



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

**Case reference** : **LON/00AH/LCP/2020/0002**

**HMCTS Code** : **P : Paper Remote**

**Property** : **18 Lancaster Road, London SE25  
4AJ**

**Applicant** : **Assethold Limited**

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

**Respondent** : **18 Lancaster Road RTM Co. Ltd**

**Representative** : **Michael McFagen**

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

**Tribunal member** : **Tribunal Judge Dutton  
Mr TW Sennett MA FCIEH**

**Venue** : **Remote paper case**

**Date of Decision** : **31 March 2020**

## **Covid-19 pandemic: description of hearing**

This has been a determination on the papers which has been consented to by the parties. The form of remote hearing was Paper Remote. A face-to-face hearing was not held because it was not practicable and all issues could be determined on paper. The documents that the Tribunal were referred to are in a bundle of 99 pages, the contents of which have been noted.

### **DECISION**

**The tribunal determines that the costs payable under the provisions of s88(4) of the Commonhold And Leasehold Reform Act 2002 are £1,287.00 for solicitors costs; £350 for managing agents costs, the total sums being payable within 28 days.**

**In addition, the respondent shall remit to the applicant the sum of £100 being the application fee, again within 28 days.**

### **BACKGROUND**

1. The tribunal is asked to determine the amount of costs the applicant landlord can recover under the provisions of s88(4) of the Commonhold and Leasehold Reform Act 2002 (the Act).
2. A bundle of documents was provided comprising the application, directions, the applicant's statement of case and costs schedule, the respondent's reply and the applicant's response and further thereto.
3. We have noted all that is said. For the applicant we are told that solicitors costs amounting to £1,551, inclusive of VAT are sought together with managing agents costs of Eagerstates Limited in the sum of £450 plus VAT.
4. The solicitors acting for the Applicant are Scott Cohen Solicitors Limited, who have acted for the applicant for some time. The solicitor having the conduct is Miss Lorraine Scott a Grade A fee earner whose details appear in the Schedule of costs. It is said that her hourly charge out rate £275. The schedule lists the work undertaken, broken down into 6 minute units, which is the norm. We have noted the time spent and the matters addressed. We will respond in such detail as is necessary under the finding section of this decision.
5. There appears to be a disbursement of £60.48 being couriers fee for the service of the Counter Notice, which we note took place on the last day for such service.
6. The fees of Eagerstates Limited are based on the management agreement, which has been produced.

7. A copy of the fee note from Scott Cohen Solicitors dated 3 December 2020 is included, together with an extract of the fee agreement.
8. The applicant's statement of response sets out the provisions of the Act in respect of this application, referring to s88(1) and (2). Under the heading 'Solicitors Fees' details are given of the tasks undertaken and confirmation of the hourly charging rate of Ms Scott. Our attention was drawn to a Northern Panel decision in the case of Albacourt Properties v W.Court Joint Enterprise, which is, of course, not binding on us.
9. Under the heading Management Fees we were told that the fee charged was within the terms of the management agreement between the applicant and Eagerstates Limited, a copy of which was provided. We were also provided with an extract of the RICS Code and directed to the Upper Tribunal case of Columbia House v Imperial Hall RTM where it is said the recovery of managing agents fees were allowed. A request for the reimbursement of the tribunal fee of £100 was made.
10. For the respondent Mr McFagen is essentially that the costs are too high. The applicant and Eagerstates are closely aligned and that the need for both Eagerstates and Scott Cohen to act was unnecessary. *"It is difficult to see this ongoing process being anything other than a last raid on the leaseholders pockets before they are free to spend their money on their own property"* says Mr McFagen.
11. Mr McFagen goes on to make somewhat arbitrary assessments of the work done and the amount that he considered should be allowed for each category. Again we will return to this in the Findings section of this decision. He concludes that the total allowed should be £612.50. Reference is made to another first-tier case 23 Hammelton Road but this relates to an application for costs under rule 13 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 and is not therefore helpful, nor binding upon us in any event.
12. The final document is the applicant's further statement of response, which we have noted in making our decision.

## FINDINGS

13. The relevant section of the Act is s88 as follows:

**88Costs: general**

*88(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 .*

14. The details of the applicant's costs are set out in the Schedule of Costs at pages 25 to 27 of the bundle. Dealing firstly with the hourly rate of Miss Scott. In the response filed by the respondents at pages 70 onwards the hourly rate does not appear to be challenged. We think that is right. £275 per hour for a solicitor of Miss Scott's experience is not unusual. The National grade for Miss Scott in Oxfordshire would be circa £217 per hour. But these rates are outdated and are due for uplift. The rate of £275 per hour is perfectly reasonable.
15. We must then turn to look at what work was done, and the time spent. It is said that 4hours and 42 minutes were spent. We have considered the schedule and find little to support the challenges made by the respondent. Given the time spent on reviewing the papers produced of 108 minutes we consider that a further 42 minutes on producing the Counter-Notice is somewhat excessive and would reduce that to 24 minutes. The same can be said of the routine attendances. 10 attendances on the client/agent is a high number and not perhaps what one would expect under the provisions s88(2). We would reduce that to 42 minutes, giving 5 attendances on the client, which would be sufficient for what is not an unusual RTM application.
16. We have therefore reduced the time spent by Miss Scott by 8 units at £27.50 per unit. This therefore reduces the fee claimed for Miss Scott's involvement to £1,072.50 plus VAT of £214.50, making a total for solicitors costs of £1,287.00.
17. As to the fees of Eagerstates Limited we see from the terms of the management agreement that a minimum charge of £450 plus VAT can be made for dealing with RTM matters (see page 96). However, Assethold Limited are, we understand, regular and long standing clients of Eagerstates Limited. Relying on 88(2) we would expect some lee way on this charge. We note in the Northern case cited by the applicant the charge by Eagerstates, admittedly in 2018, was £312 including VAT, but no copy of the management agreement was produced in that case.

- 18, We find that if the applicant were paying these fees itself it would, in all probability have been able to negotiate a lower fee. We find that in the absence of any indication of the time spent a fee of £450 plus VAT is too high and would limit them to £350 including VAT, in line with the fee charged in the case cited to us.
- 19 As to the courier fee there is no explanation why the service of the Counter-Notice was left to the last minute. A request for information was made on 31 May 2019 and there is no explanation as what caused any delay to the applicant's ability to serve the Counter-Notice in ample time. The courier fee is therefore disallowed.
- 20 This means that we find that the solicitors costs are £1,287.00: the managing agents fee £350, giving a total payable by the respondent under the provisions of s88 of the Act of £1,637.00.

*Andrew Dutton*

Tribunal Judge Dutton

31 March 2021

#### **RIGHTS 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 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 to 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 (ie 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.