annual fee would be charged. Paragraph 2.5 sets out a "menu" for duties outside the scope of the annual fee. This included: "t) undertaking additional duties with a landlord as required under Right to Manage".

13. The Applicant has also provided a copy of its management agreement with Eagerstates Limited (at p.27-40). The services covered by the agreement are set out in Appendix 2. The additional services are in Appendix 3 (at p.39). This includes: "providing any form of services to the Client over and above this Management Agency agreement in relation to the exercise by the lessees of ... the right to Management ...." The charging basis is stated to be "Minimum £350 + VAT plus £150 + VAT per hour for court appearance".

14. The Applicant has also referred to the decision of the Upper Tribunal (Lands Chamber) in *Columbia House Properties (No.3) Ltd v Imperial Hall RTM Company Limited)* [2014] UKUT 0030 (LC) ("*Columbia House Properties*"). We are referred in particular to [35]:

> " Further, I consider that while it may be within a managing agent's day to day duties to pass on notices served on it in its capacity as agent for the Landlord and possibly to serve counter notices, the sort of investigations which SEM [the managing agent] was undertaking on the Landlord's behalf to deal with the 2010 claim notices fall well outside what could reasonably be described as "day to day normal management services", even by the LVT as a specialist tribunal. Such work could not be described as 'day to day', nor is it routine and it could involve considerable work and therefore cost. It is of a similar character to the sort of work described as specified additional services. Whether passing on notices and serving counter notices do fall within day to day management services depends on the terms of Parts I, II and III of the management agreement which I have not seen. However, it is not necessary for me to do so to reach a decision in this appeal."

The Tribunal's Determination

15. The Tribunal rejects the Respondent's contention that the moment the Applicant had served its Counter-Notice disputing the Right to Manage, it was unreasonable for it to carry out the further work to assess the impact of the claim in relation to services and contracts in place. Upon receipt of the Counter-Notice, the RTM Company had a clear election to

make, namely to withdraw its Section 42 Notice or to apply to the FTT to determine whether it had the right to manage the premises. It elected to proceed with its application.

16. In these circumstances, the Applicant was fully entitled to proceed on the basis that the claim might succeed and to prepare for the consequences were this to be the outcome. The Respondent's argument would have significant implications. No landlord who disputed the validity of a right to manage application would be entitled to recover any costs of assessing and preparing for the consequences should their argument fail. This is not the intended effect of Section 90(4).

17. The Tribunal therefore also rejects the argument that the work undertaken by Eagerstates fell within the scope of their basic fee. The Applicant's management agreement with Eagerstates provides for any work in relation to the exercise of the Right to Manage to be an additional duty. This is consistent with the RICS Service Charge Residential Code. This approach is consistent with guidance given by the Upper Tribunal in *Columbia House Properties.*

18. The Respondent raise a separate point, namely the issue of duplication between the work carried out by the Solicitor and the Managing Agent. The Respondent refers the Tribunal to [44] of the judgment of HHJ Robinson in *Columbia House Properties.* The Tribunal notes that there has been a previous unsuccessful RTM application. There should be no double charging for work undertaken in investigating this previous application.

Quantum of Costs

Management Fees – Eagerstates: £350 + VAT

19. The Applicant has provided an invoice from Eagerstates, dated 1 April 2015, at p.23. The sum of £350 which is claimed is the minimum fee which is specified for this additional service in the management agreement. The invoice describes the work involved which totals 3 hours. The Applicant states that this is the charge for work carried out immediately upon receipt of the claim notice and prior to the RTM acquisition.

20. The Respondent's primary argument is that the vast majority of the work was not reasonably incurred because the landlord was disputing the validity of the Section 42 Notice. The Tribunal has rejected that argument and is satisfied that it was appropriate for the managing agents to review the contracts that were in place, review insurance details, and review scheduled works and ongoing services.

21. The Respondent challenges the time of one hour spent on "drafting e-mail, scanning copy of lease, providing information on the property and on the leaseholders". The time claimed is not disputed, but it is averred

that the obtaining a copy of the lease is not fee earning work and that there is duplication with the work of the Solicitor. The Respondent also disputes 35 minutes for "consult and meet freeholder to advise of ramifications of RTM". Again, it is suggested that there is duplication with the work of the Solicitor.

22. The issue for the Tribunal is whether the minimum fee of £350 which is specified in the management agreement for the work for work carried out immediately upon receipt of the claim notice and prior to the RTM acquisition, is reasonable. The Tribunal is satisfied that it is. In particular, were the landlord to be personally liable to pay this charge, would it argue that the minimum fee should be reduced having regard to the particular circumstances of this case. The Tribunal is satisfied that it would not.

23. The advantage of an agreement specifying a standard sum is that it provides certainty as to what the paying party will be required pay. A minimum fee of £350 is a reasonable estimate of the work that might reasonably be involved immediately upon receipt of the claim notice and prior to any RTM acquisition.

Solicitors Fees – Conway & Co: (i) Advising on RTM Claim - £475.50 + VAT; (ii) Proceedings before FTT: £1,530 + VAT

24. The Respondent state that the vast majority of the solicitor's fees are agreed save for the time claimed by the solicitor in engaging with the managing agent. Three six minute attendances are disputed in respect of the claim and seven are disputed in connection with the FTT proceedings. One hours work is claimed at £225. The Respondent seems to assume that these attendances are with the managing agent and should be disallowed as duplication. However, these are described as "attendances upon the client/client's agent". The Tribunal accepts the Applicant's argument that it is appropriate for a solicitor to report to their client and that the number of attendances is neither unusual or excessive.

25. The Tribunal has considered the reasonableness of the total bills. Neither the sum of £457.50 for dealing with the claim nor the sum of £1,530 for dealing with the paper determination are unreasonable. Neither has the Applicant satisfied us that there is any element of duplication which should be disallowed.

Judge Robert Latham

17 July 2015