



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

Case Reference : **LON/00AW/LCP/2018/0002**

Property : **105 Philbeach Gardens, London
SW5 9ET**

Applicant : **Jo-Yun Hung
Omar Majid**

Representative : **In Person**

Respondent : **Mr Zvi Benveniste**

Representative : **Linder Myers Solicitors**

Type of Application : **S88(4) Commonhold and
Leasehold Reform Act 2002 –
determination of landlord's costs**

Tribunal Member : **Judge John Hewitt
Mr Kevin Ridgeway MRICS**

**Date and venue of
Determination** : **17 July 2018
10 Alfred Place, London WC1E 7LR**

Date of Decision : **18 July 2018**

DECISION

The issue before the tribunal and its decision

1. The issue before the tribunal is an application pursuant to s88(4) Commonhold and Leasehold Reform Act 2002 (the Act) for the determination of the amount of costs payable to the respondent pursuant to s88(1) of the Act. There is a related application for reimbursement of the £100 application fee paid by the applicants to the tribunal.
2. The decisions of the tribunal are that:
 - 2.1 The amount of £1,368.00 is payable by 105 Philbeach Gardens Limited to the respondent; and
 - 2.2 The application for reimbursement of the application fee of £100 is refused.
3. The reasons for our decisions are set out below.

NB Later reference in this Decision to a number in square brackets ([]) is a reference to the page number of the hearing file provided to us for use at the hearing.

Procedural background

4. The applicants are the proprietors of long leases of flats 3 and 4 at the Property. They incorporated 105 Philbeach Gardens Limited (co regn 10902243) (the Company) with a view to it being a vehicle to acquire the right to manage the Property.
5. On 8 December 2017 a notice of claim was given pursuant to s79 of the Act to the effect that on the relevant date the Company had acquired the right to manage the Property.
6. On 12 January 2018 the respondent gave a counter-notice alleging that on the relevant date the Company was not entitled to acquire the right to manage for two reasons therein set out.
7. On 17 February 2018 notice was given on behalf of the Company pursuant to s86 of the Act that the claim notice was withdrawn.
8. The application to the tribunal was made on 16 April 2018. Directions were given on 19 April 2018 and subsequently varied. The directions required the respondent to provide a schedule of costs claimed sufficient for a summary assessment. The schedule was to identify the charging basis for legal and/or other costs, to set out hourly rates, time spent and rates applied and disbursements. The directions made provision for the applicants to serve a reply.
9. The directions notified the parties of the intention to determine the costs payable on the papers and without an oral hearing, unless a

request for an oral hearing was made. The tribunal has not received any such request and thus the determination is made on the papers.

10. The documents before the tribunal comprise:

The application form: 14 April 2018	1-7
Applicants amended statement of case; 26 June 2018	8-27
Respondent's statement of case: 4 July 2018	28-53

The statutory provisions

12. By s88(1) of the Act a RTM company is liable for the reasonable costs of the landlord in consequence of a claim notice given by the company in relation to the premises.
13. S88(2) provides that any costs incurred by the landlord in respect of professional services rendered to him by another are to be regarded as reasonable only if and to the extent that the costs in respect of such services might reasonably be expected to have been incurred by him if the circumstances were such that he was personally liable for all such costs.
14. S89(1) provides that where a claim notice is given by a RTM company is at any time withdrawn, the liability of the RTM company under s88 for costs is a liability for costs incurred by him down to that time.

The costs claimed

15. By letter dated 23 February 2018 Linder Myers, the respondent's solicitors, sent to the Company a demand for payment of £2,318.40.

That appears to have comprised:

1. Invoice dated 23 February 2018 Linder Myers to the respondent £1,598.40 made up as to:

Professional fees	£1,192.00
HMLR search fees	£ 18.00
Process server's fees	£ 125.00
VAT	£ 263.40

2. Invoice dated 22 February 2018 Grangeview Management Ltd (GML) to the respondent c/o GML £720.00 said to be in respect of "*Fees incurred in connection with the Right to Manage notice – 4 hours at £150 + VAT/hr*"

<i>Net cost</i>	<i>£600.00</i>
<i>VAT @ 20%</i>	<i><u>£120.00</u></i>
<i>Total Due</i>	<i>£720.00"</i>

16. The schedule of costs [37] dated 1 June 2018 annexed to the respondent's statement of case claims a total of £2,485.20 made up as to:

Solicitors costs	£1,346.00
VAT on legal costs	£ 269.20
Expenses:	
Landlord's managing agents	£ 720.00
Process server incl VAT	<u>£ 150.00</u>
	£2,458.20

17. The difference between the fees billed to the respondent (£1,192.00) and the professional fees claimed in the schedule (£1,346.00) is £154.00. It is not immediately clear how this is arrived but the bulk appears to reflect the claim to costs:

Preparing bill and letter for service on RTM:	£ 33.30
Preparing costs schedule:	£114.00

For convenience it may be noted here that according to the costs schedule both of those costs were incurred after receipt of the notice of withdrawal.

The gist of the case for the applicants

18. The gist of the case for applicants is that the fees do not make sense to them, are excessive and unreasonable. In general terms they say that far too much unnecessary work was undertaken by Linder Myers, but they do not cite specific examples. To support their case the applicants appear to have approached two different firms for quotations for services in the RTM sector:
1. Coles Miller Solicitors Quoted £250 + VAT flat fee to review a claim notice, and subsequent work at £210 + VAT per hour to carry out more detailed investigations; and
 2. Brady Solicitors Quoted £590 + VAT (two hours at £295) to review the claim notice and draft a counter-notice.
19. Reference was also made to free legal advice obtained by the applicants from Katie Cohen of Keystone Law but that is not relevant to what we have to determine. Similarly, the fees that Canonbury Management might charge for advising lessees on how to set up an RTM company and manage the process for them are not relevant to what we have to consider.
20. The applicants set some store by the motives which led them to incorporate the Company and pursue RTM but we cannot take them into account. The statute is quite clear as to the circumstances in which a landlord is entitled to recover reasonable costs incurred – the right stems from the giving of claim notice – the reason for giving it is not material.

The gist of the case for the respondent

21. The gist of the case of the case for the respondent is that the costs detailed in the schedule were reasonably incurred and are reasonable in amount. They assert that the respondent is an individual, not a corporate landlord who sought professional assistance from his managing agents and solicitors. Curiously it is asserted that the managing agents (GML) have little experience of RTM claims, they spent some four hours at a charge-out rate of £150 + VAT to conclude that they were unable to assist the respondent and that solicitors should be instructed on his behalf. We note from the schedule of costs that the solicitors spent some 2.3 hours in written or telephone attendances on the respondent and a further 3.7 hours receiving instructions, considering the claim notice, identifying the defects in it and drafting the counter-notice. They assert that all of this time was reasonable and justified.

Consideration and conclusions

22. First we reject the notion that the respondent is a novice landlord who reasonably relies on substantial professional assistance. The respondent is a substantial and experienced property investor who is well known in the sector. He has been involved in a number of applications before this tribunal. He is a director of a property company, Solwick Limited where he was appointed on 1 March 2009 and where his occupation is listed as a surveyor. The invoice addressed to him by GML [43] records his qualifications as being: *“B.A.(Hons) MA MSc PG Dip Law MRICS”*.
23. Nevertheless within the framework of s88 the respondent is entitled to recover reasonable costs incurred from the date of the claim notice down to the date of receipt of the notice of withdrawal, whether he is a property professional or not.
24. We have allowed the process server’s fee of £125 + VAT of £25 because:
 - 24.1 It was reasonable to incur the expense given the importance of a landlord being able to prove that a RTM counter-notice has been given; and
 - 24.2 The amount of the expense is a reasonable amount and well within the range to be expected for service of a legal document in London.
25. In relation to hourly charges, the directions issued required the respondent to set out the hourly rates and to list and summarise the time spent. In relation to the GML expense this has not been done. All that is given is 4 hours at £150 per hour + VAT. Paragraph 7 of the respondent’s statement of case makes it plain that GML *“... has almost*

no experience ...". That begs the question why were they instructed and what did they do, other than advise the respondent to seek legal advice.

26. We disallow the claim to £720 paid to GML in full. First, contrary to directions no or no sufficient explanation has been given to support the expenditure claimed. Further, the respondent is a property professional. He ought reasonably to have enquired of GML whether it had the relevant expertise before instructing them, and GML ought to have informed him that it did not. If the respondent was paying the costs himself we rather doubt he would have incurred such fees without first checking they were suitably qualified to give him the advice he required.
27. This is a case where the respondent is entitled to statutory costs. The respondent has to be reasonable in his choice of law firm but he is not obliged to shop around to find the cheapest or least expensive. Linder Myers is a well-known specialist firm practising in the residential property sector which has its complexities in RTM, enfranchisement and related fields. We find it was not unreasonable for the respondent to have instructed Linder Myers, which, is not a London based firm, with the high overheads that London firms have to meet. The hourly rates quoted, namely £190 for a Grade B fee-earner and £111 for a Grade D fee-earner are reasonable rates. Not only do they sit well with the hourly rates quoted by the solicitors approached by the applicants, but they are also well within the guide line rates set by the Senior Courts Costs Office where costs fall to be assessed under CPR in civil litigation.
28. We have some concerns about the amount of time claimed for. The fairly obvious point that would have been pretty clear from the outset is that the Company was not a properly constituted RTM company. The name itself gives a bit of a clue. Thus, we find that 2.3 hours taking instructions deserved some explanation but none has been given by or on behalf of the respondent. Similarly 3.7 hours receiving instructions, obtaining documents, considering the claim notice, identifying the defects in it and drafting the counter-notice. Given that Linder Myers specialises in this field that amount is very much on the high side.
29. For these reasons we find that we are in doubt about the reasonableness of some of the costs claimed and we hold that we must give the benefit of that doubt to the paying party. The respondent has failed to substantiate parts of his case. Thus, we must make some adjustments to reflect this.
30. Further, the respondent has included in the schedule filed in these proceedings costs incurred post the notice of withdrawal, mostly it seems concerned with preparing a bill and the schedule of costs. These are not recoverable under s88. S89(1) and (2) is plain that where a claim notice is withdrawn the liability for s88 costs is 'down to that time'. We have therefore disallowed those costs.

31. Doing the best we can with the imperfect materials before us we assess the costs payable as follows:

Solicitors costs	£1,000.00
VAT thereon	£ 200.00
Expenses:	
HMLR fees search fees	£ 18.00
Process server's fee	£ 125.00
VAT thereon	<u>£ 25.00</u>
Total	£1,368.00

Application fee

32. We have rejected the application that the application fee of £100 be reimbursed by the respondent.
33. The respondent has the right to statutory costs. The applicants have the right to make an application to this tribunal for the amount payable to be determined by the tribunal where the amount of the costs payable cannot be agreed.
34. The respondent has established a right to a fairly substantial sum, albeit not all of the costs originally claimed. There is no evidence before us that the applicants made an offer to the respondent which he unreasonably refused.
35. We do not consider there is any justification in requiring the respondent to reimburse the application fee.

Judge John Hewitt
18 July 2018

ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.