First-tier Tribunal
Property chamber
(Residential Property)

Case references	:	**CAM/00KF/LCP/2014/0001**
Property	:	**99 Cumberland Avenue, Southend-on-Sea, Essex SS2 4LG**
Applicant	:	**Forcelux Ltd.**
Respondent	:	**99 Cumberland Avenue RTM Co. Ltd.**
Date of Application	:	**17th January 2014**
Type of Application	:	**To determine the amount of costs payable by a RTM company (section 88(4) Commonhold and Leasehold Reform Act 2002 ("the Act"))**
Tribunal	:	**Bruce Edgington (solicitor, chair)** **Roland Thomas MRICS** **David Cox**
Date and venue for Hearing	:	**17th July 2014, at the Court House, 80 Victoria Avenue, Southend-on-Sea Essex SS2 6EU**

DECISION

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1. The reasonable legal costs of the Respondent in dealing with the matters set out in Section 88 of the Act are £860.00 plus VAT on profit costs but subject to the consideration of whether VAT is recoverable by the Applicant. If it is, no VAT is recoverable from the Respondent.

Reasons

Introduction

2. The Respondent has served at least 2 Claim Notices which have failed. As everything seems to be in issue in this case – including the number of such Notices that have been served – the Tribunal will simply note that this was not the first such Notice. It now seems that a successful Notice has been served.

3. At least 3 bundles of documents have been produced for the Tribunal. That relating to the costs is particularly unhelpful from both parties.

Firstly, the Applicant has included many copies of previous decisions practically none of which are relevant or helpful. Secondly the Respondent has just ignored the Tribunal's directions to set out its objections on the form recommended by the Civil Procedure Rules.

4. No doubt the directors will claim that they are not lawyers and therefore do not know what this means. With the greatest of respect to them, in the days of the internet this is no longer a reasonable excuse. The Civil Procedure Rules are easily accessed and the form recommended by Part 47 PD (precedent G) of those Rules can easily be located by the index. It sets out how to make the objections and then leave enough room for the receiving party to reply and then for the Tribunal to set out its decision against each objection. By e-mailing the document in Word format, this can be easily achieved.

5. What the Tribunal is left with is a discourse from the Respondent which really amounts to general accusations. It also refers to a previous decision of this Tribunal in relation to a previous costs order, with the same parties, as "Bruce Edgington's decision" which is, of course, inaccurate. Judge Edgington was the chair of the Tribunal and signed the decision on behalf of himself and the other member. However, it was the Tribunal's decision.

6. Thus, instead of having one schedule with the claim, the objections , the replies and space for the decision on each item, the Tribunal is left with a schedule of costs at pages 6 and 7 in the bundle, objections at pages 101 and 102 and replies to the objections at pages 129-135. At least the solicitors acting for the Applicant have attempted to set out their replies to the individual objections, as they saw them to be.

The Law

7. Section 88(1) of the Act says that *"a RTM company is liable for reasonable costs incurred by a person who is....a landlord under a lease of the whole or part of any premises....in consequence of a claim notice given by the company in relation to the premises"*

8. Section 88(3) says that where an application to the LVT for confirmation that the RTM company is entitled to manage a property is dismissed, the RTM company becomes liable to another party for its costs incurred in the LVT proceedings.

9. The method of assessment is on the basis of what is sometimes called the indemnity principle. In other words the costs payable are those which would be payable by the client *"if the circumstances had been such that he was personally liable for all such costs"* (Section 88(2) of the Act).

The hearing

10. The hearing was requested by the Respondent, and Hayley Carter and Mark Brook attended on its behalf. The Applicant did not attend and was not represented, having, though its solicitors, written to the Tribunal beforehand to ask for their attendance to be excused.

LRX/31/2005 & LRX/47/2005 His Honour Judge Rich QC had to consider upon whom lay the burden of proof. At paragraph 15 he stated :-

> *"If the landlord is seeking a declaration that a service charge is payable he must show not only that the cost was incurred but also that it was reasonably incurred to provide services or works of a reasonable standard, and if the tenant seeks a declaration to the opposite effect, he must show that either the cost or the standard was unreasonable. In discharging that burden the observations of Wood J in the Yorkbrook4 case make clear the necessity for the LVT to ensure that the parties know the case which each has to meet...."*

17. This case is not a service charge dispute. However, when a Tribunal is considering the assessment of indemnity costs, the same burden of proof exists i.e. if a person wants to challenge such costs, he or she must establish that the costs claimed are, of themselves, unreasonable or disproportionate. Simply saying that it is unreasonable to incur similar costs on each successive occasion is not enough. If defective Claim Notices are served, the consequences are known beforehand. Blaming others for work having to be repeated is not an attractive argument.

18. Thus, just setting out comments such as "*we find it strange that*" and "*which we find bizarre for such an experienced, highly qualified professional*" and "*we would argue as to why a solicitor of such experience and standing would need to spend such vast quantities of time repeating works*" and "*we feel the case of 'reasonableness' has been pushed to the boundaries and padded out with spurious claims*" and "*it is not the first time that documents Tolhurst Fisher have claimed to have sent were never received*" is not helpful.

19. The comment at the end perhaps encapsulates the problem when the Respondent says "*we would suggest that looking individually at these costs is quite ludicrous. The entire costs should have been dealt with at this point for the third successful claim as well as the second unsuccessful one*". Once again this fails to understand that the only way a court or Tribunal can assess costs is to look at the claim, then look at the general and individual objections, then at the replies and, finally, make a determination.

20. Having said that, the Applicant must understand that the Tribunal and parties must now comply with the overriding objective which includes acting proportionately. The Tribunal can certainly see the merit in saying that the Applicant should have waited for all matters of possible contention to be included in the same application or in associated applications to be dealt with at the same time.

21. The RTM Company asks the Tribunal for clarification of a point made in its previous decision about VAT. The RTM Company explains that it

is not registered for VAT purposes and will not be able to recover the VAT. The above comments mean, in this case, that if Forcelux is registered for VAT purposes, then it can recover the VAT on its own solicitors' fees and the RTM Company does not have to pay such VAT. However, if Forcelux is not so registered and/or cannot recover VAT then the RTM Company has to pay the VAT to the solicitors. Hopefully this explains matters.

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Bruce Edgington
Regional Judge
17th July 2014