



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

Case reference : **LON/00AR/LCP/2019/0010**

Property : **Eldon Court & Halyards Court, Romford
Essex RM1 3 JT**

Applicant : **Avon Ground Rents Limited**

Respondent : **Eldon & Halyards RTM 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
member(s)** : **Judge Carr
Mr Roberts RIBA**

Date of decision : **19th November 2019**

DECISION

Decisions of the Tribunal

- (1) The Tribunal determines that the Respondent shall pay the Applicant costs in the sum of £3,837.60 (plus VAT as appropriate) pursuant to section 88(1) of the Commonhold and Leasehold Reform Act 2002.
- (2) The Tribunal determines that the Respondent shall reimburse the Applicant the cost of the application namely £100

The application

1. The Applicant seeks a determination pursuant to section 88(4) of the Commonhold and Leasehold Reform Act 2002 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 2019. In those Directions it was determined that it was appropriate to deal with the application on the basis of the documents provided by the parties. In the absence of any request for an oral hearing this determination therefore proceeds on the basis of the submissions and documentation provided by the parties.
3. The following background information is taken from the Applicant statement of the background to the application:
 - (i) The premises in question is a modern development of two blocks consisting of some 60 residential leasehold units, an underground car part and a small commercial unit. The residential units are let on long leases, a proportion of which are held by the London & Quadrant Housing Trust Limited and then sublet as shared ownership leases.
 - (ii) The substantive claim notice was withdrawn following issue of a counter-notice.

The law

4. The relevant section of the Commonhold and Leasehold Reform Act provides as follows:

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 .

s.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).

The submissions of the Applicant

5. The following paragraphs summarise the Applicant's position.

6. The Applicant argues that prior to the issue of the counter-notice, the Applicant, its agent and solicitors were engaged in multiple correspondences pertaining to information, layout & qualification of the premises, details of leaseholders and the inclusion of tenants of the shared ownership leases within a RTM claim.
7. Parties involved in correspondence were the designated property manager, various employees of the managing agent and the Applicant's solicitors. Advice was further sought from Counsel with regard to case law on the complexities of the matter – ie the subject of car parks with RTM and tenants of shared ownership leases.
8. The costs incurred in the assessment of the claim formed the basis of the application.
9. The Applicant argues that the costs are payable pursuant to sections 88(1) of the Act and meet the test of reasonableness as set out in s.88(2).
10. The Applicant argues that the solicitors fees are payable for the following reasons:
 - (i) Scott Cohen were already retained by the Applicant at the time that the claim notices were given.
 - (ii) The fees billed in the matter represent the fees that the Applicant would normally pay to the firm upon an instruction and includes provision for payment of disbursements and payment on routine attendances at six minute periods.
 - (iii) The fee rate charged by Miss Scott reflect her specialisation in RTM matters dating from 2007 and also reflects the time spent.
 - (iv) The Applicant considers the work and checks carried out by its solicitor were necessary and reasonably required in order to discharge the instruction to investigate thoroughly whether the Respondent was entitled to claim a right to manage.
 - (v) With regards to the management fees, the Applicant relies on the management agreement to demonstrate that the fees charged are fees that the Applicant would pay itself.
 - (vi) It also argues that the managing agent has to carry out work in connection with receipt of the claim notice immediately the notice arrives and not wait for the Applicant to decide whether or not to serve a counter-notice. Moreover the correspondences fall outside the scope of the correspondences normally raised in connection with routine management matters.

- (vii) The Applicant further argues that it is entitled to reimbursement of the costs of the application fee as it attempted to seek payment from the Respondent without this determination and on the basis that there is no justification for the landlord to suffer any financial loss from the Right to Manage process.

The Respondent's arguments

11. The Respondent argues that the Applicant's schedule of costs is not reasonable within the meaning of section 88(1) of the Act.
12. The Respondent argues that the Applicant's Solicitors fees of £5,066.52 is excessive for a relatively straightforward RTM claim.
13. It argues that it is not reasonable for a grade A fee earner to be undertaking such matters as they could be undertaken by a junior fee earner.
14. In respect of the first two entries on the Applicant's Schedule of Costs, which are a charge of 42 minutes for time engaged on advice and instructions with the Applicant upon receipt of the claim notice, ownership of property and qualifying tenants and then a second entry relating to advice and instructions upon counter-notice inducing advising the Applicant of the Solicitor's review, the Respondent argues that it is not reasonable to allow more than 30 minutes for a grade A fee earner to review all of these matters. The Respondent submits that the first two entries should be reduced collectively to 30 minutes charged at the grade A national guidelines for fee earner rate, amounting to £108.50.
15. The fourth entry relates to 390 minutes engaged in reviewing support documents. The Respondent argues that this is not reasonable particularly at a grade A fee earner charge out rate. The work undertaken is straightforward and capable of being assigned to a grade D fee earner. Accordingly the Respondent considers that the time should be reduced to 5 hours at a grade D charge out rate of £118 per hour and therefore reduced to £590.
16. The 6th entry relates to 342 minutes for attendances on the RTM company and Applicant/Applicant agent. Whilst the Respondent argues there are no details provided the Applicant, in its response explains that 5 of the attendances were upon Counsel and 6 attendances upon courier.
17. The Respondent challenges the disbursements on the basis that if the Applicant had prepared the notice within good time then a courier and postage fees for next day delivery would not have been incurred.
18. The Respondent does not agree the management fees which constitute a duplication of work and it argues it is not usual practice for management fees to be applied in respect of RTM claims, particularly where solicitors are instructed.

19. The Respondent compares its solicitors' costs, charged at a fixed fee rate, with its fees totalling £3,950 plus VAT. It argues that the bulk of the work is done by the Respondent and points out that if a non fixed fee basis was used its fees would have been £2,437 plus VAT.
20. The Respondent draws the attention of the Tribunal to 2 offers it made to settle the matter, both of which were rejected. The first was in the sum of £1,000 and the 2nd £2,000.
21. The Applicant responds to the Respondent's submissions as follows:
 - (i) It rejects the alleged simplicity of the matter
 - (ii) It argues that the Respondent's charges are not significantly lower than the Applicant as the Respondent has charged £3,950 plus VAT whereas the Applicant has requested £4,222.10 plus VAT for solicitor fees.
 - (iii) It argues that the time spent by the Applicant's solicitor was less because of her extensive experience
 - (iv) It points out that Miss Scott is a sole practitioner and therefore personally attended to the review of documentation.
 - (v) The Applicant rejects the guideline rate of £217 per hour as it is a rate fixed in 2010 and reviewed in 2014 and no longer represents the commercial hourly rate being charged by firms of solicitors for doing this type of work.
 - (vi) The Applicant rejects the argument that the first two items on the Schedule of Costs are duplicated
 - (vii) The Applicant argues that the disbursements were reasonable as it is entitled to utilised tracked delivery service and courier service where necessary.
 - (viii) The Applicant submits that it is standard practice for a managing agent to charge fees in connection with RTM notices to Landlord and provides case law to support this.
 - (ix) In relation to the offers the Applicant argues that had it accepted them it would have been left out of pocket and anyway the offers were made subsequent to the application to the Tribunal.

Decision of the Tribunal

22. The Tribunal determines to reduce the costs of the Applicant to £3,837.60

23. The Tribunal determines to order the reimbursement of the Tribunal fee.

The reasons for the decision of the Tribunal

24. The Tribunal accepts that the matter was more complex than a standard RTM application and that the charging rate of the principal solicitor at £275 per hour was reasonable.
25. It however considers that the time spent on the matter was excessive considering the level of seniority and expertise of the solicitor. It therefore reduces the time spent on instructions, review of notice and counter notice and review of documents and preparation of counter-notice to 420 minutes.
26. The Tribunal considers the disbursements reasonable costs.
27. The Tribunal determines that the Tribunal fee should be reimbursed on the basis of the case law provided.
28. The Tribunal considers that the management fees are a reasonable charge but has reduced the attendances to 300 minutes on the basis that the managing agents took an active role in the matter.
29. The total chargeable hours are therefore 12 x £275 per hour. The disbursements and the management fee remain the same.

Name: Judge Carr

Date: 19th November 2019

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).