



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

Case Reference : **CHI/OOML/LCP/2021/0001**

Property : **73 Buckingham Road, Brighton, East
Sussex BN1 3RJ**

Applicant : **Assethold Limited**

Represented by : **Scott Cohen Solicitors Limited**

Respondent : **73 Buckingham Road RTM
Company Limited**

Represented by : **Dean Wilson LLP**

Type of Application : **Landlord's Costs: Right to Manage:
Section 88(4) Commonhold and
Leasehold Reform Act 2002**

Tribunal Member : **Judge M Davey**

**Date and venue of
Hearing** : **13 December 2021**

Date of Decision : **11 January 2022**

Decision

The Tribunal determines that the amount of costs payable by the Respondent is

- 1. £481.25 plus VAT in respect of Scott Cohen's legal fees.**
- 2. Disbursements of £6.85 plus VAT.**
- 3. £100 plus VAT in respect of Eagerstates' fee.**

Reasons for decision

The Application

1. These are the reasons for decision of the First-tier Tribunal (Property Chamber) ("the Tribunal") in the matter of an application ("the Application") dated 29 June 2021 and made under section 88(4) of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") by Assethold Limited ("the Applicant"). The respondent to the Application is 73 Buckingham Road RTM Company Limited ("the Respondent") which was incorporated on 25 November 2020.
2. The Respondent company was formed on 25 November 2020 for the purposes of claiming the right to manage premises at 73 Buckingham Road, Brighton, East Sussex BN1 3RJ ("the Premises") under Chapter 1 of Part 2 of the 2002 Act.
3. By a claim notice dated 21 December 2020, and given under section 79 of the 2002 Act, the Respondent Company claimed the right to manage the Premises specified in the claim notice, which the claimant believed to be owned by the Applicant. The notice appears to have been served on 6 January 2021. Assethold, through its solicitors, Scott Cohen Solicitors Limited ("Scott Cohen"), sent a counter notice dated, 1 February 2021, alleging that by virtue of sections 79(8) and 80(7) of the 2002 Act the Respondent company was not, on the relevant date, entitled to acquire the right to manage the Premises specified in the claim notice. Following correspondence between the parties the claim notice was withdrawn by a letter dated 8 April 2021.
4. The Applicant now seeks its costs of £1,775.22 incurred as landlord of the Premises in consequence of the claim notice.
5. Judge P J Barber issued Directions to the parties on 4 August 2021, which set out a timetable and the steps to be taken by the parties. The matter was eventually set down for an oral hearing on 13 December 2021. At the hearing Ms Claire Whiteman, of Dean Wilson Solicitors, represented the Applicant and Mr Ronni Gurvits of the Respondent's managing agents, Eagerstates Limited, represented the Respondent.

The law

6. Section 88 of the 2002 Act provides as follows:
- (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.

The costs claimed

7. The costs claimed are: (1) solicitor's fees of £1,295.22 (inclusive of VAT and postage disbursements of £8.22 (inclusive of VAT)) charged by the Applicant's solicitors, Scott Cohen and (2) management fees of £400 plus VAT (i.e. £480), charged by the Applicant landlord's managing agent, Eagerstates Limited.
8. The Applicant argues that all the costs it incurred were reasonable, in that they were incurred in respect of professional services rendered to the landlord and are costs that the Applicant might reasonably have been expected to have incurred if the circumstances had been such that the landlord was personally liable for all such costs.

9. The solicitor's costs are identified in an invoice, dated 23 August 2021, from Scott Cohen to the Applicant. The sum demanded was £1,295.22 which comprised 3.9 hours work at £275 + VAT per hour (totalling £1,287) and postage disbursements of £6.85 + VAT (£8.22). The letters, emails and phone calls were charged at 1/10th of an hour and all other work in six-minute units. The Applicant disclosed an extract from the firm's terms of appointment confirming the level of charge.
10. The work is stated on the invoice to amount to "Undertaking works in response to an RTM claim notice; to include assessment of claim, advice to client, preparation and issue of counter notice and correspondences with various parties throughout."
11. The Applicant says it considers the work and checks carried out by its solicitors were "necessary to act with reasonable diligence to assess and evaluate their legal position in this matter and respond accordingly. It also considers the works described were reasonably required in order to discharge the instruction to investigate thoroughly whether the Respondent was entitled to claim a right to manage." The Applicant says that the First-tier Tribunal has recently, in *Albacourt Properties Ltd v W.Court Joint Enterprise Dwelling Initiative Co. Ltd* MAN/OOBU/LCP/2019/0001, accepted the sums as charged on a similar basis to the present case in their entirety.
12. The Applicant says that Miss Lorraine Scott, who carried out the work, is the principal of Scott Cohen and is a grade A fee earner. It says that the fee rate reflects Miss Scott's extensive experience in RTM matters. The Applicant says that the work was requested as part of a retainer that the Applicant has with Scott Cohen and the fees charged are ones which the firm would charge on an individual instruction.
13. The management costs of £400 plus VAT (£480) sought by the Applicant are stated to be in respect of services, provided by its managing agents, Eagerstates Limited, which services are said to go beyond the standard management activities covered by the management agreement in place and for which additional charges are payable in accordance with that agreement. It says that those activities include "liaison between the Applicant and the Applicant's solicitor and the provision of assistance and information to all parties throughout the progress of claim; taking the necessary steps to co-ordinate the management response to the notice, and to advise the Landlord on the impact upon services and anticipated repairs and funding." The Applicant also relies on the Upper Tribunal decision in *Columbia House Properties (No 3) Ltd and Imperial Hall RTM Company Limited* [2014] UKUT 0030 (LC) which it says upholds the recovery of the management fee as a professional fee and highlights that the role of managing agents within the RTM is not an uncommon practice for which charges are levied.
14. The detailed services are set out in a Scott Schedule completed by the parties and are dealt with below.

The Respondent's case and the Applicant's response

15. It is the Respondent's case that the costs claimed are wholly disproportionate to the matter in question. The Respondent deals with each element of the claim in turn as follows.
16. The Respondent says that the Applicant has not produced the entire agreement between itself and the solicitors and the precise terms of appointment for this claim have not been provided. The Respondent says that in any event a person of Miss Scott's experience should have been able to do this work in no more than 1 hour, plus 30 minutes of routine correspondence. Furthermore, the Respondent says that some of the work could have been delegated.
17. The Respondent noted that in the *Albacourt* case the respondent did not provide a statement of case and the applicant's case of costs was uncontested. It says also that the decision of the Upper Tribunal in *Columbia* is in relation to an appeal allowed against the First-tier Tribunal, which had decided that all of the landlord's costs were unreasonable. The matter was remitted to the First-tier Tribunal for redetermination because that tribunal had failed to give reasons for its decision. The Respondent submits that the case is distinguishable on its facts from the present case.
18. The Respondent, whilst acknowledging that First-tier Tribunal decisions do not provide a precedent for other tribunals, drew the Tribunal's attention to the decision in *Assethold Ltd v 33 Garratt Terrace (London) RTM Limited* LON/00BJ/LCP/2020/0003 where the First Tier Tribunal determined section 88 costs, payable to the same Applicant as in the present case, to be £660 plus VAT in respect of Scott Cohen's legal fees (of £1,295.50) plus disbursements of £6.70 plus VAT).
19. The Respondent deals in detail with the time spent by the Applicant's solicitors on what the Applicant describes as, "Engaged on review of documents - assessment of Claim Notice." The Respondent says that 30 minutes are claimed for assessment of the claim notice, that is to say, checking the claim notice, time limits and making appropriate diary notes; obtaining details of the company from the Companies House website and checking that they correspond with the claim notice, obtaining the freehold title and reviewing the number of qualifying tenants listed and assessment of the membership criteria. The Respondent says that most of these tasks could have been delegated to a junior fee earner at a lower rate.
20. The Applicant replies that it was proper and reasonable to engage an experienced fee earner who would take less time than a junior. It says that in any event Miss Scott is the sole fee earner at the firm and did not personally carry out all of the tasks listed.

21. The Respondent notes that 54 minutes time were said to have been spent on matters described under the head of “Engaged on review of supporting RTM documents”. The Respondent says that much of the work described not only overlaps with the first category (see above), but is also repetitive in parts in itself and indeed overlaps also with the head “Engaged on routine attendances” (see below). The Respondent says that much of this work could have been delegated to a junior fee earner.
22. The Respondent submits that the overall time of 84 minutes on these two heads is disproportionate with heavy duplication of work and overlap. It says that the combined costs for review of the claim notice and RTM documents should not exceed 30 minutes. The Applicant says in response that this is arbitrary and unrealistic given the work involved.
23. The solicitor’s fee also includes 30 minutes for preparation of the counter notice. The Respondent says that the counter notice, which is in standard form, raises statutory grounds without facts and support and therefore recites statutory wording only. The Respondent says that grounds one and three of the grounds relied on can be ascertained by a simple review of the notice and the search of Companies House and the information clearly contained in the claim notice. The Respondent says ground 2 appears to be unsupported and should not have been made. The Respondent says that 15 minutes in total would be justified for this work. Once again the Applicant responds that the time suggested is arbitrary.
24. The solicitor’s charge includes 120 minutes on routine attendances. The Respondent says that the time charged is excessive and that the tasks in question could have been carried out more efficiently. It proposes that only 30 minutes should be allowed in respect of the same.
25. With regard to postage disbursements in respect of next day delivery, the Respondent argues that these should be treated as part of the solicitor’s overheads and not charged for separately in the absence of full disclosure of the terms of business. The Applicant responds that it is entitled to use a tracked delivery service.
26. The managing agent’s costs are identified in an invoice dated 10 May 2021, which refers to a claim notice dated 6 January 2021. The time stated to have been taken is 3 hours 35 minutes at an agreed cost of £400 plus VAT. The time is broken up into four heads as follows (numbering provided):
 - “1. Notify the freeholder and the solicitor that RTM notice has been served: Time taken: 30 minutes; drafting 2 emails.
 2. Provide instructed solicitor with information on property: Time taken: 1 hour; drafting email, scanning copy of lease, providing information on the property and on the leaseholders.

3. Instruct accounts and management team to review file and implication of RTM: Time take (sic): 1.5 hour; review file and begin preparation for costs upon RTM takeover, review contracts in place, review insurance details, review scheduled works and ongoing services.
 4. Consult and meet freeholder to advise of ramifications of RTM: Time taken: 35 minutes.”
27. The Respondent says that if a negative notice were to be served then the involvement of the management company at the stage of receipt of a claim notice (which was subsequently withdrawn) was premature because the response to the notice is a legal matter and there were no potentially ongoing management matters that needed to have been identified at that stage. The Respondent also notes that Assethold and Eagerstates Limited are companies with the same registered address and directors and alleges that there is no arms length relationship between the two such that the latter could meaningfully advise “the landlord”. It therefore submits that the Eagerstates costs should be disallowed in full.
28. The Applicant responds that it is settled law that a landlord can act as the managing agent provided the arrangement is not a sham (*Skilleter v Charles* [1992] 1 EGLR 73). It says that Assethold and Eagerstates are two separate entities and that the latter is an organization with multiple employees and clients. It says that the Company manages developments for multiple freeholders and has dedicated property managers for various properties. The Applicant says that these individual employees who hold the management information for the property, not the officers, have been the liaison with the client’s agent throughout. It says that there are also numerous F-tT cases which have determined the management fees of Eagerstates Limited claimed were payable by the RTM company even in instances where a solicitor has also acted.

Discussion and determination

29. Chapter 1 of Part 2 of the 2002 Act provides for the Right to Manage premises to which that Chapter applies. The right is exercisable by a Right To Manage Company established under that Chapter serving a claim notice on the landlord or another party to the lease (or to a tribunal appointed manager). If the claim is contested by one or more recipients of a claim notice serving a counter notice, the Company may apply to the Tribunal, under section 84(3) of the Act for a determination that it is entitled to exercise the RTM.
30. Section 88(1) of the 2002 Act provides that where a RTM Company seeks to exercise the right to manage, the Company is liable for the reasonable costs incurred by the landlord or another party to the lease (or to a tribunal appointed manager) in consequence of a claim notice given by the Company under the Act.

31. This general principle is qualified by section 88(2) of the Act, which provides that where the costs arise as a result of professional services having been afforded to the landlord or other person entitled to costs under section 88(1), the costs shall only be regarded as reasonable 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 would have been personally liable for such costs. In other words the question must be asked whether the landlord would reasonably be expected to have incurred those costs had they not been recoverable from the Company. To the extent that that they would not have been expected to be so incurred they are deemed to be unreasonable.
32. The Right to Manage Chapter of the 2002 Act has provided pitfalls for the unwary RTM Company that seeks to embark on the process of exercising the right to manage. Landlords stand to lose and leaseholders stand to gain from a successful claim. Unsurprisingly, landlords will scrutinise claims carefully with a view to identifying any possible defect in the claim notice.
33. In the present case the Respondent served a claim notice dated 21 December 2020. The Applicant served a counter notice on 1 February 2021. On 8 April 2021 the claim notice was withdrawn. The Applicant's managing agents sent an invoice to the landlord dated 10 May 2021 for services rendered. The Application to the Tribunal under section 88(4) of the 2002 Act is dated 29 June 2021, at a time when the landlord was yet to be invoiced by its solicitors. Indeed the invoice from the solicitors in respect of work stated to have been done, between 7 January 2021 and 1 March 2021, in dealing with the response to the claim notice, is dated 23 August 2021, two days before the date set by the Tribunal's Directions of 4 August 2021, for submission of the Applicant's case.
34. The Premises contain five flats held on separate long leases. The landlord is by its own admission engaged in property ownership and management on a large scale. It has a retainer with a firm of solicitors, Scott Cohen, that consists of a sole practitioner who specialises in leasehold law and more specifically this area of leasehold law. Both the Applicant and its solicitor together with the managing agent have dealt with numerous right to manage claims many of which have been disputed, found their way to the First-tier Tribunal and in some cases the Upper Tribunal. Thus they will be very familiar with the process of examining and responding to a claim notice.
35. In the present case it is not disputed that the Applicant landlord incurred legal costs. The question is whether the costs incurred were reasonable. The work that needed to be carried out was as follows:

1. Checking the validity of the claim notice and the details of the RTM Company at Companies House including the memorandum and articles of association of the RTM Company.
 2. Assessing supporting RTM documentation in so far as not covered by 1 above.
 3. Drafting and serving a counter notice.
36. The Tribunal acknowledges that it was reasonable to engage a solicitor for the purpose of assessing and responding to the claim. However, some of the work involved in obtaining the necessary information was routine. The Tribunal accepts that Miss Scott is an experienced solicitor in this field who did not have a junior fee earner to whom to delegate the less onerous tasks involved. However, that does not mean that it is reasonable for the costs of a Grade A fee earner to be recoverable for those tasks, as distinct from the evaluation of the legal position with regard to the validity of the claim notice.
37. That brings us to the matter of the time taken. As noted above the premises comprise five units of accommodation each held on a long lease. It would not be difficult for a solicitor of Miss Scott's experience to evaluate the validity of the claim notice once the relevant information was to hand. The drafting of the counter notice, which is in standard form, would then be straightforward. There does appear to be a degree of duplication and overlap involved in the Applicant's description of the tasks covered by "assessment of claim notice" (30 minutes) and "assessment of the additional documentation provided" (54 minutes). The Tribunal finds that £577.50 (being one hour 45 minutes at £275 per hour plus VAT) would be a reasonable expense in respect of these tasks including the preparation of the counter notice.
38. The Tribunal considers the attendances of 120 minutes upon the Company and the client/client's agent are excessively charged. As the Respondent acknowledges, only correspondence between the solicitors has been disclosed and so it is not possible to determine the extent of advice or comments provided from solicitor to client in order to substantiate the charge fees. However, it is possible to make certain inferences as to the charges listed.
39. It seems likely that the second email of 7 January 2021 to the client/agents was sending them a copy of the letter of the same date to the RTM Company requesting further documentation. The email of 15 January 2021 to the RTM Company is a one-line standard follow up letter that appears to have been copied to the client's agent. The three emails to the client's agent on 29 January 2021 seem to be triplicated.
40. The letter of 1 February 2021 to the RTM Company is simply a one-line covering letter that accompanied the counter notice and appears to be triplicated. It is very likely that the 1 unit email of the same date to the client's agent is a copy of the same to the agent.

41. Furthermore, as the Respondent submits, where a number of attendances take less than six minutes but charged at six minutes this may give rise to a disproportionate charge. The Tribunal also agrees with the Respondent that some of these routine undemanding communications should be charged at a lower rate than Miss Scott's charge.
42. Doing the best it can, on balance, the Tribunal allows as reasonable, £165, being 30 minutes of attendances at £275 per hour (£137.50) plus VAT (£27.50). This allows for the time that the Tribunal considers it reasonable to charge for tasks involved and the nature of the work involved. The claimed disbursements of £8.22 (being £6.85 plus VAT) are allowed.
43. With regard to the charges of the managing agent, Eagerstates Limited, the Tribunal accepts that the Applicant and the agent are separate companies despite having the same address and directors and that in the absence of evidence as to a sham it is perfectly lawful for one company to engage the other and charge for its services. In the present case there is a management agreement that includes provision for extra charges for a number of services over and above the basic management fee. These include (in Appendix 3 to the agreement), and so far as the present case is concerned, "Providing any form of services to the Client over and above this Management Agency agreement in relation to the exercise by the lessees of...the Right to Manage..." The charging basis is stated to be "£ Minimum £100 plus VAT...per flat." In the present case the agent charged £400 plus VAT.
44. The services charged for are stated to be:-
 - “1. Notify the freeholder and the solicitor that RTM notice has been served: Time taken: 30 minutes; drafting 2 emails.
 2. Provide instructed solicitor with information on property: Time taken: 1 hour; drafting email, scanning copy of lease, providing information on the property and on the leaseholders.
 3. Instruct accounts and management team to review file and implication of RTM: Time take (sic): 1.5 hour; review file and begin preparation for costs upon RTM takeover, review contracts in place, review insurance details, review scheduled works and ongoing services
 4. Consult and meet freeholder to advise of ramifications of RTM: Time taken: 35 minutes.”

45. The Tribunal accepts that a managing agent's fees can be chargeable to the extent that it was reasonable for the landlord to have incurred those costs. However, it does not accept the sums claimed in this case to be reasonable. It is clear that the agent did some work but it is another matter as to whether the sums claimed are reasonable. As to Item 1 the Tribunal was not told who carried out the work and why. The claim notice was addressed to the Applicant who did not need to be informed by the agent. If the notice was sent to the agent (of which we have no evidence) it is not clear why it took somebody 30 minutes to "notify the freeholder and the solicitor that a notice had been received."
46. As to item 3 none of those tasks were necessary at the stage between receipt of the claim notice and the service of a counter notice. As to item 4, this is vague and in any event is the task of the solicitor. Furthermore, the Applicant is perfectly aware of the "ramifications of RTM".
47. The Tribunal considers that no more than £100 plus VAT (i.e. £120) would be a reasonable sum in respect of the relevant services provided by Eagerstates Limited.
48. In reaching its decision, and bearing in mind that F-t T decisions do not operate as precedents for another F-t T, the Tribunal did not consider the tribunal decision in the *Albacourt* case to be of any help in that the claim was uncontested by the respondent in the case who failed to provide a statement of case. The tribunal decision in *33 Garrett Terrace* was of some assistance in so far as it was a contested case that dealt with an almost identical claim by the Applicant and covered issues similar to those raised in the present case.

Right 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 to the First-tier Tribunal at the Regional Office, which has been dealing with the case.
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, that 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.