



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

Case reference : **LON/00AR/LCP/2021/0009**

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

Property : **Eldon Court and Halyards Court, 12 & 14
Western Road, RM1 3GL**

Applicant : **Avon Ground Rents Limited**

Representative : **Scott Cohen, Solicitors**

Respondent : **Eldon Court and Halyards Court RTM
Company Limited**

Representative : **Canonbury Management**

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

**Tribunal
member(s)** : **Judge Daley**

**Venue and
Date of paper
determination** : **Heard remotely 10 Alfred Place,
London WC1E 7LR on**

Date of decision : **10 January 2022**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers which has been not objected to by the parties. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because all issues could be determined in a remote

hearing on the papers. The documents that the Tribunal were referred to are in an electronic bundle of 116 pages, the contents of which have been noted.

Decision

1. The Tribunal has determined that the cost to be paid by the Respondent in accordance with Section 88 (4) of the Commonhold and Leasehold Reform Act 2002, is **£11,351.69 (Eleven thousand, three hundred and fifty-one pounds and sixty-nine pence) inclusive of VAT.**

Background

2. The background is as set out in the Applicant's Statement of Response. In brief, the Applicant is the landlord and freehold owner of the premises known as Eldon Court and Halyards Court, 12 & 14 Western Road Romford, Essex, RM1 3GL ("the Premises"). The Respondent is a Right to Manage ("RTM") Company set up with the purpose of acquiring the right to manage the Premises pursuant to the Commonhold and Leasehold Reform Act 2002 ("the Act").
3. The premises which were the subject of the RTM is a modern development of two blocks consisting of 60 residential leasehold units, an underground car park and a small commercial unit, a proportion of the flats are held by London & Quadrant Housing Trust Limited, which are sub-let as shared ownership.
4. The RTM Company served a claim notice pursuant to section 79 of the Act dated 28 March 2020. The Applicant in these proceedings served a counter-notice and the matter proceeded to a determination in the First tier Tribunal ("FTT").
5. The FTT found the Applicant was not entitled on the relevant date to acquire the right to manage.
6. On 10.08.2021, the Applicant issued an application in accordance with Section 88(4) of the Act. The total costs claimed by the Applicant was in the sum of £13,223.99 inclusive of VAT.
7. Directions were given by the Tribunal on 2 September 2021. The Directions provided the steps to prepare this matter for hearing. The Directions also provided that this case was allocated to the paper track. However the parties were given the option of a hearing. Direction 7 provided that "...any party may make a request for an oral hearing. Any request for a hearing should be made by **21 October 2021.**"
8. No request for a hearing was made, and the Tribunal hearing the Application, decided that the parties had provided sufficient

information, and that this matter could be determined on the basis of the documents before it.

The Law

9. Costs: general

(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 .

The Applicant's case and the Respondent's reply

The Applicant's Submissions

10. The Applicant's case is set out in their Statement of Case, Ms Scott stated that in respect of the solicitors' fees, which were disputed, the work was undertaken by Miss Lorraine Scott as a Grade A fee-earner, who has specialised in RTM matters since 2007.
11. The Applicant in their statement set out that "The time billed reflects the time spend by the solicitor. The Applicant considers the work and checks carried out by its solicitor were necessary to act with reasonable diligence to assess and evaluate their legal position in this matter and respond accordingly. It also considers the works described were reasonably, required in order to discharge the instruction to investigate thoroughly whether the Respondent was entitled to claim a right to manage on each occasion."

12. The Applicant submitted that the hourly rate and activity carried out by the solicitor was within a “reasonable and expected range for a transaction of this nature”. The Tribunal was referred to the FTT case of Alba court Properties Limited & W Court Joint Enterprise Dwelling Initiative Co Ltd NAN/00BU/LCP/2019/0001, as a case in which the Tribunal accepted a similar sum.
13. In respect of the management fees, the Applicant submitted that the fees are sums that the applicant would pay themselves in terms of their management agreement with the agent. In the submissions the Applicant stated “ The agent is engaged on standard terms with a schedule of charges for works undertaken outside of the cyclical management remit. The Tribunal was referred to the RICS Code of Practice Clause 3.5 in support of the submission that it was a matter outside of the normal management scope of duties.
14. The Tribunal had been provided with a statement of Costs (summary assessment) comprising 10 pages. The breakdown of the total costs, was as follows: Solicitors fees £6215.00, Managing Agent and Surveyors fees £1,304.99, Counsel’s fees £3,500, the total claimed was £11,019.99 plus VAT (£13,223.99).

The Respondent’s submissions

15. The Respondent had submitted a statement of case, prepared by their representatives, dated, 14 October 2021.
16. In the statement of case it was submitted that there were four grounds upon which the statement of cost was objected too.
17. Firstly before the current application for a Right to Manage the RTM Company had made a previous, unsuccessful application. The claim was withdrawn and costs of £3837.60 were paid to the Applicant . The Respondent submitted that because the Applicant had already undertaken work in relation to an RTM claim from this respondent, there would have been a degree of prior preparation which would have meant that less work was necessary on the subject claim. The Respondent referred to time spent checking the company and leaseholders’ details.
18. The Respondent in respect of the work being undertaken by a sole practitioner, who is a grade A fee-earner, referred to information which they had found on the internet, on LinkedIn which described the firm as having 11-50 employees including para-legals.
19. The time taken for checking information was submitted as being disproportionate. “ The total number of hours stated for checking the information is at odds with records of other blocks of similar size.”
20. The Respondent further submitted that 2 of the three grounds of the counterclaim were withdrawn. Accordingly, the Respondent submitted in

the round that the costs associated with this element of the claim ought to be disallowed. This included the surveyor's fees.

21. The Respondent also asked for the provision of a more granular breakdown of costs, so that they could assess, whether the time taken was permissible.

The Respondent in their submissions conceded that the cost of counsel's fees, were payable, and no objections were raised to the sum claimed.

The Tribunal Decision and reasons

22. The Tribunal considered the submissions of both parties, it reminded itself of the law, that the cost incurred had to be assessed "if the circumstances had been such that he was personally liable for all such costs." That is, that the Applicant was responsible for paying the cost without the possibility of recovery.
23. The Tribunal considers that such a party should be considered as having a reasonable but not excessive budget for legal costs, and that such a party would where possible, keep a careful eye on the costs, and would take steps to reduce costs and ensure that the work being undertaken was proportionate; that is only what was necessary to deal with the claim. where appropriate, such a party would seek a discount.
24. The Tribunal has applied this assessment of what a reasonable paying party would expect when assessing the costs. It has also stood back and used its knowledge and experience to consider whether the costs, are reasonable and proportionate, and whether a paying party, would ask those who assist to take steps to further reduce the costs.

The Solicitors Costs

25. The Tribunal did not accept the Respondent's submissions that the hourly rate of Ms Scott is excessive. However, the Tribunal has noted that Ms Scott has some expertise, at dealing with RTM cases, this means in the Tribunal's view that Ms Scott, did not approach the RTM claim, without being able to assess, what was needed, as such she would be able to use her knowledge and skills to cut through unnecessary lines of enquiry.
26. The Tribunal has also used its knowledge and experience, that the solicitor has a longstanding relationship with the applicant. Given this, this means in the Tribunal's view that the Applicant is aware of her terms and conditions of practice, and would expect that a lot of the correspondence between the parties, and the Respondent and Tribunal would be standardised, and kept to the minimum so as to avoid additional costs.
27. The Tribunal has considered the "Schedule of Work done on documents", in particular the assessment of supporting RTM documents,

and has noted that 10 hours was spent in respect of this work. The Tribunal accepts the Respondent's first submission, that there would have been an element of duplication, given that costs had already been occurred in the previous abortive RTM application. The Tribunal finds that the consideration of the leasehold titles, for 3 hours, and the other work undertaken totalling 10 hours, appears to be longer than expected given Ms Scott's seniority and expertise in this matter. The Tribunal finds that a fee-earner of Ms Scott's experience should have been able to undertake this work in 7 hours in the total sum of £1925.00.

28. The Tribunal has considered the letters in/ out the attendance it has noted that in respect of counsel letters out, the Respondent's solicitor claims £962.50, and also £275.00 for the brief to counsel. The Tribunal would expect that unless this was a case of considerable complexity, Ms Scott would instruct Counsel and would not be engaged in lengthy and on-going correspondence. Accordingly the Tribunal has allowed 1 hour for instructing counsel and 1,5 hours for correspondence with counsel. In the total sum of £687.50
29. The Tribunal has also considered the correspondence to the Tribunal under attendance on the FTT. The Tribunal consider that most of the letters to and from the Tribunal would be standardised. Accordingly the Tribunal would allow 1.5 hours for this in the total sum of £412.50.
30. The Tribunal then stood back from its deductions, and considered how this would have translated into a sum paid for legal services, and have decided that the parties would have paid no more than £5000.00 for legal services on the basis that a competent solicitor such as Ms Scott would have spent no more than a total of 18 hours, in respect of this matter, and that a prudent client would expect a discount of any sums over and above £5000.00.
31. In respect of Y & Y Management Limited, there claim is for Assessment of the Claim £350.00, Assisting with FTT Proceedings £500.00 and Director's time of payable in the sum of £200.00. The Tribunal is unclear as to what Y & Y Management's role would have been in "assessing the claim" given the involvement of solicitors, and what the director's time, means in respect of this claim.
32. The Tribunal has again stood back and asked what would a reasonable prudent Applicant be willing to pay? It has decided that the sum payable to Y and Y Management, without proof of the complexity of this matter, would involving considering the claim, for no more than was necessary to seek advice, and the provision of some assistance with the FTT Proceedings. The Tribunal considers that these costs should be capped at £600.00 given the solicitors involvement.
33. The Tribunal consider that a surveyor's involvement in advising in this case, even if it led to the matter not been pursued, as one of the grounds upon which this case was defended. Is still reasonable, and falls within section 88(4) costs, however it has noted that no report was provided,

and would expect that the surveyor's rate should be for no more than 1 hour of his time capped at £400.00.

34. The Tribunal has taken account of the concession that counsel fees in this matter in the sum of £3,500.00 plus VAT (£4,200 are payable). It has also found that the disbursement for postage in the sum of £6.70 is reasonable and payable. In respect of the managing agent's fees in the sum of £350.00, no explanation was provided for this fee, the Tribunal has therefore disallowed this head of cost.
35. The Tribunal therefore determines that cost of -:
- a. £5000.00 solicitor's fees plus VAT of £1000.00 in the total sum of £6000.00
 - b. Counsel's fees of £3,500.00 plus VAT in the total sum of £4,200.00
 - c. Managing Agent's fees of £600.00 in the total sum of £660.00
 - d. Surveyor's fees of £404.99 and VAT of £80.00 and disbursements of £6.70 are the total sums due.

36. The Tribunal determines that the reasonable sue payable for Section 88(4) costs is in the total sum of £11,351.69.

Signed: Judge Daley

Dated:10 January 2022

Right 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.

Appendix one

88Costs: general

- (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 .

Signed: Judge Daley

Dated: 03 November 2021