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

Case Reference : **CHI/45UC/LCP/2013/0007**

Property : **20 Clifton Road, Littlehampton
West Sussex BN17 5AS**

Applicant : **Julie Colwell**

Representative : **Dean Wilson LLP, Solicitors**

Respondent : **20 Clifton Road (Littlehampton)
RTM Company Limited**

Representative : **None**

Type of Application : **Application for costs under Section
88(4) of the Commonhold and
Leasehold Reform Act 2002 ("the
Act")**

Tribunal Members : **Judge E Morrison (Chairman)
Mr B H R Simms FRICS MCI Arb
(Valuer Member)**

Date of consideration: **28 August 2013**

Date of Decision : **9 September 2013**

DECISION

The Application

1. This is an application made by the Landlord of 20 Clifton Road for a determination of the costs payable by the Respondent Right to Manage company pursuant to section 88 of the Act.

Summary of Decision

2. The costs payable by the Respondent are £1024.00 inclusive of disbursements and VAT.

The Law and Jurisdiction

3. The relevant provisions of the Act are as follows:

Section 84 Counter-notices

...

(3) Where the RTM company has been given one or more counter-notices containing a statement such as is mentioned in subsection (2)(b), the company may apply to [the appropriate tribunal] for a determination that it was on the relevant date entitled to acquire the right to manage the premises. ..

(4) An application under sub-section (3) must be made no later than the end of the period of two months beginning with the day on which the counter-notice... was given.

87 Deemed withdrawal

(1) If a RTM company has been given one or more counter-notices containing a statement such as is mentioned in subsection (2)(b) of section 84 but either—

(a) no application for a determination under subsection (3) of that section is made within the period specified in subsection (4) of that section, or

(b) such an application is so made but is subsequently withdrawn, the claim notice is deemed to be withdrawn.

(2) The withdrawal shall be taken to occur—

(a) if paragraph (a) of subsection (1) applies, at the end of the period specified in that paragraph, and

(b) if paragraph (b) of that subsection applies, on the date of the withdrawal of the application.

Section 88 Costs: general

(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,

....

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 a leasehold valuation 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 a leasehold valuation tribunal.

89 Costs where claim ceases

(1) 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.

(3) Each person who is or has been a member of the RTM company is also liable for those costs (jointly and severally with the RTM company and each other person who is so liable).

4. To be reasonable, costs must be reasonably incurred and reasonable in amount.
5. Pursuant to the indemnity principle, a paying party is obliged to indemnify a receiving party only for expenditure actually incurred. Accordingly a party may not recover more than it is actually obliged to pay its advisers.

Background to the Application

6. In April 2012 the Applicant was served with a Claim Notice dated 11 April 2012, being a notice of claim to acquire the right to manage 20 Clifton Road under Chapter 1 of Part 2 of the Act. On 10 May 2012 the Applicant, through her solicitors, served a Counter-Notice under section 84 of the Act alleging that the Respondent was not entitled to acquire the right to manage. The Respondent made no application to the tribunal for a determination within two months as required by section 84, and accordingly on 10 July 2012 the Claim Notice was deemed withdrawn pursuant to section 87. The Applicant's solicitors then submitted an invoice for their client's legal costs. These not being paid, this application was made under section 88.

Procedural Background

7. Directions were given on 1 May 2013 requiring the parties to set out their respective positions in writing and to provide relevant documents. It was further directed that the application would be determined on the basis of written representations unless either party objected. Neither party having so objected, the Tribunal has determined this case on the basis of written representations without an oral hearing.

Evidence before the Tribunal

8. Pursuant to the Directions the Applicant submitted a witness statement from Emily Fitzpatrick, the solicitor at Dean Wilson who was instructed by the Applicant in relation to the Claim Notice. The witness statement exhibited various documents. The Respondent has not participated in the proceedings and has filed no submissions or evidence.

Determination

9. Applying the relevant provisions of the Act, the Applicant is entitled to be paid her costs, as determined under section 88(1), to the date of withdrawal of the Claim Notice i.e. 10 July 2012.
10. Ms Fitzpatrick's witness statement is unclear as to the precise amount being claimed. At paragraph 16 she states that her firm's legal fees up to withdrawal were £1282.20 inclusive of VAT. However at paragraph 20 she asks the Tribunal to determine the costs at £1360.08. The latter figure appears to be derived from an exhibited breakdown of the time spent by Ms Fitzpatrick and one other fee-earner, utilising their respective hourly rates. Although this breakdown does not set out the dates on which any of the work was carried out, Ms Fitzpatrick states at paragraph 18 that it is for work through 10 July 2012.

11. Also exhibited are copies of two invoices addressed to the Applicant. The first is dated 31 July 2012 and is headed "Dealing with RTM Claim by Lessees". It is for a total of £1097.88, broken down into profit costs of £850.00 + VAT, courier fee of £61.57 + VAT and Land Registry fee of £4.00. The second invoice is dated 27 March 2013 and is headed "RTM – 20 Clifton Road Littlehampton Interim" and covers the period 27 May 2012 – 6 March 2013. The narrative refers only to advice given, and does not specify any other work. The invoice is for £582.00, comprising profit costs of £485.00 + VAT.
12. Neither of the bills, taken separately or together, marry up with the figures mentioned by Ms Fitzpatrick in the body of her witness statement. The Tribunal also notes that at paragraph 14 of her statement, it is said that on 19 September 2012 she provided the Respondent's agents with her firm's invoice for the Applicant's legal costs. At that point, the only invoice in existence, based on the evidence before the Tribunal, was the one dated 31 July 2012.
13. The indemnity principle prevents the Applicant recovering more from the Respondent than she is liable to pay her own solicitor. The solicitors' internal time records may indicate that billable costs were higher, but the only clear evidence of what the Applicant is actually being required to pay to her solicitors for costs in consequence of the Claim Notice up to 10 July 2012 is the amount of the invoice dated 31 July 2012. The Tribunal is not satisfied that the second invoice of 27 March 2013 includes any costs recoverable under section 88 for the period up to 10 July 2012.
14. The first invoice includes a charge for a courier fee of £61.57 + VAT. Ms Fitzpatrick acknowledges that this was queried by the Respondent. She submits it was reasonable to use a courier to serve the Counter-Notice on 10 May 2012 due to the rigid time constraints and ramifications of not serving in time. The Tribunal notes that Ms Fitzpatrick was first instructed on 10 May 2012, a Thursday, just 3 days before the deadline for the Counter-Notice expired on Sunday 13 May 2012. In those circumstances, where time was so short, it is understandable why a courier was used to ensure the Counter-notice was served in time. However, time was short because the Applicant had waited until the eleventh hour to instruct Ms Fitzpatrick. If there had been more time, it would have been neither necessary nor reasonable to incur the costs of a courier. The Tribunal therefore finds that the courier fee is a not an expense which can be regarded as a reasonable cost payable by the Respondent.

15. There being no other objection to the costs, and it appearing to the Tribunal that the remaining legal fees charged in the invoice of 31 July 2012 are reasonable, the Tribunal determines the costs payable by the Respondent in the sum of £1024.00 (profit costs of £850.00 + VAT + Land Registry fee of £4.00).

Dated: 9 September 2013

Judge E Morrison (Chairman)

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.