



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

Case reference : **LON/00AH/LCP/2021/0010**

HMCTS code : **V:VIDEO**

Property : **55 Penge Road, London SE25 4EJ**

Applicant : **Assethold Ltd**

Representative : **Scott Cohen Solicitors Limited.**

Respondent : **55 Penge Road RTM Company Limited**

Representative : **Ms Morgan, Harmens Management**

Type of application : **Costs – payable by an RTM company
under s.88(4) Commonhold and
Leasehold Reform Act 2002**

Tribunal members : **Judge Pittaway
Mr A Parkinson MRICS**

Date of hearing : **24 February 2022**

Date of decision : **28 February 2022**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been not objected to by the parties. The form of remote hearing was V: CVPREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents before the tribunal at the hearing were in a bundle provided by the applicants of 115 pages. The respondents had not provided any documentation for the bundle. The Tribunal was aware that there had been a request from Ms Morgan that this application should be heard together with two other applications relating to the Property that are currently before the Tribunal and that that request had been turned down by a procedural Chair. The Tribunal also had regard to the decision in *245 Stansted Road RTM Co Ltd v Assethold* (LON/00AZ/LRM/2019/0006) referred to by Ms Morgan during her submissions.

At the hearing Mr Gurvits of Eagerstates Limited represented the Applicant and Ms Morgan of Harmens Management represented the Respondent. Ms Scott of Scott Cohen Solicitors Ltd. did not attend the hearing.

The Tribunal heard evidence from Mr Gurvits

The Tribunal heard submissions from Ms Morgan and Mr Gurvits.

The decisions made and reasons are set out below.

Decisions of the tribunal

1. As a preliminary issue the Tribunal determined that the hearing on this application should proceed.
2. The Tribunal determines that the amount of costs payable by the respondent is
 - £1828.75 plus VAT in respect of Scott Cohen's legal fees;
 - £450 plus VAT in respect of Eagerstates fees; and
 - Disbursements of £6.70 plus VAT
3. The Tribunal orders the respondent to refund the applicant its hearing fee of £200 but not its application fee of £100.
4. The Tribunal makes no order for costs under Rule 13(b) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

Background

- (1) The Applicant seeks an order under section 88(4) of the Commonhold and Leasehold Reform Act 2002 (the “**2002 Act**”) as to the amount of costs payable by a RTM Company.
- (2) Section 88 of the 2004 Act provides that
 - ‘(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.’
- (3) The costs claim arises out of an application for a determination that the applicant was entitled to acquire the right to manage 55 Penge Road London SE25 4EJ (**‘the Property’**).
- (4) By Directions dated 10 September 2021, varied on 18 October 2021, the applicant was directed to provide the respondent a schedule of costs by 25 October 2021 sufficient for summary assessment, invoices substantiating the costs and any other documents relied on.
- (5) The directions provided for the respondent to provide a statement in response by 15 November 2021 and for the applicant to provide a statement in reply by 29 November 2021 and to provide a bundle of documents to the Tribunal by 6 December 2021.

- (6) The directions also stated that the tribunal considered that the application on the basis of written submissions from the parties using the document bundle provided.
- (7) Following a request from the respondent the matter was listed for a hearing.

The preliminary issue

1. At the start of the hearing Ms Morgan raised a preliminary issue. Ms Morgan wished to place on record at the hearing her formal objection to a Procedural Chair having decided that this application should be heard independently of two other applications that are currently before the Tribunal in relation to the Property, and in advance of other applications that are before other courts in relation to the Property.

Ms Morgan objected to the Procedural Chair's decision on 29 November 2021, repeated on 3 February 2022, that there was no nexus between the parties in the three applications. In her submission there was nexus because the Applicant was a party to all the applications.

Ms Morgan was requesting that the hearing should not proceed, or in the alternative the Tribunal should not make its decision before the other applications were all decided.

2. Mr Gurvits submitted that the hearing was being held at Ms Morgan's request.

The Tribunal's reasons for its decision on the preliminary issue.

3. Ms Morgan advanced no new argument as to why the hearing on this application should not proceed independently of the other applications. The Procedural Chair had decided that there was no nexus between the three applications before the Tribunal, the applicants in the other two cases not being the respondent in this application.
4. The Tribunal have no reason to reconsider the Procedural Chair's decision. Ms Morgan has raised no new legal arguments in support of her request and the Procedural Chair had taken into account all of the points now raised by Ms Morgan, when reaching the original decision.

The applicant's case

5. The applicant's statement of case asked the Tribunal to note that the respondent did not serve a formal statement of case as directed by the Tribunal.
6. The applicant's Statement of Response set out the following breakdown of the costs claimed,

	Initial Assessment	Tribunal Costs
Solicitor's costs	£1,127.50	£1,045.00
Management fees	£600	£500
Disbursements	£6.70	
VAT	£346.84	£309
Total	£2,081.04	£1,854

7. It was the applicant's submission that the Initial Assessment costs are payable pursuant to sections 88(1) of the 2002 Act and meet the reasonableness test set out in section 88(2) of the 2002 Act.

8. The bundle included a breakdown of the solicitor's fees for the Initial Assessment;

- Assessment of claim notice 30 minutes
- Assessment of supporting RTM documents 60 minutes
- Preparation of counter-notice 42 minutes
- Routine attendances 114 minutes

Fees were calculated at an hourly rate for Ms Lorraine Scott, a principal of the firm Scott Cohen and a Grade A fee earner, on the basis of an hourly rate of £275 per hour, with e mails and letters timed in 6 minute units.

9. Eagerstates fees in connection with the Initial Assessment were broken down in the invoice dated 6 April 2021 included in the bundle as;

- Drafting 2 e mails 45 minutes
- Providing property information to the solicitor 90 minutes
- Consulting/meeting/advising freeholder 35 minutes

The invoice then stated that the fee was an agreed £600.

10. The applicant submitted that the Tribunal Costs were payable under section 88(3) as the Tribunal had dismissed the Respondent's application in relation to its right to manage.

11. The breakdown of the solicitors fees (calculated on the same basis as above) in connection with Tribunal Costs was

- Advice and instruction with client 72 minutes
 - Review of F-TT application 18 minutes
 - Review of F-TT Directions 12 minutes
 - Preparation of respondent's statement of case 78 minutes
 - Review of F-TT Decision 18 minutes
 - E mails 30 minutes
12. There was no breakdown of Eagerstates' fees in connection with the Tribunal Costs in the bundle, only an invoice dated 6 October 2021 charging £500 for 'Admin costs for assistance with Tribubunal (sic) proceedings'.
 13. Ms Morgan questioned Mr Gurvits on the length of time Ms Scott had spent on various aspects of the transaction, particularly given her level of experience. Mr Gurvits was not able to answer her questions other than to say that notices require thorough checking and the form of the counter-notice has to be correct.
 14. On being questioned as to why Ms Scott had not informed the respondent of the actual defect in the notice Mr Gurvits stated that the counter-notice had been served in the form required by the Act. Mr Gurvits denied that the counter-notice was prepared in a generic form, submitting that it was specific to the notice served.
 15. The Tribunal questioned Mr Gurvits on the basis upon which Eagerstates fixed its charges. Mr Gurvits referred the Tribunal to Appendix 3 of the Management Agreement between Assethold Ltd and Eagerstates Ltd in the bundle which sets out the additional charges Eagerstates may charge. This fixes a charging basis in relation to the exercise by the lessees of enfranchisement at a minimum of £100 plus VAT per flat plus £150 plus VAT per hour for court appearances.
 16. Mr Gurvits told the tribunal that he did not keep time sheets recording time spent on transactions.
 17. Mr Gurvits confirmed to Ms Morgan that the fees charged by Eagerstates were outside its standard management charges for the Property.
 18. In its statement of case the applicant submitted that its costs met the test of reasonableness set out in section 88(2) of the 2002 Act, as the landlord would reasonably be expected to incur this level of cost if incurring the costs itself. The applicant submitted that the hourly rate was reasonable and within the expected range for a transaction of this nature, referring the tribunal to the first-tier tribunal case *Albacourt Properties Ltd v W.Court Joint Enterprise Dwelling Initiative Co. Ltd*. MAN/00BU/LCP/2019/0001.

19. As to Eagerstate's fees the applicants submits that fees in relation to a RTM claim are outside the scope of the applicant's management agreement with the applicant, and that the fees are reasonable. It submits that Eagerstate's involvement is necessary immediately on receipt of the claim notice, to correspond with relevant parties and the solicitors and review its management of the property in its entirety in relation to scheduled works and services. In this connection the applicant referred the tribunal to *Columbia House Properties (No.3) Ltd v Imperial Hall RTM Company Ltd* [2014] UKUT 0030 (LC) which upheld the recovery of a management fee and that managing agent involvement is common in RTM applications.
20. The statement of case refers to the fee for the managing agent's assistance in the conduct of proceedings being a fixed fee.

The respondent's case

21. Ms Morgan submitted that a more junior solicitor than Ms Scott could have dealt with aspects of the application.
22. Ms Morgan also submitted that if when returning the counter-notice Ms Scott had clarified why the application was being rejected (because notice had been served on the incorrect tenant for 55 Penge Road) it would have limited the costs subsequently incurred. In support of her submission Ms Morgan referred the Tribunal to paragraph 13 of the decision in *245 Stansted Road RTM Co Ltd v Assethold* (LON/00AZ/LRM/2019/006)

Rule 13 costs and reimbursement of fees

23. Under Rule 13(2) of the 203 Rules the applicant seeks reimbursement of the fee of £100 paid to the Tribunal by it in connection with this application and the £200 fee paid by reason of the respondent requesting a hearing, when the matter would otherwise have been determined on paper. It submits that the respondent had ample notice of the costs and that the matter could have been determined on paper.
24. The respondent submitted that the application to the tribunal had been premature (because other applications remain pending) and that it should not therefore be responsible for the fees.
25. The applicant also seeks an order under Rule 13 (b) for its costs on the basis that the respondent has acted unreasonably in defending the proceedings. Mr Gurvits referred the Tribunal to the tests set out in *Willow Court Management Co (1985) Ltd v Alexander* [2016] UKUT 290 (LC). He submitted that Ms Morgan had acted unreasonably and that an Order should be made.

Reasons for the tribunal's decision

26. The bundle before the Tribunal consisted only of documents provided by the applicant. The respondent did not comply with the Tribunal's

directions and the Tribunal would remind the respondent of note (c) to its Directions which warns that such failure may result in the Tribunal deciding all issues against it pursuant to rules 9(7) and (8) of its 2013 Rules.

27. There was no evidence from the respondent as to what would have constituted a reasonable level of charge or time spent on the transaction by either the solicitor or the managing agents. This is unfortunate.
28. The Tribunal finds that all the costs claimed are not automatically recoverable because the costs in respect of such services might have been incurred by the applicant if the circumstances had been such that it was personally liable for all such costs. The costs must also meet the test of reasonableness set out in section 88(2). Any costs incurred by a landlord consequent on a claim by a RTM company in respect of professional services rendered to the landlord 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.

The tribunal accepts the existence of agreements between the applicant and Scott Cohen, and the applicant and Eagerstates, so that the costs might have been incurred by the landlord, but of itself that does not make the charges under the agreement reasonable. The terms of engagement with the applicant show that the applicant might have been personally liable for their costs, but that is not evidence that the costs themselves are reasonable.

29. The respondent has challenged the level of fee charged by the applicant's solicitor, namely £275 per hour, and the length of time spent on various aspects of the claim, arguing each to be unreasonable but has provided no evidence to substantiate its submissions.
30. Given Ms Scott's stated experience the tribunal consider that she should be able to undertake this work in a more time-efficient manner than someone less experienced. It is regrettable that Ms Scott did not attend the hearing, although it had been anticipated that she would. The Tribunal find that the time spent in considering the claim notice and supporting documents is longer than one would expect of someone of Ms Scott's experience and that the objections in the counter-notice appear to be generic as it contained numerous objections to the right to manage, not only the one ultimately relied upon. The applicant did not draw the respondent's attention to the error in the identity of one tenant, which might have led to the withdrawal of the claim, and a reduction in the costs incurred. Accordingly the Tribunal find it appropriate to make a reduction in the costs claimed by Ms Scott in relation to assessment of the claim notice and supporting documents and preparing the counter-notice, to a total time of 75 minutes.

From the information provided to it the tribunal finds that it was not reasonable for the applicant to spend 36 minutes on emails and letters on 20 May 2020. The tribunal notes that there were six e mails and letters sent out on 20 May 2020. The applicant submits that it is correct to charge in units no smaller than 1/10 of an hour on routine attendances. A minimum unit of charge of six minutes may be the basis of charge agreed with the applicant but where a number of such attendances take less than 6 minutes and each is charged at 6 minutes this may give rise to a disproportionate, and therefore unreasonable charge. The tribunal finds a charge of 18 minutes, not 36 minutes to be reasonable for these.

31. In the absence of reasons as to why Ms Scott's Tribunal Costs should be challenged the Tribunal find these to be reasonable. Having received the counter-notice the respondent should have investigated the merit of each of the grounds of opposition and in so doing might have obviated the need for any of these costs.
32. The Tribunal therefore finds costs of £783.75 plus VAT to be reasonable solicitor's costs in connection with the Initial Assessment and costs of £1045 plus VAT to be reasonable in connection with the Tribunal Costs.
33. The Tribunal heard no evidence on the disbursement of £6.70 plus VAT and therefore finds this to be reasonable.
34. The Tribunal is concerned by the apparent contradiction in the evidence it heard as to the basis upon which Eagerstates fees are calculated. The invoice of 6 April referred to a total time of 170 minutes being spent by Eagerstates on the work undertaken in connection with the Initial Assessment which suggests that should be a basis of charge, but the invoice then refers to a fixed fee of £600. The Tribunal do not find this to be a reasonable charge for the level of work indicated in the narrative of the invoice. Further it questions that 45 minutes were spent on 2 e mails as stated. It notes that Mr Gurvits does not keep time records so it is uncertain how he can specify time spent so precisely. The Tribunal finds that a reasonable charge for the work that the invoice indicates was undertaken by Eagerstates in connection with the Initial Assessment is £300 plus VAT.
35. Mr Gurvits was unable to provide the Tribunal with any information as to what work was undertaken by Eagerstates in connection with the Tribunal Costs and further notes that there were no proceedings in connection with the application, which was determined on paper. This charge appears to be a standard charge levied when there are actual proceedings. The Tribunal accept that Eagerstates may have had some involvement in connection with the proceedings but in the absence of clear evidence as to what this involved find costs of £150 plus VAT to be reasonable.
36. The tribunal therefore determines that the amount of costs payable by the respondent is

- £1828.75 plus VAT in respect of Scott Cohen’s legal fees, with disbursement of £6.70 plus VAT.; and
 - £450 plus VAT in respect of Eagerstates’ fees.
37. In relation to the fees paid by the applicant the Tribunal has no evidence before it that the applicant sought to recover the costs from the respondent before making the application to the tribunal. The Tribunal determines that the £100 is not to be refunded. In relation to the additional fee paid by the applicant because the respondent requested a hearing it is always open to a respondent to request a hearing but in this instance the respondent did not assist the Tribunal in providing any information to it, even at the Hearing. By Ms Morgan’s admission she had received the bundle but had not read it. There was therefore little merit in the respondent having requested a hearing and the Tribunal therefore orders the respondent to refund the hearing fee of £200.
38. The Tribunal therefore does not make an order under Rule 13(b).

In relation to the application made for an order under Rule 13(b) it is unfortunate that Ms Morgan did not comply with the Directions and did not prepare for the hearing that she had requested. In considering whether Ms Morgan acted unreasonably the Tribunal have regard to paragraph 24 of the decision in *Willow Court* where it was stated, “Unreasonable” conduct includes conduct which is vexatious, and designed to harass the other side rather than advance the resolution of the case. It is not enough that the conduct leads in the event to an unsuccessful outcome.” The Tribunal does not find that Ms Morgan’s conduct was designed to harass the Applicant. Ms Morgan’s approach was not correct but does not amount to unreasonable conduct. As the first stage of the Willow Court test has not been satisfied, there is no need for the tribunal to make a decision about the second or third stages.

Name: Judge Pittaway

Date: 28 February 2022

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).