



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

Case Reference : CAM/00KA/LCP/2022/0004
HMCTS Code : P:PAPERREMOTE

Property : Kingswood Court, Grove Road, Luton,
Beds LU1 1QJ

Applicant : Assethold Limited

Represented by : Scott Cohen Solicitors

Respondent : Kingswood Court RTM Company
Limited

Represented by : Premier Solicitors

Date of Application : 22 November 2022

Type of Application : An application under Section 88(4) of
the Commonhold and Leasehold
Reform Act 2002 in respect of any
question in relation to the amount of
any costs payable by a RTM Company

Tribunal member(s) : Judge Wayte

Date : 14 April 2023

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers which has not been objected to by the parties. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because all issues could be determined in a remote hearing on paper in accordance with the usual practice for determining costs claims. The documents that I was referred to are in a bundle of 130 pages, the contents of which I have noted. The order made is described below.

The tribunal determines that £1,967.22 is payable in respect of the costs incurred by the applicant in consequence of the claim notice given by the respondent in respect of the property and the subsequent tribunal proceedings in relation to the denial of the Right to Manage which were dismissed on 26 August 2022. The tribunal also orders the respondent to reimburse the applicant £56 in respect of their application fee.

Background

1. This is an application for a determination of costs under section 88(4) of the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”) following the service of a claim notice in respect of the Right to Manage (RTM) set out in Chapter 1 of Part 2 of the 2002 Act. Under section 88(1) a RTM company is liable for the reasonable costs incurred by the landlord in consequence of a claim notice given by the company. Section 88(2) states that any such costs in respect of professional services provided by a third party are to be regarded as reasonable only to the extent that he is personally liable for them and they might reasonably be expected to have been incurred by him. The costs only extend to costs incurred in proceedings if the RTM application is dismissed.
2. Directions were given on 16 January 2023 proposing that the application be determined on the papers unless a hearing was requested. Orders were made for a schedule of costs to be produced by the applicant, together with copies of any other relevant documents including copies of invoices substantiating the claimed costs and any other documents upon which reliance was placed. The respondent replied to that schedule in accordance with the directions and the bundle was produced by the applicant as detailed above. No request for a hearing was made and I was satisfied that it was appropriate for the matter to be determined on the basis of that bundle.
3. The validity of the claim notice dated 7 February 2022 was disputed by the respondent on a number of grounds, including that the date for acquisition of the RTM was less than 3 months after the date given for the counternotice. The subsequent application in respect of the Right to Manage, reference CAM/ooKA/LOA/2022/0001 was listed for a paper determination on 8 August 2022.
4. On 9 August 2022 the applicant’s solicitors applied to withdraw their application. Under rule 22 of the Tribunal Procedure Rules 2013, notice of withdrawal will not take effect unless the tribunal consents to the withdrawal. The respondent objected to the withdrawal and sought dismissal of the application as they wished to preserve their ability to claim their costs of the proceedings. By a decision dated 26 August 2022 I decided not to consent to the withdrawal and to dismiss the application, on the basis that the applicant had failed to deal with the

objection in respect of the date of acquisition. That means that the applicant is entitled to a determination of their costs incurred in respect of the Claim Notice and also in respect of the subsequent proceedings.

The applicant's case

5. The total costs claimed are £1,730.22 inclusive of VAT and disbursements in relation to the Claim Notice and £1,731 in relation to the proceedings, making a total of £3,461.22. Those amounts include management fees claimed of £500 and £350 respectively, plus VAT.
6. Scott Cohen's costs are based on the hourly rate of £275 for Miss Scott, the principal of the firm. In her schedule of costs for the response to the claim notice, she states that she spent a total of 3 hours 24 minutes; broken down into 30 minutes assessing the claim notice, 1 hour 36 minutes reviewing the supporting documentation, 30 minutes to prepare the counter notice and a further 48 minutes on routine correspondence. The disbursement of £6.85 + VAT was claimed for postage. The bundle contained a copy of an invoice for £1,130.22 sent to the applicant c/o Eagerstates Limited dated 13 October 2022.
7. The schedule for costs for the proceedings claimed for work done by Miss Scott and her assistant Ms Morgan, described as a Band D fee earner. Her rate was £150 per hour. Miss Scott claimed a total of 3 hours 12 minutes; broken down into 2 hours 30 minutes on the documents, 30 minutes on routine correspondence and 12 minutes on the telephone. Ms Morgan claimed a total of 1 hour 30 minutes; broken down into 48 minutes on the documents and 42 minutes on routine correspondence. Again, the bundle contained a copy of an invoice for £1,311 sent to the applicant c/o Eagerstates Limited dated 13 October 2022.
8. Despite the directions requiring a copy of invoices substantiating the costs and any other documents which the applicant wished to rely on, the bundle contained no invoices in respect of the costs claimed on behalf of Eagerstates Limited or a copy of their management agreement with the applicant. There was also no evidence of any hourly rate charged.

The respondent's case

9. The respondent challenged the costs claimed by the applicant.
10. Their first point was that the invoices produced in respect of Scott Cohen's fees were only "pro forma" invoices, with no numbers and no evidence that they had been paid by their client. The respondent also

pointed out that no invoices had been produced in respect of the managing agents' fees at all.

11. The respondent also challenged the hourly rates charged by Scott Cohen. Since the property was in Luton, they asserted that the Luton rates should apply at £255 for a Grade A fee earner and £126 for a Grade D.
12. On the costs incurred in respect of the claim notice, the respondent stated that they were not recoverable under the order for costs which referred to the cost of proceedings. Without prejudice to that submission, the hourly rate should be reduced to £255. The respondent submitted that it would not have taken Ms Scott the time claimed in relation to the review of the claim notice and documents and offered 42 minutes in total. The respondent accepted the time claimed in respect of the counter notice and for routine correspondence. The respondent also challenged the postage on the basis that it should have been absorbed into the hourly rate. Finally, the respondent submitted that Eagerstates' costs should not be allowed due to the lack of evidence.
13. On the costs of proceedings, the hourly rates were challenged as set out above. Subject to that submission, the time for routine correspondence was accepted. On the documents, the respondent submitted there was duplication in relation to a claim for 0.1 hour for reading the directions from both fee earners and duplication in relation to the time claimed for both working on the statement of case, which should be reduced to 49 minutes by the Grade A alone. The other time was accepted. Again, Eagerstates' costs should not be allowed due to the lack of evidence in terms of an invoice or other information as to the right to seek payment.

The applicant's reply

14. The applicant provided further background in their response, confirming that the RTM application concerned 11 flats. They also confirmed that their application for costs was under section 88 of the 2002 Act, which applied to both the costs of the claim notice and the proceedings, in the light of their dismissal by the tribunal. The test of reasonableness under that section is on the basis that "costs in respect of such services might reasonably be expected to have been incurred by [the client] if the circumstances were such that he was personally liable" for them. Scott Cohen provided an extract of their terms and conditions and confirmed that their rates were payable by Assethold in respect of other matters and are in fact within a reasonable and expected range for work of this nature.
15. In respect of Eagerstates fees, the applicant submitted that this was non-standard work outside the scope of normal management fees.

Columbia House Properties (No 3) v Imperial Hall RTM Company Limited [2014] UKUT 30 was cited as an authority that managing agents' fees may be recovered as part of a claim for costs under section 88. Lengthy submissions were made as to the work generally undertaken by the managing agent in preparing for a handover, liaising with the client and the solicitors. Reference was made to the RICS Code which recommends that the agent has a menu of charges for such non-standard work.

16. Scott Cohen submitted that costs do not have to be paid to be incurred and cited the case of *Triplerose Ltd Re Forth Banks Tower* [2016] UKUT 77 (LC) as authority that no particular formality was required in respect of the invoice, as "the FTT can and should take considerable comfort from, and place reliance on, what it is told by [the] solicitor".
17. More detail was provided of the time taken in respect of the pre-proceedings costs and it was confirmed that the postage was for a courier and therefore outside standard postage which would usually be included in an hourly rate. In terms of preparation of the statement of case, it was submitted that the use of a Band D fee earner reduced the cost overall. In the circumstances, none of the respondent's arguments were accepted.
18. In the light of the respondent's failure to engage with the claim for costs prior to these proceedings the applicant also sought reimbursement of their application fee of £100 under rule 13(2) of the Tribunal Procedure Rules 2013.

The tribunal's decision

19. As stated above, the entitlement is to reasonable costs and therefore the landlord may suffer a loss if the costs incurred are not considered to be reasonable by the tribunal (and pursued by its solicitors/agents). Clearly, the landlord has a choice as to their solicitors and agents and market forces should ensure that such fees are reduced to a reasonable level if the costs are not upheld on a routine basis. None of the First-tier decisions provided by the applicant are relevant; First-tier decisions have no precedent value and reflect their own facts.
20. This was an unfortunate RTM application, which has incurred costs both in respect of the claim notice and the proceedings. The respondent's solicitors' submission in respect of the entitlement to costs is mistaken: section 88 is clear in passing responsibility to the RTM Company both in respect of pre and post proceedings in the light of their dismissal. I also reject the argument that the applicant has to have paid the fees claimed – the test is that they have incurred them and I accept Scott Cohen's evidence on that point (in respect of their own fees).

21. I similarly reject the suggestion that the hourly rate should be reduced to a Luton rate. Scott Cohen's fees are within a reasonable range for what is reasonably technical work and it makes sense for Assethold to use the same firm wherever their property is based. That said, payment for expertise should lead to economy as to the time taken and I agree with the respondent that the time taken in consideration of the claim notice and other documents was excessive. The 2 hours and 6 minutes claimed is therefore reduced by 1 hour. I allow the courier fee as I agree it is non-standard postage. The time for routine correspondence was agreed. This reduces the costs in respect of the claim notice to £800.22 (including VAT).
22. In terms of the proceedings, I agree that almost all of Ms Morgan's time on the documents is either duplication or administrative and I have therefore disallowed it. With that in mind, I will allow all the time claimed by Ms Scott, the respondent's offer was too low. No other objections were raised. That reduces the costs in respect of the proceedings to £1,167 (including VAT).
23. As to Eagerstates costs, I accept that *Columbia House* is authority for the proposition that such costs may form part of a claim under section 88(1), subject to the provision of evidence as to the work done and costs incurred. Here, no invoices were produced or a schedule of charges and no evidence of any work done other than the confirmation by the solicitors that the agent received the notice and sent it to them. It is also claimed that the agent prepares for the RTM as they cannot be sure the objection will succeed but again no evidence was actually provided of any work done to justify the £500 claimed. No submissions covered the £350 claimed in respect of the proceedings and it is very hard to see how that could have been justified in any event. Acting as the middle- man between the Freeholder and their solicitors does not in my view add any value in terms of supporting their claim for costs. In the circumstances, I do not consider that the applicant has demonstrated any reasonable costs were incurred in respect of its managing agent's fees.
24. That makes the total costs payable by the respondent £1,967.22, including VAT and disbursements. That is about 56% of the costs claimed and I therefore also order the respondent to pay £56 in respect of the issue fee.

Name: Judge Wayte

Date: 14 April 2023

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).