



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

**Case Reference** : **MAN/00BU/LCP/2019/0001**

**Property** : **Windsor Court, Ashton Lane, Sale, M33 6WF**

**Applicant** : **Albacourt Properties Limited**

**Representative** : **Scott Cohen Solicitors Limited**

**Respondent** : **W. Court Joint Enterprise Dwelling Initiative  
Company Limited**

**Type of Application** : **Application for a determination of costs payable by  
the Respondents, pursuant to section 88(4) of the  
Commonhold and Leasehold Reform Act 2002**

**Tribunal Members** : **Judge T N Jackson  
Ms D Latham MRICS**

**Venue of Paper  
determination** : **Piccadilly Exchange, 2 Piccadilly Plaza,  
Manchester M1 4AH**

**Determination Date** : **11 July 2019**

**Date of Decision** : **30 July 2019**

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**DECISION**

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## **Decision**

The Tribunal determines that the Respondent shall pay the Applicant costs in the sum of £2992.80 (inclusive of VAT) pursuant to section 88(4) of the Commonhold and Leasehold Reform Act 2002.

The Tribunal determines that the Respondent shall reimburse the Applicant the cost of the application fee, namely £100.

## **Reasons for decision**

### **Introduction**

- 1.** The Applicant seeks a determination, pursuant to section 88(4) of the Commonhold and Leasehold Reform Act 2002, ('the 2002 Act') in respect of costs payable by the Respondent. The Applicant seeks the reimbursement of the Tribunal application fee of £100.
- 2.** Directions were given in respect of this application on 2<sup>nd</sup> April 2019. Direction 2 required the Respondent, within 21 days of receipt of the Applicant's Statement of Case and itemized schedule, to serve a Statement of Case in response setting out each item in dispute and the reasons for such dispute. The Applicant served their Statement on the Respondent on the 23<sup>rd</sup> April 2019. Despite a reminder dated 22<sup>nd</sup> May 2019, the Respondent did not send a Response.
- 3.** An Order, proposing to bar the Respondent from taking any further part in the Proceedings, was issued on 5<sup>th</sup> June 2019. As at the date of this decision, the Respondent has failed to provide a Response in accordance with Direction 2 or to the Order proposing to bar the Respondent. The Order of 5<sup>th</sup> June 2019 stated that in the absence of the Respondent's bundle, the Tribunal would determine the application on the basis of the Applicant's submission.
- 4.** By a claim notice dated 24<sup>th</sup> September 2018, the Respondent claimed to acquire the right to manage the Property on 4<sup>th</sup> February 2019. By Counter Notice dated 26<sup>th</sup> October 2018, the Applicant submitted that the Respondent was not entitled to acquire the right to manage the Property on the basis of five separate grounds. Correspondence was exchanged between the parties but no application was made by the Respondent to the Tribunal under section 84(3) of the 2002 Act (an application for a determination that it was on the relevant date entitled to acquire the right to manage the Property).
- 5.** The Applicant wrote to the Respondent on 14<sup>th</sup> January 2019 seeking recovery of the professional fees and disbursements totaling £2992.80 and giving a detailed breakdown of the time spent by solicitors and by the managing agent. The letter advised that in the absence of agreement, it would be the intention to issue proceedings for determination of the costs. In response to a query from the Respondent's agent Warwick Estates, by email dated 16<sup>th</sup> January 2019, the Applicant clarified that reasonable costs were recoverable notwithstanding the status of the right to manage claim. By email dated 21<sup>st</sup> January 2019, the Applicant sought confirmation from the Respondent's representative as to the Respondent's position with respect to the costs and advised that in the absence of agreement, the Applicant would proceed with an application to the Tribunal and that the Applicant would also seek an order for reimbursement of any application fees paid.

6. By email dated 23<sup>rd</sup> January 2019, the Respondent's representative confirmed that she had passed on the information regarding costs to her client. The Applicant sent a further reminder to the Respondent's representative on 28<sup>th</sup> January 2019 to which the Respondent's representative stated that she was awaiting her clients' instructions and that once received and relayed to the Applicant, the representative would no longer be acting for the Respondent. We have not been provided with details of any further correspondence. The Applicant made this application to the Tribunal on 15<sup>th</sup> February 2019.

## **The Law**

7. The relevant sections of the 2002 Act provide:

### *Section 88. 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.*

### *Section 89. Costs where claim ceases*

*(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).*

## **Hearing**

8. Neither party requested a hearing and we determined the matter on the papers. An inspection was not necessary.

## **Submissions**

9. We had the Applicant's Statement of Case but no submission from the Respondent.

## **Deliberations**

### Costs

10. We have considered the Applicant's submission and documentary evidence. We are satisfied, on the basis of the documentary evidence, that the Applicant is liable to pay the legal fees incurred. Having regard to the hourly rate of £275, the experience of the Grade A fee earner and the breakdown of activity carried out and evidence of such activity, we also determine that such fees are reasonable and accept them in their entirety. We determine that legal fees of £2,673 (inclusive of £445.50 VAT) and disbursements of £7.80 (inclusive of £1.30 VAT) for postage are payable by the Respondent.
11. In relation to the fees of the managing agent, we note the invoice to the Appellant dated 9<sup>th</sup> April 2019 in the amount of £312 (inclusive of £52 VAT) which describes the fees as being in relation to 'works undertaken in the initial assessment of the claim notice dated 24<sup>th</sup> September 2018'. Page 3 of the Applicant's submission refers to such tasks as being additional tasks which are non-standard management activities and for which additional fees are charged.
12. We have not been provided with a copy of the managing agent agreement. In the absence of any evidence to the contrary, and using our general knowledge and expertise, we accept that managing agent agreements do not usually include work on the receipt of RTM Notices within the standard works and management fee, and that an additional charge is payable.

13. We agree that upon receipt of a RTM Notice a managing agent will be required to carry out some preliminary work to gain an overview of the implications of the Notice. However, we do not accept that immediately upon receipt of the claim notice and prior to service of a Counter Notice such detailed work as is described in paragraphs 10 i) and 16-18 of the Applicant's Statement of Case is required. We are not clear from the evidence exactly which tasks the managing agent actually carried out in this case. The invoice describes the activities as 'works undertaken in the initial assessment of the claim notice dated 24<sup>th</sup> September 2018'. We also note in Exhibit 7, we there is reference to the solicitor's routine attendance upon the client/client agent and that page 2 of the Applicant's submission refers to 14 attendances upon the client/client agent.
14. We have not been told of the hourly rate or charging rates of the managing agent. However, using our general knowledge and expertise, we determine that a charge of £312 (inclusive of £52 VAT) is reasonable for the activities we consider necessary for a managing agent to carry out immediately upon receipt of a Notice.

#### Reimbursement of application fee

15. Rule 13(2) Tribunal Procedural (First Tier Tribunal) (Property Chamber) Rules states that a Tribunal may make an order requiring a party to reimburse any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.
16. The Respondent had ample opportunity to respond to the Applicant on the matter of costs before this application was made. The Applicant raised the matter on 14<sup>th</sup> January 2019 and sent two reminders with no substantive response from the Respondent (or their representative) as to whether there was an agreement to pay the costs. We note that the Respondent has also failed to participate in these proceedings. We have had regard to the Applicant's submission on this application. We find that it is fair and just that the application fee be reimbursed.
17. We determine that the Respondent shall reimburse the £100 application fee.

#### **Appeal**

18. If either party is dissatisfied with this decision, they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties and must state the grounds on which they intend to rely in the appeal.

Judge T N Jackson  
11 July 2019