



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

Case reference : **LON/00BG/LCP/2022/0008**

HMCTS code : **P:PAPER**

Property : **52-58 (even numbers) and 54-58 (even numbers) Commercial Road London E1 1AN**

Applicant : **Rocquefort Properties Limited**

Representative : **Shakespeare Martineau LLP**

Respondent : **52-58 (Even) Commercial Road RTM Company Limited**

Representative : **Setfords Law Ltd**

Type of application : **Costs – payable by an RTM company under s.88(4) Commonhold and Leasehold Reform Act 2002**

Tribunal member : **Judge Pittaway**

Date of decision : **18 October 2022**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers which has been not objected to by the parties. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents before the tribunal were in a bundle provided by the Applicant of 79 pages.

Decision of the tribunal

Having considered the documents provided, the Tribunal determines that the amount of costs payable by the Respondent in respect of the Applicant's legal fees is £6,849, with disbursements of £515, in each case exclusive of VAT.

The reasons for the Tribunal's decision are set out below.

Background

- (1) The Applicant seeks an order under section 88(4) of the Commonhold and Leasehold Reform Act 2002 (the "**2002 Act**") as to the amount of costs payable by a RTM Company. The costs claim arises out of an application for a determination that the Respondent was entitled to acquire the right to manage 52-58 (even numbers) and 54-58 (even numbers) Commercial Road London E1 1AN ('the **Property**') and follows a decision dated 30 June 2022 dismissing the application under reference LON/00BG/LRM/2021/0038.
- (2) Section 88 of the 2004 Act provides that
 - '(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.'

- (3) By Directions dated 28 July 2022 the Applicant was directed to provide the Respondent by 25 October 2021, invoices substantiating the costs and any other documents relied on, in addition to the statement of costs already provided.
- (4) The Directions provided for the Respondent to provide a statement of case by 1 September 2022, and allowing the Applicant to provide a statement in response by 15 September 2022. The Directions provided for the Applicant to provide a bundle of documents to the Tribunal and the Respondent by 29 September 2022.
- (5) The Directions also stated that the tribunal considered that the application could be decided on the basis of written submissions from the parties using the document bundle provided unless any party requested an oral hearing. No such request was received.

The parties' cases

1. The Applicant provided a Statement of Costs dated 22 June 2022 which identified the charge out rates of the fee earners as

Vincent Foley and Kate Onions (Grade A)	£300 per hour,
Tara Goodwin (Grade B)	£210 per hour
Adam Watson (Grade C)	£200 per hour.

The Statement then set out the costs as follows

	Hours	Charge-out rate	Amount
Attendances on Rocquefort Properties Limited			
Letters	13.50	£300	£4,150
Attendance on opponents			
Letters out/ e mails	2.36	£300	£780
	1.30	£210	£315
Attendance on others			

Letters out/ e mails	3.36	£300	£1,080
Work done on documents			
Tara Goodwin Directions	54 (sic)	£210	£189
Adam Watson work on settlement agreement	1.42	£200	£340
Kate Onions work on settlement agreement	2.18	£300	£690
V Foley work on settlement agreement	6.36		£1,980
		Sub-total	£3,199
		TOTAL	£9,524
Other expenses			
Land registry			
Enquiry agents for service of counter-notice			
			£515
		GRAND TOTAL	£10,039

2. In its Statement of case the Respondent drew attention to the fact that the invoices provided to it by the Applicant totaled £10,061 but the Statement of Costs states that the sum payable is £10,039. The Respondent referred to two invoices (neither of which was in the bundle before the Tribunal), stating that the invoice dated 26 July 2022 was stated to cover the period from 27 September to 26 July 2022 and the invoice dated 11 August 2022 was stated to cover the period from 1 November 2021 to 11 August 2022. The Respondent stated that it had had withdrawn its application for the Right to Manage on 26 May 2022 and the claim had been dismissed on 30 June 2022.
3. The Respondent drew attention to the July invoice charging for the enquiry agents, an apparent duplication of the charge for this item set out in the Applicant's Statement of Case. It submitted that this item should be disallowed as there had been no change in the registered office of the Respondent and this was known to the Applicant.

4. The Respondent did not challenge the hourly rates set out by the Applicant. It did however challenge whether all the time sought was related to the application, drawing the Tribunal's attention to reference to 'ADR' on the invoices. It submitted that virtually all the correspondence after receipt of the Applicant's counter-notice (which the Tribunal notes was dated 8 October 2021) was entered into on a 'without prejudice' basis; and that the majority was short e mails of a few lines.

5. On the time set out in the Applicant's Statement of Costs

- There is no breakdown of the 13.5 hours allocated to correspondence with the Applicant and this seems to the Respondents a very substantial amount of time. On a 'broad brush' basis the Respondent submitted that a reasonable sum would be £2,250 (7.5 hours).
- The Respondent accepts the time spent by the senior solicitor on correspondence with it (£780) but as the majority of correspondence was with the senior solicitor submits that the fees of the junior should be reduced to £105 (30 minutes).
- As to the work done on the documents the Respondent submits that Tara Goodwin's costs should be reduced to £105 (30 minutes) as communications with the Tribunal were primarily limited to applications for stays made by the Respondent. The other three fee earners costs were incurred in connection with negotiating a six page settlement agreement and the Respondent submits that Mr Watson's and Ms Onion's time should be disregarded, as likely duplication of work. It accepts Mr Foley's costs on this document of £1,980.

6. The Respondent offers

• Letters to Applicant	£2,250
• Attendances on opponent	£ 885
• Attendance on others	£1,080
• Documents	£1,980
• Land Registry fees	<u>£ 15</u>
Total	<u>£6,210</u>

7. The Respondent states that it was its solicitors who drafted the 6 page settlement agreement.

8. In its Statement in Response on the issue of the costs themselves the Applicant states that

- the claim of 13.50 hours is reasonable in order for the solicitors to obtain instructions and discuss the matter.

- That the claim for the junior solicitor is maintained based on its file of papers.
 - That the costs in connection with the Directions (Tara Goodwin) was reasonable. It rejects that work on the settlement agreement was duplicated; it was reasonable for the solicitors to have delegated tasks to fee earners with different specialisms
9. In relation to the enquiry agent's fee the Applicant submitted that this was a fee incurred for process servers to attend at the Respondent's registered office to effect personal service of the counter-notice.

Reasons for the tribunal's decision

10. Notwithstanding the Directions of the Tribunal, the bundle before the Tribunal did not include any invoices from the Applicant substantiating the claimed costs nor a breakdown of the how the Applicant's solicitor had reached the total of hours claimed for each element of work. This was not helpful to the Tribunal. Accordingly in reaching its decision the Tribunal has had regard to its own knowledge and experience and to the submissions made by the Respondent in relation thereto.
11. The Applicant has not challenged what the Respondent states in relation to the invoices and the Tribunal therefore accepts what the Respondent says as to the periods to which they are stated to relate.
12. While raising the issue as to whether all the time charged by the Applicant relates to the application the Respondent did not pursue this point and the Tribunal are therefore not required to determine whether any element of the costs are not properly recoverable under Section 88 of the 2004 Act. In passing the Tribunal notes that section 88(1) does not limit costs to those in connection with the application. It covers any costs incurred, 'in consequence of a claim notice given by the company in relation to the premises'. It could therefore cover costs incurred in negotiations that were a consequence of the claim notice being served.
13. The Respondent did not make any submissions on the fact that the invoices appeared to cover, in part, the same period of time.
14. In the absence of any breakdown explaining the 13.50 hours attendance on the Applicant the Tribunal agrees with the Respondent that this is a very substantial amount of time. There is nothing in the bundle before the Tribunal to justify this length of time being spent on an application that was withdrawn. It is not sufficient for the Applicant to state that the time spent is 'reasonable'. Something has to be provided to the Tribunal to substantiate this, and the Applicant has provided neither copies of its invoices nor a breakdown of how its time was incurred. The Tribunal, from its own knowledge and experience, accepts the Respondent's submission that a more appropriate charge would be £2,250.

15. The Applicant has provided no evidence to the Tribunal to substantiate that the costs of £315 for the junior solicitor incurred in connection with correspondence with the Respondent. Accordingly the Tribunal accepts the Respondent's statement that virtually all the correspondence was conducted with the senior solicitor and finds a charge of £105 for the junior solicitor to be reasonable.
16. The Tribunal notes that the Respondent did not challenge the costs of £1,080 for attendance on others.
17. On the time spent by the Applicant on the Tribunal's Directions there is nothing in the bundle to assist the Tribunal as to whether this is a reasonable charge. Equally it does not assist the Tribunal for the Respondent to refer the Tribunal to its records, as only the bundle is before the Tribunal when making its decision. The time claimed for this element of work by the Applicant is less than one hour (the Tribunal assumes it is 54 minutes and not 54 hours as the Statement of Costs suggests) and the Tribunal finds the charge of £189 to be reasonable.
18. As to the time spent on negotiating the documents the Tribunal accepts the Respondent's submission that charging for two separate senior solicitors might suggest a duplication of work, but it might also reflect that one solicitor had taken over the matter from another. The Tribunal also accepts the Applicant's submission that it may be appropriate to refer the agreement to different solicitors with different specialisms but there is nothing before the Tribunal to substantiate that this was what the Applicant did. The Tribunal notes that the Respondent accepts all the cost incurred by Mr Foley, which may suggest he fronted the negotiations with the Respondent. In the absence of any clear evidence one way or the other the Tribunal finds Mr Foley's costs of £1,980 to be reasonable but it also finds that it would be reasonable to allow an element of the costs incurred by Ms Onions and Mr Watson. In the absence of any indication of what they did to incur the costs and what might be reasonable the Tribunal allows them collectively the sum of £500.
19. The Tribunal accept that it is reasonable for the Applicant to instruct an agent to serve the counter-notice personally on the Respondent and finds the charge of £500 for this to be reasonable. The Respondent did not challenge the amount, only whether it was necessary and reasonable to incur the charge.
20. The Tribunal accordingly finds the following to be costs reasonable incurred by the Applicant in consequence of the claim notice served by the Respondent;
 - Letters to the Applicant £2,250
 - Attendances on Respondent £ 885
 - Attendances on others £1,080

• Documents	£2,669
• Service of counter-notice	£ 500
• Land Registry fees	<u>£ 15</u>
TOTAL	<u>£7,399</u>

Name: Judge Pittaway

Date: 18 October 2022

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).