



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

**Case Reference** : **CAM/12UD/LCP/2019/0001**

**Premises** : **5 and 6 North End, Wisbech,  
Cambridgeshire PE13 1PE**

**Applicant** : **Assethold Limited**  
**Representative** : **Scott Cohen Solicitors**

**Respondent** : **Yachts View RTM Company Limited**  
**Representative** : **Warwick Estates Property Management**

**Date of Application** : **3<sup>rd</sup> July 2019**

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

**Tribunal** : **Judge J R Morris**

**Date of Decision** : **27<sup>th</sup> September 2019**

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**DECISION**

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**Decision**

1. The Tribunal determines that the Respondent shall pay to the Applicant costs in the sum of £1,693.00 (inclusive of VAT) pursuant to section 88(4) of the Commonhold and Leasehold Reform Act 2002.
2. The Tribunal determines that the Respondent shall reimburse the Applicant the cost of the Application Fee of £100.00.

**Reasons**

**Introduction**

3. The Applicant seeks a determination, pursuant to section 88(4) of the Commonhold and Leasehold Reform Act 2002 in respect of costs incurred by

the Applicant following a claim by the Respondent to acquire the right to manage the Premises. The Applicant also seeks the reimbursement of the Tribunal Application Fee of £100.00.

4. Directions were issued on 26<sup>th</sup> July 2019. Directions required the Applicant to send documentation detailing the costs claimed to the Respondent by 12<sup>th</sup> August 2019. The Respondent was then required to send a statement of case by 2<sup>nd</sup> September 2019. The Applicant could then reply by 9<sup>th</sup> September 2019. The bundle was to be prepared by the Applicant and sent to the Tribunal by 16<sup>th</sup> September 2019. The parties were informed in Directions that the case would be dealt with by paper track and determined after 23<sup>rd</sup> September 2019 unless a hearing was requested by either party by 31<sup>st</sup> August 2019.
5. No request for a hearing was received. The Applicant sent a Bundle to the Tribunal in compliance with Directions. In a statement of case dated 6<sup>th</sup> September 2019 the Applicant stated that it had sent a letter and enclosures of schedule of costs with supporting documents (copy provided) to the Respondent on 8<sup>th</sup> August 2019. The Applicant stated that notwithstanding their own compliance with the Tribunal's Directions the Applicant had not received a response or statement of case from the Respondent.
6. The Tribunal also has not received any communication from the Respondent.

### **The Law**

7. The law that applies is in the Commonhold and Leasehold Reform Act 2002 (the 2002 Act) and is set out in an Annex to this Decision and Reasons.

### **Evidence**

#### The Documents

8. The Tribunal examined the documents provided in the bundle and found as follows.
9. The Respondent had sent to the Applicant an unsigned Claim Notice dated 25<sup>th</sup> January 2019 seeking to acquire the right to manage the Premises pursuant to section 70 of the Commonhold and Leasehold Reform Act 2002. The Applicant subsequently received a signed Claim Notice also dated 25<sup>th</sup> January 2019 seeking to acquire the right to manage the Premises.
10. Following an email exchange on 29<sup>th</sup> January 2019 the Respondent's Representative confirmed that the signed Claim Notice was the correct Notice and provided copies requested by the Applicant of: Land Registry Entries, register of members of the RTM Company, copies of correspondence, notices of invitation to participate, Memorandum and Articles of Association and applications for membership of the RTM Company. The Respondent's representative also confirmed that the unsigned Notice was withdrawn and had not been sent to any other party.

11. On 22<sup>nd</sup> February 2019 the Applicant sent to the Respondent and its Representative Counter Notices relating to the unsigned and signed Claim Notice.
12. The Counter Notices alleged that the Respondent was not entitled to acquire the right to manage the Premises because they did not comply with sections 72(1), 73(2), 80(2) 80(6), (7), (8) and (9), 81(3). The Counter Notice also stated that if the Respondent had received one or more counter notices with a statement as is mentioned in section 84(2)(b) of the 2002 Act an application must be made to a tribunal to determine its entitlement to acquire the right to manage.
13. It appears from the correspondence and documents provided that the application to acquire the right to manage was not proceeded with as on 8<sup>th</sup> May 2019 the Applicant sent to the Respondent and its Representative a letter seeking recovery of their fees and disbursements, under section 88 and 89 of Part 1 of the 2002 Act, in consequence of the signed and unsigned Claim Notices and Notices of Counter Claim. The letter stated that the Solicitor's Fees incurred were £1,665.60 (£1,375.00 plus disbursement of £13.00 plus VAT of £277.60) and Managing Agent's Fees of £360.00 (£300.00 plus VAT of £60.00) being a total of £2,025.60.
14. It was added that if these fees were not agreed the Applicant intended to issue proceedings for determination of the costs. A reminder letter was sent on 10<sup>th</sup> June 2019 and an application was made to the Tribunal on 3<sup>rd</sup> July 2019.

#### Costs

15. The Applicant's Statement of Case referred the Tribunal to section 88(2) which states that where the costs in section 88(1) are in respect of professional services the test for reasonableness is whether it may reasonably be expected that the landlord would incur the costs, if incurring the costs itself. It was submitted that the fees of the solicitor and the managing agent were costs that the landlord would reasonably be expected to incur if incurring the costs itself.
16. In support of this the Applicant stated that with regard to the Solicitor's Fees it had retained Scott Cohen Solicitors on the same terms as applied in the present situation in relation to other matters in respect of which the Applicant had paid the fees.
17. The Applicant submitted that it was appropriate to instruct a solicitor to assess the validity of the Claim Notice, advise the Landlord and take appropriate steps to protect its interest with particular reference to trust monies held in respect of managing the Premises.
18. Miss Scott, the person dealing with the matter, is a sole practitioner and Grade A solicitor. She was called to the Bar in 1999 and converted to a solicitor in 2009. The fee level reflects her total experience. The amount charged reflects the time spent which is charged at increments of 1/10<sup>th</sup> of an hour. The Tribunal's attention was drawn to the First-tier Tribunal case of *Albacourt Properties Ltd & W Court Joint Dwelling Enterprises Co Ltd* case ref

MAN/00BU/LCP/2019/0001 in which that tribunal accepted the sums charged on a similar basis in their entirety.

19. With regard to the Managing Agent's fees the Tribunal was referred to the Management Agreement (a copy of which was provided) which shows that the fee claimed is one that the Applicant would pay under the contract. Appendix 3 of the Management Agreement provides that the charge of £300 + VAT is a minimum charge in respect of a RTM. The advantage of this is that the Respondent would know with certainty the minimum charge payable by the Respondent in this case.
20. Reference was also made to the RICS Code of Practice, Service Charge Residential Management Code and Additional Advice to Landlords, Leaseholders and Agent 3<sup>rd</sup> Edition, which recommends that an agent has a separate scale of charges for matters which fall outside the annual fee as part of the terms of engagement. Appendix 3 of the Applicant's Managing Agents Agreement meets this recommendation.
21. The Applicant submitted that the Managing Agent's work had to be carried out immediately upon receipt of the Claim Notice. Whether a counter notice is served or not contractors need to be reviewed and notified and services and planned works reviewed to assess the impact of the right to manage.
22. The Applicant referred the Tribunal to *Columbia House Properties (no. 3) Ltd v Imperial Hall RTM Company Limited* [2014] UKUT 0030 (LC) where the Upper Tribunal upheld the recovery of the management fees as a professional fee and that it is not an uncommon practice to engage a managing agent when a right to manage is claimed and for which a charge is levied. In this respect the Applicant referred to the First-tier Tribunal case of *Assethold Ltd v 61 Lewisham Hill RTM Co Ltd* Case ref: LON/00AZ/LCP/2019/0003 in which that tribunal awarded managing agent's fees of £400.00 plus VAT whereas in this case £300.00 plus VAT are being sought for similar work.
23. The Respondent did not provide a Statement of Case.

#### Application for Reimbursement of the Tribunal's Fee

24. With regard to the application for reimbursement of the Tribunal's Fee of £100.00 the Applicant said that it had incurred additional costs because it had had to apply to the Tribunal since the Respondent made no attempt to agree the costs or otherwise settle the matter (copies of correspondence provided).

#### **Decision**

##### Costs

25. The Tribunal considered the Solicitor's Fees set out in the attachment to the Applicant's letter to the Respondent dated 8<sup>th</sup> May 2019 and the more detailed account in the Schedule in response to Directions.

26. The Tribunal finds that taking into account the experience and expertise of the Solicitor, Grade A is appropriate. In principle the Tribunal prefers to accept an hourly rate, in this case £275.00 The Tribunal would expect that the rate of £275.00 paid for the services of a Grade A solicitor would result in the work being carried out most expeditiously and that included in the rate would be an allowance for non-fee earner work such as opening files, diarising, acknowledgement replies on receipt of documents, archiving etc.
27. The Tribunal noted the work carried out and the time taken as follows:

<b>Item</b>	<b>Time taken</b>	<b>Charge</b>
<b><i>Advice an Instructions with Client</i></b>		
Attending the Client to take instructions (12 minutes) Advising the client following the review and checks prior to serving the counter notice (18 minutes)	30 minutes	
<b><i>Review of Claim Notices</i></b>		
Checking format and noting time limits of the Claim Notices Company search Obtaining the Freehold Title	30 Minutes	
<b><i>Review of RTM Supporting Documents</i></b>		
Cross referencing Leasehold Titles and Leases with Claim Notice to identify qualifying tenants and cross-referencing with the Register of Members Checking Memorandum and Articles of Association to ensure valid RTM Company Cross referencing Memorandum and Articles of Association with Register of Members to establish memberships Checking dates and content of the Register of Members to ascertain membership on the relevant date Checking the application for membership forms Checking service of the claim on qualifying tenants and contents of correspondence Ascertaining details of the Development and the two residential blocks and identifying the extent of the premises.	102 minutes	
<b><i>Preparation of Counter Notice</i></b>		
Preparation of counter notices including some 8 and 5 grounds including the necessary checks against the provision of the legislation.	42 minutes	
<b><i>Routine Attendances</i></b>		
6 minutes per correspondence 10 attendances on RTM 6 attendances on Client	96 minutes	
<b>Total Solicitor's Fees 5 hours @ £275.00 per hour</b>		£1,650.00 (£1,375.00 +

		£275.00 VAT)
<b>Disbursements</b>		
Postage – Next Day delivery of Counter Notices		£15.60 (£13.00 + £2.60 VAT)
Total Solicitor’s Fees		£1,663.00
Managing Agent’s Fees		
Notify freeholder and solicitor of service of Notice Providing instructed solicitor with information on Property, Leases etc - 1 hour Instruct accounts and management team to review file and implications of RTM, prepare for costs on RTM takeover, review contracts, insurance, scheduled works and ongoing services – 1 hour Meet Client to advise on ramifications of RTM – 35 minutes		£360.00 (£300.00 + £60 VAT)
<b>Total Costs</b>		£2,025.60

28. The Tribunal determined 30 minutes for attending client in taking instructions (including obtaining the freehold Title) and reporting on claim to be reasonable. However, this should include at least one of the attendances for which an additional charge has been made in respect of routine attendances and 6 minutes has been deducted from that charge.
29. The Tribunal determined that 30 minutes for the review of the notices, the exchange of the very brief emails regarding the unsigned notice and the request for further documents to be reasonable. An additional charge for the emails as routine attendances on the RTM Company was not considered justified. The review and the emails were all part of one task. 30 minutes were deducted from the charge of routine attendances with the RTM Company.
30. The description of the task of reviewing the supporting documents really identifies five things to be done:  
Cross referencing Leasehold Titles and Leases with Claim Notice to identify qualifying tenants;  
Checking Memorandum of Association and Articles of Association;  
Checking membership of the company with the Register of Members;  
Checking the service of the Claim Notice on qualifying tenants;  
Considering the information provided regarding the Premises including that obtained from the Managing Agent.
31. In this instance there is an overlap in the review of the Claim Notice and drafting the Counter Notice in that the alleged failure to comply with sections 80 and 81 relates to alleged defects in the Claim notice.
32. For a Grade A solicitor in this case the task should take 90 minutes, particularly as the Managing Agent will have advised as to whether the Premises are capable of being the subject matter of a right to manage claim.
33. Following the review of the supporting documentation the drafting of the Counter notice for a Grade A solicitor should be 30 minutes. The relevant

provisions of the legislation will be known to the expert. The Counter Notice is in a fairly standard form and only refers to the provisions in the legislation which are alleged not to have been met. No description or explanation is given as this will not be required unless the RTM Company subsequently applies to a tribunal to challenge the Counter Notice.

34. The Tribunal considered the disbursements reasonable, although VAT is not chargeable.
35. The Tribunal found the Managing Agent's fees to be reasonable.
36. In making its decision the Tribunal noted the cases to which it had been referred together with the contracts and RICS Code. In respect of the amount of the fees considered reasonable there is likely to be some variation between cases notwithstanding the tasks to be undertaken are essentially the same.
37. The Tribunal's determination is as set out in the table below:

<b>Item</b>	<b>Time taken</b>	<b>Charge</b>
Advice an Instructions with Client	30 minutes	
Review of Claim Notices	30 Minutes	
Review of RTM Supporting Documents	90 minutes	
Preparation of Counter Notice	30 minutes	
Routine Attendances 5 attendances on RTM Company 5 attendances on Client	60 minutes	
Total Solicitor's Fees 4 hours @ £275.00 per hour		£1,320.00 (£1,100.00+ £220.00 VAT)
Disbursements of Postage – Next Day delivery of Counter Notices		£13.00
Managing Agent's Fees		£360.00 (£300.00 + £60 VAT)
<b>Total Payable</b>		<b>£1,693.00</b>

38. The Tribunal determines that the Respondent shall pay to the Applicant costs in the sum of £1,693.00 (inclusive of VAT) pursuant to section 88(4) of the Commonhold and Leasehold Reform Act 2002.

Application for Reimbursement of the Tribunal's Fee

39. Rule 13 (2) of the 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. The party ordered to reimburse the fee need not have acted unreasonably.
40. The Tribunal found that the Applicant having written twice to the Respondent seeking payment of its costs without any reply was left with little option but to apply to the tribunal. The Respondent made no attempt to pay, challenge or negotiate a lower charge and has not participated in these proceedings.

Notwithstanding the Tribunal having reduced the Applicant's costs the tribunal find it is fair and just that the application fee be reimbursed.

41. The Tribunal determines that the respondent shall reimburse the Applicant the cost of the application fee of £100.00.

**Judge JR Morris**

### **ANNEX 1 - RIGHTS OF APPEAL**

1. If a party wishes to appeal the 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.

### **ANNEX 2 – THE LAW**

The Relevant Law is in sections 88 and 89 of the Commonhold and Leasehold reform act 2002 as follows:

#### **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.

### **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).