



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

Case reference : **LON/00AH/LRM/2020/0018**

**HMCTS code
(paper, video,
audio)** : **P: PAPERREMOTE**

Property : **23 Station Road, London, SE25 5AH**

Applicant : **23 Station Road RTM Company Limited**

Representative : **Commonhold and Leasehold Experts
Limited**

Respondent : **Assethold Ltd**

Representative : **Eagerstates Ltd**

Type of application : **To decide costs to be paid by an RTM
company under s.88(4) of the
Commonhold and Leasehold Reform
Act 2002**

**Tribunal
member(s)** : **Judge H Carr**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **22nd April 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote determination on the papers which has been consented to by the parties. The form of remote hearing was P:PAPERREMOTE,.A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing/[on paper]. The documents that the Tribunal

were referred to are in a bundle of 91 pages, the contents of which have been noted.

Decisions of the Tribunal

- (1) The Tribunal determines that the Applicant shall pay the respondent costs in the sum of £1,714.80 inclusive of VAT pursuant to section 88(4) of the Commonhold and Leasehold Reform Act 2002.
- (2) This determination relates solely to the respondent's costs in relation to the withdrawn claim.

The application

1. The applicant has applied for a determination of the costs payable by an RTM company under section 88(4) of the Commonhold and Leasehold Reform Act 2002 ("the Act").
2. Following directions issued by the tribunal on 29th January 2021 the respondent provided a schedule of costs. The costs claimed are £1,714.80 made up of legal costs of £1,294.80 and management costs of £420.00. The respondent states that the costs relate solely to the withdrawn claim dated 8th June 2018.

The law

3. Section 88 of the Act states:
4. (1) A RTM company is liable for reasonable costs incurred by a person who is
 - (a) 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 .

5. Section 89 states

(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).

The argument of the applicant

1. The applicant asks the tribunal for an order that as the respondent has only provided information about the costs which the respondent says were incurred in respect of the first claim notice, that no costs should be awarded in relation to the second claim notice.
2. The applicant also argues as that the respondent was in breach of the tribunal's directions because its schedule of costs was served on 22nd February 2021 the tribunal should consider making a costs order pursuant to its powers in Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
3. The breakdown of costs appears to relate to time spent from 12th June 2018 to 20th July 2018 other than one entry for 10th July 2020 relating to the preparation of counter notice on which 42 minutes has been spent. The applicant argues that as the time was some 2 years after the claim notice was received, the costs clearly do not relate to the first claim notice or are unreasonable.
4. The applicant notes that the invoice from Scott Cohen appears to have been raised on 4th February 2021 and is marked as a 'proforma' invoice. The application questions whether the landlord is really liable to pay the costs they say they have incurred. The applicant notes that there is no evidence that the indemnity principle has been satisfied.
5. The applicant notes that there is no statement of truth on any document filed by the landlord and the document put forward by the landlord lacks the required statement by the solicitor that the costs sought are no more than the landlord is liable to pay the firm.
6. The applicant argues that some of the time spent on the matter is unreasonable. Ms Scott is an experienced lawyer in the field. It is for this reason she charges a high hourly rate. The applicant argues that the high hourly rate should be considered when consider the amount of time spent on simple matters. The block in question is 3 flats, there is nothing unusual about it and the invalidity of the first claim notice was conceded swiftly by the respondent.
7. One hour and 48 minutes was spent on advice and instructions, assessment of claim notice and assessment of supporting RTM documents. The applicant suggests that the maximum reasonable time for the respondent's solicitor to obtain instructions and to review the claim notice and supporting documents was one hour.

8. 24 minutes has been spent sending the same letter 4 times. This should have been undertaken by a secretary and 6 minutes is reasonable for this work.
9. 42 minutes has been spent in addition to the advice on communication between the landlord's solicitor and the landlord's agent. There is no detail or explanation as to why there was a need for 7 different communications. The applicant suggests that 18 minutes is reasonable for this.
10. In respect of the managing agents fees, the applicant argues that the invoice is dated some 2 years after the first claim notice and no explanation is provided. The applicant suggests that this raises questions as to the indemnity principle and whether the landlord is liable to pay these costs.
11. The costs appear to relate to work which the landlord has instructed its agent to do in connection with the receipt of the claim notice and notifying the landlord the claim is made. The applicant says that the 1 hour 30 minutes relating to this is unreasonable and falls foul of s.88 (2) of the Act. There is no need and it is unreasonable, it argues, to use a managing agent simply to instruct a solicitor and provide that solicitor with information which the landlord could provide and expect the RTM company to pay for that.
12. A further 35 minutes is claimed for consultation and meeting with the freeholder to advise of the ramifications of RTM. The applicant suggests that this is double charging as the costs of advice is being sought as legal costs. Secondly the freeholder needs no explanation of the ramifications of the RTM given the experience the landlord has in dealing with RTM claims. A further one hour is claimed for preparation for the RTM handover. As the landlord has disputed the claim and the TRM claims that the first claim notice was not valid, this work was not required as there was never going to be a handover.

The respondent's statement of response

13. The respondent argues that the costs are payable pursuant to s.88(1) of the Act and meet the test of reasonableness as set out in s88(2)
14. The respondent submits that the fees of the Solicitor and the Managing Agent are costs that the Landlord would reasonably be expected to incur if paying the cost themselves.
 - (i) An extract of the firm's terms of appointment has been provided which confirms that the terms applicable in the matter were ones to which solicitors

would charge upon an individual instruction and includes provision for disbursements.

- (ii) Scott Cohen Solicitors were instructed to assess the validity of various claim notices served, to advise the Landlord and to take the appropriate steps on the landlord's behalf. Given the ramifications of a Right to Manage Claim particularly the handing over of management responsibility and monies held on trust, the respondent submits that it is reasonable for a landlord to take steps to protect its property interests.
- (iii) The fees are charges for legal work undertaken by Ms Lorraine Scott as a grade A Solicitor. The fee rate reflects her experience and specialization within landlord and tenant matters.
- (iv) The time billed reflects the time spent by Ms Scott. The respondent considers the work and checks carried out by the solicitor were necessary to act with reasonable diligence to assess and evaluate the legal position in this matter and respond accordingly. It also considers the works described were reasonably required to discharge the instruction to investigate thoroughly whether the applicant was entitled to claim a right to manage.
- (v) The respondent argues that the hourly rate and activity is within a reasonable and expected range for a transaction of this nature.
- (vi) The respondent argues that the management fees are sums that the respondent would pay themselves within the terms of the management agreement with its agent. It refers to the RICS Code of Practice, Service charge residential management Code and additional advice to landlords, leaseholders and agents, 3rd edition. This makes clear that certain activities can be distinguished as falling outside of standard management activities and are matters for which additional charges may be raised.
- (vii) The respondent submits that the managing agents work must be carried out immediately upon receipt of a claim notice and prior to the RTM acquisition. Regardless of whether a landlord serves a counter notice or not, contractors need to be reviewed and notified and services and planned works reviewed to assess the impact of the RTM.

- (viii) The respondent argues that there is no basis to assess costs of the second claim as nil. The costs relating to the second notice have not yet been finalised. There is a statutory entitlement to reasonable costs incurred consequence of a claim notice subject to statutory limitations and the Act does not required that the issue of costs has to be made within any particular atime limit.
- (ix) The very short delay in serving the respondent's schedule has not caused prejudice to the proper conduct of the ligation or to the applicant. The threshold of what amounts to unreasonable behaviour is very high which can only be met in extreme circumstances.
- (x) The entry for 10th July 2020 was an unfortunate typographical error. The counter notice dated 10th July 2018 has been provided in the paperwork.
- (xi) Liability is not dependent on payment. Letter of appointment have now been provided and the statement in response contains a statement of truth.
- (xii) The cumulative costs are neither excessive or unreasonable and the specialist fee earner instructed is likely to conduct proceedings more quickly than a less experienced colleague.
- (xiii) The time spent by Miss Scott is nether excessive or unusual for time taken by solicitors in response and communications to its client and agent. Review of documentation is reasonably required in order to discharge the instruction to investige thoroughly the claim to a right to manage.
- (xiv) Miss Scott attends to all outgoing correspondences as the sole solicitor within the firm. Routine attendances are billed at a standard rate of 6 minutes per attendance. The copy correspondences have been provided. The number of correspondences is not unusual or excessive.
- (xv) The time billed by the managing agent reflects the time spent by the agent who is instructed to deal with the processing of all notices served upon the landlord in connection with the leasehold management of the properties .

The decision of the tribunal

15. The Tribunal determines that the Applicant shall pay the respondent costs in the sum of £1,714.80 inclusive of VAT pursuant to section 88(4) of the Commonhold and Leasehold Reform Act 2002.

The reasons for the decision of the tribunal

16. The tribunal accepts the arguments of the respondent and drawing on its own experience of such matters and the cases referred to by the respondent considers that the amount charged is payable pursuant to s.88(1) of the Act and meets the test of reasonableness as set out in s88(2)
17. The tribunal does not consider that the delay from Friday 19th February to Monday 22nd February in providing the statement of costs was prejudicial to the applicant and certainly does not meet the high threshold required for a costs order under Rule 13 of the Tribunal's rules.
18. The tribunal accepts that the date of 10th July 2020 was a typographical error. It also notes the documentation and the statement of truth provided in the bundle.
19. The tribunal notes that there is an entry for the managing agent preparing for costs upon RTM takeover when a counternotice was served. However this was part of a larger review of the file and is likely to represent a very small proportion of the time charged for. The overall amount charged by the agent is reasonable and within the normal band of charges for this type of work.
20. The tribunal agrees with the respondent that it can claim further costs for the renewed claim. However this decision will be taken into account in determining any argument relating to the reasonableness of those costs.

Name: Judge H Carr

Date: 22nd April 2021

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).