

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

**Case References** : **BIR/31UC/LCP/2018/0002**

**Property** : **Jordean Court, 12 Brook Street, Sileby  
Loughborough, Leics, LE12 7DR**

**Applicant** : **Fountain Developments (Sileby) Limited**

**Applicant's  
Representative** : **Spearing Waite Solicitors**

**Respondent** : **Jordean Court RTM Company  
Limited**

**Respondent's  
Representative** : **None**

**Application** : **(1) Application for a determination of costs  
payable under s88(4) Commonhold and  
Leasehold Reform Act 2002**

**Tribunal** : **Tribunal Judge P.J. Ellis  
Tribunal Member Mr N.R. Thompson  
Tribunal Member Mr N. Wint FRICS**

**Date of Hearing** : **31 August 2018**

**Date of Decision** : **21 September 2018**

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**DECISION**

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***The Tribunal determines the sum of £1824.00 inclusive of vat and disbursements is the sum which the Applicant might reasonably be expected to have incurred in connection with the costs in consequence of a RTM claim notice given by the Respondent in connection with Jordean Court***

1. This is an application by Fountain Developments (Sileby) Limited for determination of the amount of costs payable by the Respondent an RTM company, pursuant to s88 Commonhold and Leasehold Reform Act 2002 (the Act).
2. The Application was issued on 18 June 2018. Directions for preparation of Statements of Case were issued on 9 July 2018. The parties did not request an oral hearing and the Tribunal considered the parties Statements on 31 August 2018.
3. The costs the subject matter of this application are the charges raised by Spearing Waite Solicitors of Leicester who represented the Applicant in connection with the Respondent's application to be appointed manager of Jordean Court but that firm did not represent the Applicant in these proceedings.
4. The Applicant seeks recovery of all charges incurred by it arising from giving instructions to its solicitors. The Applicant sent an invoice dated 31 March 2018 to the Respondent for the sum of £2,208.00 and Vat of £441.60. No charges other than the legal fees were added to the invoice. The sum claimed is made up from two invoices from Spearing Waite. The first invoice, dated 26 March 2018 is for charges of £1350.00 the second invoice, dated 13 April 2018 is for charges of £840.00. Both invoices are gross sum invoices with no information describing work done but Statements of Costs for summary assessment were presented in support of the claim.
5. The sums claimed are set out in the tables prepared by the Tribunal from the Statements of Costs.
6. The gross sum of £1350.00 in the first invoice is made up as set out in the first table.

Work Summary	Fee Earner Rate	Time	Total
Letters to Client	150	3.5hours	£525
Telephone to Client	150	1.5 hours	£225

Letters to other party	150	2.80 hours	£420
Telephone to other party	150	0.5 Hours	£75
Documents			£105
Vat			£273.60

7. The work on documents was supported by schedules showing 0.7 hrs of grade A fee earner working on definitions in the articles of association and a review of resolutions to amend the articles.
8. The sum of £840.00 in the second invoice is made up as set out in the second table.

Work Summary	Fee Earner Rate	Time	Total
Letters & emails	150	0.20	£30.00
Letters & emails	100	2.30	£230.00
Telephone	100	1.00	£100.00
Documents			£480.00

9. The time spent on Documents was supported by schedules showing:
  - a. Consideration of claim notice, 0.7hrs by A grade fee earner and 2 hours by B grade fee earner making a claim of £305.00
  - b. Letter to New Estate Management on 20, February 2018 taking 0.5hrs of A grade fee earner and 1 hour of B grade fee earner making a claim of £178.00
10. The Applicants' statement of case is accompanied by the bundle of correspondence which passed between the parties including the letter of 20, February 2018. The Respondent's statement of case includes a bundle containing the claim notice and two decisions of the First-tier Tribunal determining costs in other cases in support of its assertion that the sum claimed by the Applicant is excessive.
11. There is no dispute that the Applicant is entitled to its costs of obtaining legal advice in respect of the right to manage or that in the event the parties cannot agree the Tribunal has jurisdiction to determine any question arising in relation to the amount of any costs payable by the RTM company.

12. The dispute arises because the Respondent contends the total time taken by the Applicant's solicitors is excessive in this case which it states was straight forward. It also asserts the Applicant's solicitors have failed to supply adequate information of the breakdown of the costs. The Applicant in its statement of case maintains the costs were exacerbated by the Respondent's conduct of the application for appointment as the RTM company. It refers to the defects in the claim notice relating to the description of the premises and other issues relating to the authority of those representing the Respondent and its composition.
13. As both sides submitted comprehensive statements of case with supporting bundles the Tribunal was able to review the respective claims before making this decision.

### **The Law**

14. Both sides refer to the obligation on the part of the Respondent to pay the charges incurred by the landlord pursuant to s88 of the Act which 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 .*

## **Decision**

15. S88(1) & (2) provide that the RTM company is liable to pay the reasonable costs of the landlord but those costs are only to be regarded as reasonable to the extent that they are what the Applicant might expect to pay if paying themselves.
16. There is no dispute that the Applicant was entitled to appoint lawyers or that the charging rate was reasonable. The issue between the parties is in connection with the time taken to deal with the Respondent's claim.
17. It is regrettable that the Applicant has not provided a more detailed breakdown of the time taken although the statement of case gives some idea of what work was required by the solicitor. A client is entitled to know what work was undertaken by the solicitor in order to be satisfied the charge is reasonable.
18. In the absence of a full breakdown of the costs claimed, the Tribunal has applied its own experience of work involved in these cases in coming to its decision as to what is a reasonable charge.
19. As far as the first invoice is concerned the time taken with the client is excessive and will be reduced to two hours for correspondence and thirty minutes for phone calls. The work involved by a specialist solicitor need not have taken the time claimed.
20. The Tribunal has reviewed the inter partes correspondence and considers the time reasonable. There were substantive issues between the parties and disagreement over how to resolve them. The Tribunal agree that a properly formulated claim notice would have avoided some of the costs.
21. As far as the second invoice is concerned the Tribunal considers the time taken with the client is not fully explained or justified. The time claimed is excessive and will be reduced to one hour for the lower grade fee earner. The greater part of the second invoice is under the heading Documents. The work described is consideration of the claim notice of 31 January 2018 and the letter to New Management of 20 February 2018. Taken together the claim is for 1.2 hours by the grade A fee earner and three hours by the grade B fee

earner making a total sum claimed of £480.00. The Tribunal is not satisfied with the explanation offered that the time was reasonable. There is some probable duplication with the claim for consideration of the claim notice and the letter. The Tribunal considers two hours by the junior fee earner is appropriate but allows thirty minutes by the senior fee earner for the claim notice as the defects were obvious upon perusal of the notice. However, the time for the letter is excessive. It is reasonable for the senior fee earner to review a complex letter and thirty minutes is appropriate but the junior fee earner could have drafted the letter within the two hours of time allowed for consideration of the notice.

22. Having regard to the reductions made by the Tribunal it determines that the sum of £1824.00 inclusive of vat and disbursements is reasonable as appears in the table below.

### **First Invoice**

Work Summary	Fee Earner Rate	Time	Total
Letters to Client	150	2 hours	£300.00
Telephone to Client	150	0.5 hours	£75.00
Letters to other party	150	2.80 hours	£420.00
Telephone to other party	150	0.5 Hours	£75.00.
Documents			£105.00
Vat			£195.00

### **Second Invoice**

Work Summary	Fee Earner Rate	Time	Total
Letters & emails	150	0.20	£30.00
Letters & emails	100	1.00	£100.00
Telephone	100	0.50	£50.00
Documents			£350.00
Vat			£106.00

### Summary Totals

<b>First Invoice</b>		£975.00
	Vat	£195.00
	Disbursements	<u>£ 18.00</u>
	<b>Total</b>	<b>£1188.00</b>

<b>Second Invoice</b>		£530.00
	Vat	<u>£106.00</u>
	<b>Total</b>	<b>£636.00</b>

**Total of both invoices**                      **£1824.00**

### Appeal

23. If either of the parties is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to them rule 52 of The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013.

Tribunal Judge P.J.Ellis  
Chair