



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

Case reference : **BIR/00CT/LCP/2022/0002**

Properties : **230 – 240 Station Road, Balsall
Common, Coventry CV7 7EE**

Applicant : **City & Country Properties (Midlands)
Limited**

Representative : **Wallace LLP, Solicitors**

Respondent : **230-240 Station Road RTM Company
Limited**

Representative : **Mr N Bignell, RTMF Services Limited**

Type of application : **Application for costs under section 88
of the Commonhold and Leasehold
Reform Act 2002**

Tribunal member : **Judge C Goodall**

**Date and place of
hearing** : **Consideration on the papers**

Date of decision

DECISION

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Background

1. The Respondent RTM Company has acquired the right to manage the block of flats at 230 – 240 Station Road, Balsall Common, Coventry CV7 7EE (“the Properties”), pursuant to a claim notice dated 22 February 2022, which was admitted by the Applicant (which is the freeholder) in a counter-notice dated 23 March 2022.
2. The Properties comprise six flats, one of which is not let on a long lease. The other five lessees are the participating members in the Respondent company.
3. Section 88 of the Commonhold and Leasehold Reform Act 2002 (“the Act”) provides as follows:

Section 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.

...

(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].

4. The Applicant is entitled to its reasonable costs in consequence of the claim notice under section 88 of the Act. It claims costs in the sum of £3,199.50 plus VAT and a disbursement comprising Land Registry fees of £63.00 plus VAT. The total claimed is therefore £3,915.00. The Respondent disputes that the sum claimed is reasonable, and the dispute is therefore to be resolved by this Tribunal.
5. Directions dated 19 December 2022 determined that the application would be determined on the papers by a Tribunal Judge sitting alone, unless either party requested a hearing. Neither did. This is therefore the Tribunal’s determination of the application.

Costs breakdown and rationale

6. The Applicant's legal work was undertaken by an assistant solicitor at Wallace LLP, Solicitors. She spent time on the case from 25 February 2022 to 15 July 2022. Her charging rate during this period was £395 per hour. Each hour is broken down into 6-minute units. The table below sets out how the charges are broken down:

	Number or time taken	Cost (£)
Letters & emails taking one unit of time each	21	829.50
Letters & emails taking 2 units of time each	3	237.00
25 February 2022 Reviewing claim notice; obtaining details of the property; locating and reviewing Google Map and Google Earth images; obtaining freehold and leasehold official copies, plans, and copy leases	1 hour 18 mins	513.50
15 March 2022 Engaged reviewing all title documentation (Official copies, plans, and leases) in detail; Obtain and review RTM Incorporation documentation; review register of members and check details against official copies	1 hour 42 mins	671.50
22 March 2022 Reviewing layout of flats in building and preparing draft counter notice	42 mins	276.50
23 March 2022 Finalise counter notice and collate for service	12 mins	79.00
6 April 2022 Prepare contractor notices x4	24 mins	158.00

8 April 2022 Review of insurance documentation	6 mins	39.50
8 June 2022 Review letter from Respondent and confirm handover date	6 mins	39.50
4 July 2022 Review and confirm quantum of recoverable statutory costs	6 mins	39.50
15 July 2022 Prepare breakdown of statutory costs	30 mins	197.50
Undated – Anticipated further work to deal with payment of statutory costs	18 mins	118.50
Total	8 hours 6 mins	3,199.50

7. The Applicant's solicitor's case is that the following work is required:
- a. Confirming the current registered proprietors of each of the flats;
 - b. Ensuring that the correct proprietors were noted as participators/RTM members or non-participators in the claim notice;
 - c. Confirming the details of the leases for each flat (the eligibility of each flat to participate in the right to manage claim);
 - d. Confirming whether any appurtenant property was connected to the flats (which in this case involved reviewing title documents for three garages);
 - e. Confirming that there was no commercial element to the Properties;
 - f. Confirming whether there was a porter or other live-in representative at the Properties and if so whether they occupied a flat;
 - g. Confirming if there were any other non-qualifying flats not held on long leases (and the number and status of any such flats);
 - h. Confirming the position regarding the provision of services to the Properties (as set out in service charge provisions);

- i. Confirming whether there was any other storage or basement areas at the Properties demised to the tenants (or to which they had access);
- j. Inspection of the RTM company documents to ensure that the statutory requirements concerning the constitution of the RTM company were met and that the statutory provisions had otherwise been complied with;
- k. Obtaining and reviewing the register of members of the RTM company to ensure that the statutory requirements concerning participating tenants and membership of the RTM company were met and that the statutory provisions had otherwise been complied with.

The Respondent's objections

- 8. There are a number of bases upon which the Respondent challenges the claim for costs, these being:
 - a. The costs are disproportionate to the substance of the work required;
 - b. VAT should not be charged as the Applicant should be able to recover this itself;
 - c. The costs should be proportionate pursuant to rules 3(2)(a) and 3(3)(a) & (b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (“the Property Chamber Rules”), and Paragraph 1.1 of the Civil Procedure Rules;
 - d. The work on 25 February 2022 should not have exceeded 30 mins and research work should have been delegated to a more junior fee earner;
 - e. The work on 15 March 2022 was excessive bearing in mind that there were only five qualifying tenants, all being members of the RTM company. 30 minutes would have been adequate;
 - f. A paying client would not have required a full breakdown of costs;
 - g. The time spent preparing the counter notice was excessive for a straight-forward task;
 - h. The time spent on emails was excessive – 30 minutes would have been sufficient;
 - i. A reasonable charge would have been £825.00, being 3 hours work at £275.00 per hour.

Discussion

9. My task is to assess what are the reasonable costs incurred by the Applicant in consequence of the claim notice.
10. I reject the suggestion that the overriding objective in the Civil Procedure Rules and / or the Property Chamber Rules is of any assistance to me in deciding the amount of the costs payable in this case. Those provisions require proportionality in the conduct of the case, not in the quantum of the costs I should order. The financial resources of the Respondent or the individual members of it are not relevant to this case.
11. The Civil Procedure Rules do contain detailed provisions about how costs incurred in court proceedings should be assessed, and there is a rule (Rule 44.3(2)) requiring that if costs are to be assessed on the standard basis, the proportionality principle should apply. But I am not conducting a costs taxation following court proceedings, and that rule has no direct applicability to this case.
12. My assessment is under section 88 of the Act. In addition to the task set out in section 88(1), I am constrained by the provisions of section 88(2), to the effect that only costs which the Applicant could reasonably have expected the solicitor to incur if the Applicant had been the paying party are to be considered reasonable costs. That is the additional test I must apply, rather than the test of whether the costs are disproportionate.
13. I firstly consider the hourly rate charged by Wallace LLP of £395.00 per hour. Apart from a reference at the end of the Respondent's submission to an hourly rate of £275.00 per hour, which I take to be an acceptance by the Respondent that such a rate would be reasonable, the Respondent has not challenged the hourly rate, or provided any rationale explaining why it is unreasonable.
14. The Applicant has referred me to the authority of a first-tier tribunal decision called *Daejan Investments Limited v Parkside 78 Limited LON/ENF/1005/03*. This was a collective enfranchisement case rather than a right to manage case, but I consider the principles are the same. This decision is not binding on me, but I accept the rationale to the effect that (a) freeholders are not expected to be out of pocket when an application for the right to manage is dealt with by their solicitors (paragraph 8), and (b) the freeholder is not expected to find the cheapest solicitors or cheaper solicitors (paragraph 10).
15. I consider it was reasonable for the Applicant to instruct Wallace LLP, who I am told have been acting for them for over 20 years in relation to right to manage claims. I do have evidence that the assistant solicitor at Wallace LLP who dealt with the matter is from the specialist department experienced in right to manage and leasehold enfranchisement generally. It is asserted (without challenge) that the charge out rate of £395.00 per hour is consistent with the usual charge out rates for enfranchisement solicitors in central London. I accept that and adopt that charge out rate for the costs claimed.

16. Turning now to consider the Respondent's challenges to the extent of the work, it is apparent that the work carried out between 25 February and 23 March 2022, during which the Assistant Solicitor spent 3 hours 42 minutes on the file (not including letters and emails), is the main component of the service provided by the solicitors.
17. In my view, it was relevant and reasonable for the Applicant's solicitor to check the title documents to ensure the lessees were the qualifying tenants stated on the claim notice, to check that the company documentation complied with statutory requirements, that the alleged qualifying tenants were on the register of members, and to review the position regarding appurtenant property (at least to the extent of enquiring from the Applicant as to whether any existed). I do need to bear in mind that this RTM claim involved only five flats, and all the qualifying lessees were members of the RTM company. Such documents as are included in the submissions to the tribunal do not indicate that any complex analysis of any documents was required. Checking these points should have been straightforward, especially for a competent and experienced solicitor.
18. A short point was raised by the Respondent on the time taken to obtain official copies, and whether that work should have been undertaken by a lower grade fee earner. I accept that the Assistant Solicitor with conduct of the file should have decided to obtain official copies, but filling out the forms, or completing on-line requests for them would have been clerical work not separately chargeable. It is impossible to know what time is specifically claimed by the Assistant Solicitor for the clerical work (if any), but I will take this question into account.
19. I am less convinced of the need to interrogate google earth or review layout plans, or to carry out the tasks identified in paragraphs 7(e), (f), or (i) above. I am told that no less than 12 separate images were obtained of the Properties for review. It is arguable that the information reviewed was well known to the Applicant already, and it may well not have wished to pay its solicitor to find out and review information it already possessed. In particular, the Applicant's submission suggests this work was (at least in part) to advise on whether the Properties are a self-contained building. One would think the Applicant could confirm this (or otherwise) to the solicitor at commencement of instructions, rather than the solicitor investigate it.
20. Doing the best I can on the basis of the written submissions and documents I have seen, my view is that a proportion of the 3 hours 42 minutes spent as discussed above was not reasonably incurred, as either the task was not sufficiently onerous or time consuming to have required that amount of time, or alternatively, some of the tasks were tasks that the Applicant would not have wished to pay for had it been the ultimate payer of the costs. My view is that some tasks the solicitor said were required could have been by-passed by obtaining information directly from the Applicant.
21. Inevitably I need to take a broad-brush approach. My assessment is that one hour of time on the tasks being discussed will be disallowed. This reduction

takes into account the challenges raised by the Respondent at paragraphs 8(d), (e), and (g) above.

22. I next consider emails and letters. There were 24 in total. 12 (or possibly 13 if the 29 March 2022 entry indicates more than one email) were sent by the solicitor to the Applicant, and 10 were sent to the Respondent. Two were sent to contractors, which would have been reasonable to inform them of the transfer of management responsibilities. A rational explanation for 10 of the emails sent by the solicitor to the Applicant has been provided in paragraph 51 of the Applicant's submissions, which I accept. No explanation has been provided for the emails to the Applicant on 4 & 11 July 2022. By that date, the claim had been admitted and the hand-over requirements appeared to have been complied with. It is not obvious to me that the costs of those two emails were reasonably incurred, and I disallow them. Obviously, the Applicant needs to be kept abreast of the outcome of this costs case, but there is an allowance for anticipated further work in the costs claimed.
23. I reject the Respondent's suggestion that no charge should be made for providing a full breakdown of costs. This is required for these proceedings, and is a direct consequence of the issue of the claim notice.
24. So far as VAT is concerned, I accept the Applicant's explanation in paragraph 31 of its submission that the Applicant is not making taxable supplies on the Properties as they are exempt from VAT, being residential properties, and there is no option to tax. VAT cannot therefore be recovered by the Applicant, and it therefore has to be paid by the Respondent.
25. I consider all other elements of the charges claimed by the Applicant to have been reasonably incurred.

Decision

26. I determine that the reasonable costs payable by the Respondent under section 88 of the Act are £2,725.50 plus VAT of £545.10. Land registry fees (unchallenged) are also payable in the total sum of £75.60. The total due is £3,346.20.
27. This sum is derived from paragraphs 22 and 23 above in which I have reduced the costs claimed by, respectively, £395.00 for one hour of time, and £79.00 for the charges relating to two emails.

Appeal

28. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Judge C Goodall
Chair
First-tier Tribunal (Property Chamber)