



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

Case Reference : **CHI/43UF/LCP/2013/0011**

Property : **1-8 Barstow Place, 124 Warren Road, Banstead, SM7 1LB**

Applicant : **Grangeford (113) Ltd**

Representative : **Conway & Co, Solicitors**

Respondents : **Barstow Place RTM Co Ltd**

Representative : **Urban Owners Ltd**

Type of Application : **For the determination of the Respondent's liability to pay the Applicant's RTM costs**

Tribunal Members : **Judge I Mohabir
Mr N I Robinson FRICS**

Date and venue of Hearing : **22 October 2013
Reigate County Court**

Date of Decision : **13 December 2013**

DECISION

Introduction

1. This is an application made by the Applicant seeking a determination under section 88(1) of the Commonhold and Leasehold Reform Act 2002 (as amended) ("the Act") of the Respondent's liability to pay its costs having exercised the right to manage in respect of 1-8 Barstow Place, 124 Warren Road, Banstead, SM7 1LB.
2. The Respondent's right to manage application is contested by the Applicant and is the subject matter of separate proceedings (CHI/43UF/LRM/2013/0009) which have been stayed pending the outcome of an Upper Tribunal decision on the point at issue.
3. Nevertheless, by an application dated 20 August 2013 the Applicant made an application for a determination that the Respondent pay its costs incurred thus far.
4. On 5 September 2013, the Tribunal issued Directions, which have been complied with by both parties.
5. The costs claimed by the Applicant are £1,432.72 for solicitors fees and £420 for managing agent's fees inclusive of VAT. They are claimed as a consequence of two claim notices served by the Respondent dated 22 May 2013 and in respect of which the Applicant has served a counter notice.
6. A breakdown of the costs together with an explanation has been provided by the Applicant in its statement of case dated 10 September 2013. The work has been undertaken by the fee earner with conduct, Ms Scott, at an hourly rate of £225 plus VAT. A total attendance of 5 hours and 14 minutes is claimed plus disbursements of £16.44.
7. The total attendance is comprised of 55 minutes taking instructions, 175 minutes spent on documents and 84 minutes engaged on routine correspondence.

8. The managing agent's fee of £420 appear to relate to the cost of providing assistance to the Applicant's solicitors with the provision of information in relation to the property and leaseholders from its records.
9. In its points of dispute dated 8 October 2013, the Respondent does not challenge the hourly rate claimed by the Applicant. Instead, it contends that the total attendances claimed are unreasonable and excessive having regard to the work carried out. In relation to the counter notices, the Respondent argued that, as the Tribunal has yet to rule on their validity, the cost of preparing them should not be allowed. As to the correspondence, the Respondent contends that no more than 20 minutes should be allowed. It also contends that the managing agent's fee should be disallowed.

Section 88

10. This 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) ...*
- (c) ...*

in consequence of a claim notice given by the company in relation to the premises.

(2) Any costs incurred by 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)...

(4)..."

Decision

11. Pursuant to the Tribunal's directions, the determination of this application took place on 22 October 2013 and was based solely on the documentary evidence before it.
12. The first issue considered by the Tribunal was whether the Applicant was entitled to claim its interim costs given that the substantive RTM application had been stayed.
13. The Tribunal concluded that the Applicant could do so because section 88 does not expressly prevent a landlord from doing so even where a RTM application is defended. All the landlord has to do is to establish, as a matter of causation, that the costs claimed are a "*consequence of a claim notice given by the (RTM) company*". Presumably the Act is silent on the point about when a landlord may recover its costs because it is largely irrelevant whether the RTM claim is admitted or defended. Under section 88(3) the landlord cannot recover any costs incurred in contested proceedings before the Tribunal. In any event, the Respondent does not take this point in its statement of case.
14. The second issue then considered was the reasonableness of the costs claimed by the Applicant applying the statutory test of reasonableness under section 88(2).
15. The Respondent does not complain about the level of fee earner or the hourly rate of £225 claimed nor did the Tribunal consider this to be unreasonable. Accordingly, it was allowed.
16. Having carefully considered the explanation of the breakdown of the attendances including the documentation filed in support and the points of dispute, the Tribunal was satisfied that the total attendance of 5 hours and 14 minutes had been reasonably incurred.

17. As to the attendance for preparing the counter notices, the challenge being made by the Applicant in the substantive proceedings is that the Respondent is not entitled to acquire the right to manage in respect of more than one property. Until two recent Upper Tribunal decisions that have decided that an RTM could in fact do so, the point remained arguable. Therefore, in the Tribunal's judgement, the Respondent was entitled to seek to defend the claim on this basis and, it follows, that the cost of preparing the counter notices had been reasonably incurred and is allowed.
18. The disbursement of £16.44 is not challenged by the Respondent and is, therefore, allowed.
19. As to the managing agent's costs of £420, these were disallowed by the Tribunal. The challenge made by the Applicant in the substantive proceedings was entirely based on a legal point. The Tribunal did not understand why the assistance of the managing agent was required in the preparation of the counter notices. The provision of information by the managing agent about the property and the leaseholders did not strike the Tribunal as being onerous and would no doubt have been readily available from a current database. This work would ordinarily fall within the scope of the management agreement.
20. Accordingly, the Applicant's costs allowed are the solicitors fees of £1,432.72 including VAT and disbursements.

Appeals

21. 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.

22. 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.
23. 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.
24. 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.

Judge I Mohabir
13 December 2013