



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

Case Reference : **CHI/21UD/LRM/2020/0005 & 0006 & 0007 & 0008
Paper Remote**

Property : **Southview Court, 530b-528d Old London Road Hastings East Sussex TN35 5BN
Southview Court(one) RTM Company Limited (for 530b – 528d Old London Road)**

Applicant : **Southview Court (three)RTM Company Limited (520d – 522a)
Southview Court (four) RTM Company Limited (516d – 518a)
Southview Court (five) RTM Company Limited (512d – 514a)**

Representative : **Mr G Okines of Arko Property Management Ltd**

Respondent : **SE Estates and Agency Management Ltd (Head Lessor)
Kingsland Estates (GP) Limited (Superior Lessor)**

Representative : **Bonallack & Bishop**

Type of Application : **Determination in relation to the denial of a Right to Manage and the landlords' costs of dealing therewith**

Tribunal Members : **Judge F J Silverman MA LLM**

Date of Determination : **Paper Determination
22 June 2021**

DECISION AND ORDER

1 The Tribunal disallows the Respondent's claim for costs dated arising from the applications made on 20 March 2020 because the Respondent's costs schedule does not relate to any costs incurred against the current Applicants.

2 In relation to costs claimed in respect of the Applicants' claim dated 07 July 2020 the Tribunal allows the Respondent the sum of £5,478.97 including VAT in respect of its costs under s89 Commonhold and Leasehold Reform Act 2002. The sum allowed is payable in full and jointly and severally by the Applicants.

3 For the reasons stated below the Tribunal exercises its discretion under Rule 8(2)(a) of the Tribunal Rules of Procedure in relation to the late delivery of memorandum and articles by the Applicants.

4 The Tribunal declines the Applicants' request to remove the stay on these proceedings as directed by the Tribunal on 01 April 2021.

This has been a remote hearing on paper which has been consented to by the parties. The form of remote hearing was P:REMOTE . A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The document which the Tribunal was referred to are contained in electronic bundles the contents of which are referred to below. The orders made in these proceedings are described above.

REASONS

- 1 This Decision forms a part of the continuing litigation between the parties relating to applications made by the Applicants to exercise a right to manage the property comprising various flats at Southview Court Old London Road Hastings East Sussex TN35 5BN (the property) of which the members of the Applicant RTMs are the tenants and long leaseholders and the first Respondent is the immediate landlord and reversioner.
- 2 As such, it deals exclusively with applications for costs made by the Respondents in relation to two failed applications made on 20 March

- 2020 and 7 July 2020 respectively and the related administrative issues prescribed in the Tribunal's Directions dated 01 April 2021.
- 3 The costs issues before the Tribunal were firstly whether the Respondent was entitled to costs at all and secondly, if so, whether the costs demanded were reasonable.
 - 4 The Respondent avers that the March 2020 costs were correctly incurred against the Applicants named in this application but the Tribunal can find no evidence to support that contention. The March applications were made by Leeds Southview Court RTM Company Ltd on 20 March 2020 (see pages 35, 39, 40, 41 and 42 attached to the Applicant's Response to the Respondent's statement of case). The Respondent's March schedule of costs is headed: 'Respondent's statement of costs in relation to claim dated 20 March 2020'. The Respondent's letter to the Applicants dated 29 June 2021 (page 1 of the attachment to the Applicant's Response to the Respondent's statement of case) refers to the Leeds company and not to the present Applicants. The Respondent's schedule of costs produced in correspondence between the parties (pages 5 and 6 of exhibits to the Applicant's Response to the Respondent's statement of case) shows costs for the March application made by the Leeds company which are similar but not identical to those now claimed in this application. There was no other application in March 2020.
 - 5 The March applications were made by an RTM company called Leeds Southview Court RTM Company Ltd and that is the company (and its members) who are potentially liable for any costs in relation the applications which were deemed to be withdrawn on 24 June 2021. That company is not a party to this application. The named Applicant companies were not incorporated until mid-June 2021 and cannot therefore be held responsible for costs which were incurred by another company before their own incorporation date. The Applicant companies are therefore not liable for any of the costs claimed by the Respondent in respect of the March application.
 - 6 In relation to the July applications, the Respondent's solicitor's schedule of costs total £8,048.70 including VAT.
 - 7 The Respondent's schedule of costs for the July application shows that work done by Ms Slater a grade B employee in the Respondent's solicitors' firm, was charged at £245 per hour and that her Grade D assistants Mr Holmes and Ms Inglis were charging hourly rates of £150 and £145 respectively. The Tribunal considers these rates to be reasonable and representative for those grades of employee working in a similar provincial firm.
 - 7 The schedule includes a courier fee for service of documents of £331.80 to which the Applicants object saying that the postal service should have been used instead. While the courier fee does seem to be high, it has been properly invoiced and the Tribunal allows it in full (£331.80). The

documents in question were served during a period when postal services were not running normally or smoothly owing to the pandemic and use of a courier to ensure prompt and proper service was fully justified in these circumstances.

- 8 Given that the July applications were repetitive of the failed March applications and themselves suffered the same fate it is questionable why Counsel's fees should have been so high (£2,135) in contrast to the £840 charged in March. The Tribunal considers that the Applicants should only be asked to contribute 50% of that fee leaving the balance to be paid by the Respondent. The Tribunal therefore allows £1,067.50 which with VAT totals £1,281 for this item.
- 9 The Respondent's solicitors' fees amount to £4,295.75 plus VAT. The Tribunal notes that almost without exception all the work was claimed to have been carried out by the most expensive fee earner and again, given that this was a repeated scenario from the March applications, it is questionable why so many hours of work were necessary to defend the Respondent's position. The Tribunal reduces this sum by 25% and thus allows £3,221.81 plus VAT giving a total of £3,866.17.
- 10 The total allowed under this application is therefore £5,478.97. including VAT. This sum is payable jointly and severally by the Applicant companies and their members.
- 11 The Tribunal is also being asked to exercise its discretion under Rule 8(2)(a) of the Tribunal Rules of Procedure 2013 to allow the late service by the Applicants of the memorandum and Articles of the RTM companies which are a mandatory accompaniment to a claim notice served by an RTM company. The Respondent objects to this application by the Applicant saying that the Applicants had previously served defective applications and should have taken greater care in serving the July applications. They also suggested that the Applicant's representative's explanation of the omission as an administrative error had not been entirely straightforward. Further, they argued that the requirement to serve these documents is mandatory and the Tribunal's discretion should not normally be used to overrule a mandatory obligation. The omission has now been rectified and the relevant documents have been served. Since there is currently a stay on the proceedings which is unlikely to be lifted in the near future it would appear that no prejudice would be suffered by the Respondent if the Tribunal allowed the documents to be deemed served by exercising its discretion in the Applicants' favour. If the Tribunal did not do so, it is probable that the current applications would be deemed withdrawn and that the Applicants would recommence the process for a third time which would in the end be more costly and time consuming for everyone. On balance therefore, the Tribunal chooses to exercise its discretion under Rule 8(2)(a) and permits the late service of the memorandum and articles of each of the Applicant companies to stand as deemed good service.

12 The final item which the Tribunal is asked to deal with is an application by the Applicants to lift the stay on proceedings which was imposed by the Tribunal in its Directions dated 01 April 2021.

13 The reason for the stay is to allow the parties and the Tribunal to benefit from a judgment to be made by the Supreme Court later this year in a case (*Firstpoint Property Services Ltd v Settlers Court RTM Company Ltd* 2019 UKUT 243 (LC)) which will deal (inter alia) with the issue of appurtenant land. That issue forms an important and major part of the dispute between the current parties and the Tribunal considers that it will be in both parties' interests to await the outcome of that case before proceeding with the full merits hearing of any application relating to the property which is the subject of this application. The Applicants' representative requested that the stay should be lifted on the grounds that the pending case was not relevant to the issues in this case. The Tribunal does not agree with this view and supports the Respondent's contention that the stay should remain in place as previously directed.

14 **The Law**

Commonhold and Leasehold Reform Act 2002

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).

Tribunal Rules of Procedure 2013

Failure to comply with rules, practice directions or Tribunal directions

8.—(1) An irregularity resulting from a failure to comply with any provision of these Rules, a practice direction or a direction does not of itself render void the proceedings or any step taken in the proceedings.

(2) If a party has failed to comply with a requirement in these Rules, a practice direction or a direction, the Tribunal may take such action as the Tribunal considers just, which may include—

1. (a) waiving the requirement;
2. (b) requiring the failure to be remedied;
3. (c) exercising its power under rule 9 (striking out a party's case);
4. (d) exercising its power under paragraph (5); or
5. (e) barring or restricting a party's participation in the proceedings.

(3)

(4) ...

(5) The Tribunal may refer to the Upper Tribunal, and ask the Upper Tribunal to exercise its power under section 25 of the 2007 Act in relation to, any failure by a person to comply with a requirement imposed by the Tribunal—

1. (a) to attend at any place for the purpose of giving evidence;
2. (b) otherwise to make themselves available to give evidence;
3. (c) to swear an oath in connection with the giving of evidence;
4. (d) to give evidence as a witness;
5. (e) to produce a document; or
6. (f) to facilitate the inspection of a document or any other thing (including any premises).

Judge F J Silverman as Chairman
Date 22 June 2021

Note:

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.