



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

**Case Reference** : **MAN/OOBY/LCP/2019/0002**

**Property** : **Mill View Tower, Mill Street/Rutter Street,  
Liverpool L8 6AG**

**Applicant** : **Tuscola (FC101) Limited**  
**Representative** : **Regent Property Management  
Limited**

**Respondents** : **L8 Inc RTM Company Limited**

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

**Tribunal Members** : **Laurence Bennett (Tribunal Judge)**

**Date of determination** : **2 August 2019**

**Date of Decision** : **7 August 2019**

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**DECISION**

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## **Application**

1. Tuscola (FC101) Limited applies for a determination of the costs payable by L8 Inc RTM Company Limited under Section 88(4) of the Commonhold and Leasehold Reform Act 2002 (the Act).
2. The Respondent is a Right to Manage Company formed to acquire the right to manage Mill View Tower, Mill Street/Rutter Street, Liverpool L8 6AG (the Property).

## **Background**

3. The application was received by the Tribunal on 1 March 2019.
4. On 16 April 2019, Judge Holbrook made directions for the determination of the application which provided for service of statement of case and supporting documents and a Respondent's statement of case. the directions stated that the Tribunal would consider the application on the papers unless either party requested a hearing.
5. In compliance with directions the Applicant and Respondent provided a statement of case. The Applicant also submitted a reply.
6. Neither party requested an oral hearing. The Tribunal determined the application on the papers on 2 August 2019.

## **The Law**

7. The relevant sections of the Act provide:
8. S88 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,  
(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]

9. S89 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) But subsection (3) does not make a person liable if—

(a) the lease by virtue of which he was a qualifying tenant has been assigned to another person, and

(b) that other person has become a member of the RTM company.

(5) The reference in subsection (4) to an assignment includes—

(a) an assent by personal representatives, and

(b) assignment by operation of law where the assignment is to a trustee in bankruptcy or to a mortgagee under section 89(2) of the Law of Property Act 1925 (c. 20) (foreclosure of leasehold mortgage).

## **Background**

10. The Respondent sent a claim notice dated 18 August 2018 to the Applicant in respect of the Property. A counter notice was sent on behalf of the Applicant on 13 September 2018 by the Applicant's Solicitors. Both the claim notice and counter notice bear the name LR8 Inc RTM Company Limited although the letter submitting the notice from the Respondent's Solicitors Messrs J B Leitch refers to their clients as L8 Inc RTM Company Limited.

11. By letter dated 9 January 2019 addressed to L8 Inc RTM Company Ltd, Regent Property Management Limited on behalf of the Applicant submitted an invoice totalling £6,581.74 including Solicitors fees and disbursements. The invoice sets out work done by a Director of Regent Property Management Limited consequent on receiving the notice including obtaining and reviewing leases, documents, claim form, travelling to Liverpool to visit the site, meeting local client to obtain instructions and liaising with Freeholders and Solicitors. It noted that its client is based in Israel.

## **Applicant's case**

12. The Applicant's case statement states that as no further action was taken by the Respondent following the counter notice the invoice was issued. The Applicant submits that it was the clear intention of the Respondent to serve the notice on behalf of the correct company and that following that notice, a second claim notice was served with the correct company name.

13. The Applicant has responded in respect of specific invoiced items raised by the Respondent.

### **Respondent's case**

14. The Respondent states that as the claim notice was purported to have been given by a company that did not exist, it cannot be deemed that an initial notice has been served and any costs for work undertaken by the Applicant is not the responsibility of the Respondent. The Respondent is L8 Inc RTM Company Limited and not LR8 Inc RTM Company Limited.
15. The Respondent makes comments in respect of individual items within the invoice. These are considered in the Tribunal's determination below.

### **Tribunal's Conclusions with Reasons**

- Claimant Company
16. The Tribunal finds that it was the clear intention that the notice giving rise to the costs was intended to be a valid notice on behalf of the correct claimant RTM Company. This is clear not only from ensuing events which included a notice with the accurate company name but also from the accompanying letter of L8 Inc RTM Company Limited's Solicitors which carries the accurate company name. We conclude that the notice which proved defective was a notice intended to be sent on behalf of L8 which bore an error. Accordingly, we find L8 the appropriate Respondent to this application.
- Regent's invoice
17. In reaching our decision we have borne in mind Section 88(2). We note there is a degree of duplication in Regent Property Management Limited's description of work and that of Messrs Brethertons, the Applicant's Solicitors. One example relates to perusing leases and title documents and obtaining office copies.
  18. We have reservations whether it was necessary for either Regent or Brethertons to obtain documents which should have reasonably been in their possession as agents for their clients as responsible Landlords/Managers and accordingly disallow office copies at £192 within the Regent invoice and £540 for viewing same within that invoice.
  19. Bearing in mind solicitors were instructed we do not find a person who was personally incurring costs would require nor do we see the purpose of additional review by a Regent director nor further duplication in respect of meetings and technical review. Accordingly, we disallow the sums of £740 and £1,680 as invoiced amounting to £2,960.
  20. We accept that it was necessary for Regent's administrative oversight and liaison with solicitors which we consider, based on our experience of similar matters would require 2 hours work at the level of administrative staff in the sum of £180 + VAT.

21. We note that travel to London has been charged. No detail is given why a meeting in person was necessary and if so, why this would require hotel expenses. We do not consider this would have been personally incurred within the terms of Section 88(2) and it does not reflect modern or appropriate practice and methods of communication.
22. In summary, we find that the appropriate sum for work carried out by Regent is £180 + VAT.  
  
Bretherton's invoice
23. Messrs Brethertons' invoice is not broken down and does not state the hourly rate or identify the particular category of fee earner. This may be explained by the fact that in the invoice it is referred to as work in progress. It does not, however, comply with the direction made by the Tribunal.
24. The Respondent does not challenge Messrs Brethertons' fees, however, we must consider whether they fall within the Respondent's liability.
25. Interestingly, the invoice bears an address in Oxfordshire and not London as would have been expected from Regent's invoice although this may reflect an Accounts Centre. We have further difficulty in identifying the hourly rate applied.
26. Hampered by the lack of information, we have considered a likely hourly rate, time and amount of work in respect of the claim and counter notice provided with the application. On that basis, we conclude an appropriate solicitor's cost would be £400 + VAT and disbursements as invoiced in the sum of £42.
- Summary
27. Accordingly, we conclude that the Respondent is liable to the Applicant in the sum of £580 + VAT and disbursements of £42 in respect of costs arising from the claim notice.

## **Order**

28. The costs determined payable by the Respondent to the Applicant are £580 + VAT and disbursements of £42 in respect of costs arising from the claim notice.

**L J Bennett**  
**Tribunal Judge**  
**2 August 2019**

## **Appeal**

29. A party seeking permission to appeal this decision must make a written application to the Tribunal for permission to appeal. This application must be received by the Tribunal no later than 28 days after the date this decision is sent to the parties. Further information is contained within Part 6 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (S.I. 2013 No. 1169).