First-tier Tribunal
Property chamber
(Residential Property)

Case reference	:	**CAM/26UD/LCP/2018/0001**
Properties	:	**The Mansion, The Coach House and West Wing, Balls Park, Hertford, SG13 0EF**
Applicant	:	**Balls Park Mansion RTM Co. Ltd.**
Respondent	:	**Balls Park Mansion Management Co. Ltd.**
Date of Application	:	**6th August 2018**
Type of Application	:	**To determine the costs payable on service of RTM claim notice (Section 88 (4) of the Commonhold and Leasehold Reform Act 2002 ("the Act"))**
Tribunal	:	**Bruce Edgington (solicitor, chair) David Brown FRICS**

DECISION

---

1. The reasonable costs of the Respondent in dealing with the matters set out in Section 88 of the Act are £1,289.50, plus VAT but subject to the consideration of whether VAT is recoverable by the Respondent from the revenue. If it is, no VAT is recoverable from the Applicant.

Reasons

Introduction

2. The Applicant served a Claim Notice claiming the right to manage the property. The claim was initially agreed, then disputed and then agreed again. The Applicant agrees that it is liable to pay the Respondent's costs arising from the service of such notice but disputes the amount of costs claimed at £2,695.50 plus VAT.

3. A directions order was issued on the 6th September 2018. The Tribunal said that it was content for the matter to be dealt with on a consideration of the papers to include the parties' submissions and it would do so on or after 26th October 2018. The parties were told that if they wanted an oral

hearing, they could apply for one and it would be arranged. No such request was received.

4. The bundles for the Tribunal duly arrived with, as ordered, the objections and replies on one document e-mailed to the Tribunal as a Word document so that the decisions could be endorsed thereon against each objection. The Tribunal is grateful to the parties for dealing with matters in this way.

The Law

5. Section 88(1) of the Act says that *"a RTM company is liable for reasonable costs incurred by a person who is....a landlord under a lease of the whole or part of any premises....in consequence of a claim notice given by the company in relation to the premises"*

6. The method of assessment is on the basis of what is sometimes called the indemnity principle. In other words the costs payable are those which would be payable by the client *"if the circumstances had been such that he was personally liable for all such costs"*. (Section 88(2) of the Act)

Discussion

7. The Respondent's solicitors are Longmores Solicitors LLP of Hertford. The main fee earner is John Wagstaffe who describes himself as Grade B i.e. a solicitor or legal executive with more than 4 years' post qualification experience, including at least 4 years' litigation experience. He claims £190 per hour for his work and, quite rightly, this does not seem to be opposed. There are also 6 minutes of time spent by a Grade C fee earner which is also not disputed.

Conclusions

8. The Points of Dispute document with the replies and the Tribunal's determination form part of this decision. It will be seen that a total of 7 hours 24 minutes has been deducted from the claim which, at £190 per hour totals £1,406.00. Deducting this from the total claim of £2,695.50 leaves £1,289.50 as being a reasonable sum.

9. VAT is only payable by the Applicant if the Respondent is not able to reclaim the VAT. The reason, of course, is that the legal services have been supplied to the Respondent even though the costs are being paid by the Applicant. A certificate supplied by the Respondent's solicitors or accountants to the Applicant's solicitors will be sufficient.

Bruce Edgington

.....

Bruce Edgington
Regional Judge
26th October 2018

ANNEX - RIGHTS OF APPEAL

i. 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.

ii. 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.

iii. 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.

iv. 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.

First-tier Tribunal
Property Chamber
(Residential Property)

CAM/26UD/LCP/2018/0001

Balls Park Mansion RTM Co. Ltd. Applicant

and

Balls Park Mansion Management Co. Ltd. Respondent

POINTS OF DISPUTE SERVED BY THE APPLICANT

(WITH RECEIVING PARTY'S REPLIES)

Point 1 General point	Having carried out its initial checks on 12 October 2017, the Respondent notified the Applicant that it did not dispute the right to manage (letter dated 14 November 2017). Three days later, on 17 November 2017, and without appearing to have undertaken any further work or taken any further instructions the Respondent then served a Counter Notice objecting to the right to manage. It then withdrew its objections (letter dated 24 November 2017). It is unreasonable for the Respondent to seek payment of the costs of disputing the right manage when it had stated it did not object and then finally returned to that position. The Respondent gives no explanation for its change in position and has not referred to having carried out any further work or taken any further instructions leading to the change in its position and the service of the Counter Notice. Nor had the Respondent sought any documentation whatsoever from the Applicant in the interim.
	Receiving Party's Reply
	The RTM claim was the source of much disagreement between residents and there were strong feelings on both sides. There were even differing views between non-participating residents on whether and to what extent the claim should be opposed. As a result of the differing views, the Respondent changed its mind as to whether or not it should oppose the claim. In the event, it decided to oppose it. That was its prerogative.

	At a later date the Responded elected not to continue its opposition. It did not at any time say that it considered any of its objections to be unfounded. All that can be inferred from the discontinuance of its opposition is that at the relevant time a majority of directors no longer wished to oppose the claim. The Respondent initially decided to take each and every point available to it to object to the claim. In *Pineview Limited and 83 Crampton Street RTM Company Limited [2013] UKUT 568 (LC)* the Deputy President, Martin Rodger QC said, "66. *Experience of claims to acquire RTM demonstrates that some recipients of a claim notice will take every possible point available to them in challenging an RTM company's assertion of entitlement. Such points are often ingenious and sometimes they are successful, but when examined very many lack both substance and merit. A landlord is not to be criticised for adopting that tactic; it is entitled to put a claimant to proof that is has complied fully with the relevant statutory procedures, and if it [sic] is takes the view that a claim is vulnerable to a technical challenge it is entitled to have regard to its own interests and to make that challenge.*" (emphasis added). The Respondent considered that • The claim notice was invalid because it related to three separate blocks – the Mansion, the West Wing and the Coach House; • the claim notice may have been invalid because of errors in the notice of invitation to participate – Pamela Jane Murray's name was misspelt and Simon George Dickens was named as the lessee of two flats in the schedule; • The claim notice may have been invalid because an incorrect notice of invitation was sent on 4 September 2017 and then an amended one was sent on 22 September 2017;
	• The claim notice may have been invalid because the notice of invitation included Karen Jean Smith's name in the schedule but the same name did not appear in the schedule to the claim notice; • The claim notice may have been invalid because it did not appear to be signed by an authorised member of officer of the RTM Co;

	• The claim notice may have been invalid because it was not apparent that the RTM Co. had at least 50% of qualifying tenants as its members; • A director of the RMT Co may be disqualified from holding a company directorship. The above issues, together with all other relevant technical points (for instance, whether the articles were in the proper form) had to be considered and the Respondent had to be provided with advice both on the nature of a right to manage claim, what factors may prevent an RTM Co from acquiring the right to manage and whether when applied to the facts of the instant case any of those factors prevailed. It was reasonable and proper for the Respondent to ask the above questions and seek full advice on them – its doing so was purely "in consequence of a claim notice" as envisaged by s.88(1) of the 2002 Act.
	Costs Officer's Decision The explanation has been noted
Point 2 12.10.17 6:24	The Respondent did not seek disclosure of any documentation at all from the Applicant. The time involved in considering the Notice of Invitation to Participate and Notice of Claim could therefore not have included checking that the documents were served on all required parties but could only have involved time on checking the contents of a copy of each of the documents which would only take a maximum 18 minutes per document. Reduce this part of the time claimed to 36 minutes.
	Receiving Party's Reply Documents were sought from and provided by the Respondent.
	Costs Officer's Decision There are no less than 8 objections to this item of claim – please see composite decision after point 9
Point 3 12.10.17. 6:24	The Articles are prescribed and the only item to check would be that the company included "RTM Company" in its title and the definition of "Premises" and that the rest of the Articles followed the prescribed content. This would only take 12 minutes. Reduce this part of the time claimed to 12 minutes.
	Receiving Party's Reply

	The Respondent would accept 18 minutes.
	Costs Officer's Decision see below
Point 4 12.10.17. 6:24	"2002 Act" is too vague a reference and a competent solicitor should know the main provision of the 2002 Act without needing to incur time for research. No time should be allowed.
	Receiving Party's Reply The research focussed on case law concerning section 72 and analogous case law under section 3 of the 1993 Act.
	Costs Officer's Decision See below
Point 5 12.10.17. 6:24	"Question of definition of parts premises" and "research case law s72 of 2002 Act and parts of premises". The Respondent has misdirected itself and its research on this issue is not relevant. All parts of the Premises are structurally attached. The structural attachment is self-evident and does not give rise to any legal questions of the nature of structural attachment. This fact should be immediately apparent when taking instructions and no legal research at all would be required on this issue. Reduce to 18 minutes to take instructions confirming all parts of Premises structurally attached.
	Receiving Party's Reply The question of whether or not the claim notice was invalid because it related to three separate blocks – the Mansion, the West Wing and the Coach House – was of utmost importance to the Respondent since, firstly, it considered that the blocks were separate premises and, secondly, if that amounted to a proper objection then it would not only defeat the claim but, given that a majority of the participating lessees were concentrated in one block, it would likely mean that the two other blocks could not be subject to a later RTM claim (at least on the current level of interest from residents). The Applicant appears to have misunderstood the point.
	The legal question was whether, notwithstanding that the three blocks when taken together were self-contained, if each block can be considered "separate premises" for the purpose of the 2002 Act, it is permissible to bring one claim in relation to all of them.

	The 2002 Act does not provide the answer to that question. After considerable research it was established that (at the time of serving the counter notice) there was no authority on the point. The only potentially helpful case was *41-60 Albert Palace Mansions (Freehold) Ltd v Craftrule Ltd [2011] EWCA Civ 185 which* concerned s.3 of the 1993 Act. The Respondent was entitled to be fully advised on the state of the law in this area and how it applied to its own facts. Given the importance and the absence of any authority, the Respondent would have been entitled to instruct counsel to advise – see *Remise Investments Ltd v 2-20 Hughendon Road RTM Co Ltd and others, 6 October 2016, First-tier Tribunal* in which Regional Judge Bruce Edgington and David Brown awarded £2,250.00 for the cost of counsel's advice. However, instead of incurring that cost, the Respondent's solicitors conducted the research and did so at a lower cost than counsel would likely have charged. The costs are reasonable in the circumstances.
	Costs Officer's Decision See below
Point 6 12.10.17. 6:24	"Lease" Unknown what work is being claimed for as description too vague. No time should be allowed.
	Receiving Party's Reply It is unthinkable that a competent solicitor could act in a right to manage claim without reading a lease of a flat in the block.
	Costs Officer's Decision See below
Point 7 12.10.17. 6:24	"Plans of building" The client or its managing agent could provide instructions very easily and quickly confirming the Premises comprised a single structure with all parts structurally attached. Checking this against lease plans
	should take no more than 18 minutes. Reduce this part of time claimed to 18 minutes.
	Receiving Party's Reply Plans of the building were available and it was not unreasonable for the solicitors to consult them when forming a view on whether the blocks were structurally

	detached.
	Costs Officer's Decision See below
Point 8 12.10.17. 6:24	"Qualifications of RTM Co directors". This is not relevant as there are no qualifications required. No time should be allowed.
	Receiving Party's Reply It appeared to the Respondent that Mr Molloy may have been disqualified from holding a directorship. It was entitled to be advised as to when a person's qualifications are relevant under the Right to Manage (Prescribed Particulars and Forms) (England) Regulations 201/825 and whether on the facts Mr Molly's qualifications were relevant.
	Costs Officer's Decision See below
Point 9 12.10.17. 6:24	"Strategy generally". Unknown what work is being claimed for as reference too vague. The legal relevance is only whether the RTM statutory criteria have been met and complied with. No time should be allowed.
	Receiving Party's Reply The Respondent was entitled to be advised, and therefore thought had to be given, as to what it might reasonably do in the circumstances and what would likely take place if it served a counter notice.
	Costs Officer's Decision The Tribunal accepts that all the matters and documents listed had to be considered. However, for an experienced practitioner to spend so much time on these issues is unreasonable. The RTM provisions in the 2002 Act are contained within a relatively small part of the Act and, using a proper search engine, the relevant case law can be identified by an experienced practitioner charging £190 per hour relatively quickly. In other words, if a solicitor is researching an area of law new to him/her, the client would
	not expect to have to pay for inexperience because knowledge of the general law and where to look for it is an overhead and therefore part of the hourly rate, not an additional charge. A total of 3 hours should be more than enough time and that time is determined as reasonable. The reference to *Remise Investments v 2-20 Hughendon Road RTM* is misconceived. As the decision makes clear

	the sum of £2,250 for counsel's fees in a much more complicated case was not disputed and was therefore not an 'award'.
Point 10 12.10.17. 3:12	Time engaged is wholly excessive. Reduce to 1 hour.
	Receiving Party's Reply The letter of advice was nine pages long and set out the relevant law concerning right to manage claims, the possible objections available to the Respondent, the state of the law concerning the three separate blocks, and the various facts and matters that had been analysed together with advice on the next steps. Given the importance to the Respondent and the issues involved, the time spent was reasonable.
	Costs Officer's Decision It must be remembered that this work was undertaken on the same day as all the research etc. The letter of advice would be dealt with at the same time whilst everything was fresh in the mind of the fee earner. 1 hour is reasonable
Point 11 17.11.17 2:48	Time engaged is wholly excessive. The Counter Notice was in the form of a general catch all Notice with no specific factually based objections. No documentation had been requested from the Applicant that would have required consideration before drafting the Counter Notice. The Applicant refers to General Point of dispute above and therefore no time should be allowed. If time is allowed it should be reduced to 24 minutes.
	Receiving Party's Reply The counter notice drew together all of the points that had been analysed and produced possible avenues to a challenge. It related to the actual facts of the claim and was in no way simply in "catch all" form.
	Costs Officer's Decision The counter notice becomes straightforward once all the research has been done and the client's instructions obtained. The points to be analysed and avenues of challenge had already been considered. 1 hour is reasonable.
Point 12 17.11.17. 00:05	Attending Foulds Solicitors office. This was only necessary because the Respondent left service until the last day. Had

	they acted with due diligence the Counter Notice could have been posted or sent by DX. No time should be allowed.
	Receiving Party's Reply The Respondent would have been entitled to instruct process servers to serve the counter notice. That cost would likely have been triple that claimed for hand delivery.
	Costs Officer's Decision The point made by the Respondent is reasonable. Time allowed as claimed
Point 13 17.11.17 and 20.11.17 and 21.11.17	"Emails out to client". Unknown content and length so Applicant unable to comment on reasonableness save for general objection concerning Respondent's change of position.
	Receiving Party's Reply It is not unreasonable to expect that some discussion will go on between the Respondent and its solicitors whilst questions are asked and documents are provided.
	Costs Officer's Decision The objection is not clear and the claims in respect of these e-mails are accepted because they arise from the service of the notice and these are indemnity costs.

Re: Receiving Party's Replies

The costs stated above do not exceed the costs which the Respondent is liable to pay in respect of the work which these points of dispute cover.

Signed

_____

John Samuel Wagstaffe, Solicitor, Longmores Solicitors LLP

Date

_____