



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

Case reference : **BIR/00CN/LCP/2023/0002-3**

Property : **(1) 1-6 Hamble Court Clifton Park
Estate Park Road Sutton Coldfield
B73 6BY**
**(2) 7-12 Hamble Court Clifton Park
Estate Park Road Sutton Coldfield
B73 6BY**

Applicant : **The Halliard Property Co Limited**

Representative : **Wallace LLP**

Respondent : **(1) Hamble Court 1-6 RTM Company
Ltd**
**(2) Hamble Court 7-12 RTM Company
Ltd**

Representative : **Anthony Haycock Director/Company
Secretary**

Type of application : **Application under sections 88 and 89 of
the Commonhold and Leasehold
Reform Act 2022 (“the Act”) for
determination of reasonable costs
payable to the Applicant**

Tribunal member(s) : **Judge C Payne**

Hearing : **Paper**

Date of decision : **5 October 2023**

DECISION

Decisions of the Tribunal

The Tribunal determines that the costs payable by the Hamble Court 1-6 Company Ltd to the Applicant are £2,463.36 and the costs payable by Hamble Court 7-12 Company Ltd to the Applicant are £2,132.76, such costs to be paid within 28 days.

The Application

1. This was an application by the Applicant landlord, The Halliard Property Co Limited (“Haliard”), for a determination as to the costs payable by the Respondent RTM companies, Hamble Court 1-6 Company Ltd and Hamble Court 7-12 Company Ltd under the provisions of section 88 of the Commonhold and Leasehold Reform Act 2002 (the Act).
2. The claim for costs arises from two Claim Notices served by Haliard on the persons who are both qualifying tenants and members of the RTM Companies dated 14 March 2022. This resulted in the RTM Companies each serving a Counter Notice dated 19 April 2022, within the permitted time, stating they were not entitled to acquire the right to manage 1-6 and 7-12 Hamble Court Clifton Park Estate Park Road Sutton Coldfield B73 6BY (the “Property”).
3. It was not, it seems, possible for the parties to agree the costs and accordingly Haliard issued the application dated 28 February 2023. Directions were issued on 6 April 2023 indicating that unless objected to the matter would be dealt with as a paper determination. The parties agreed to the matter being determined on paper and both complied with the Directions.

The Law

4. The relevant legal provisions are set out in the appendix to this decision.

The Evidence

5. The papers before the Tribunal are the Applicant’s Statements of Costs, the Respondents’ Joint Statement dated 12 May 2023, copies of the Claim Notices, Counter Notices and RTM Companies incorporation documentation. The Tribunal has carefully noted the contents of each.
6. The Applicant’s Statements of Cost consist of two spread sheets setting out the tasks undertaken in the period 15 March 2022 to 15 July 2022.
7. This sets out a total claim inclusive of VAT and disbursements of £2,463.36 for Hamble Court 1-6 Company Ltd and £2,132.76 for Hamble Court 7-12 Company Ltd.
8. In respect of the work done for Hamble Court 1-6 Company Ltd it would appear that some 4.4 hours of assistant solicitor time has been incurred at an hourly rate of £395. In respect of the work done for Hamble Court 7-12 Company Ltd it would appear that some 5 hours of assistant solicitor time has been incurred at an hourly rate of £395.

9. The Respondents' Joint Statement particularises the objection as follows:

My appeal against the charges is that this is just how it will in practice have been researched and investigated by Wallace & Co. Time will have been spent investigating the claims as if it were one claim, rather than establishing the facts of apartment 1-6 and then subsequently 7-12. The investigations will have been undertaken from the start as 1-12. However, despite this, I have 2 invoices covering what appears to be 2 separate investigations. For example, in order to obtain office copies and plans, there is a charge of £118 for 1-6 and another charge for 7-12. Where as in practice when the investigation took place, both will have been done simultaneously.

10. Mr Haycock also submitted in his Statement that he believed Wallace LLP had approached the two separate matters as *a profit making opportunity*. He also submitted that he accepted one invoice ought to be paid but not the other. He did not specify which of the invoices he felt should or should not be paid.

Findings

11. The first matter the Tribunal addresses is the hourly rate charged. S88(2) is relevant, which says as follows:

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.

12. The Tribunal has not been provided with any evidence in the form of terms of engagement, nor has the schedule of costs been signed by anyone from Wallace LLP as one would expect to see on an application for the Summary Assessment of costs. However, the Tribunal accepts the rate charged regardless of who commissioned the work and the hourly rate is not considered unreasonable. Accordingly, the Tribunal has used the rate of £395 per hour throughout its assessment.
13. There are two separate apartment blocks, each with a separate RTM company appointed. Each RTM company has had work carried out specifically in respect of that block and it is, therefore, appropriate that each should be separately billed for that work. The Respondent's assertion that work which is carried out in respect of both blocks, which are managed by two separate RTM Companies, may be appropriately all billed to one or the other is not accepted. Each RTM company should be invoiced for the work relating to that block.
14. The specific example provided by Mr Haycock of a costs that he disputes

is that of the work done to obtain office copy entries and plans. On the Statement of Costs for Hamble Court 1-6 Company Ltd a sum of £118.50 to *Obtain freehold and leasehold office copy entries & plans* has been listed. Eighteen minutes is not an unreasonable amount of time to spend obtaining the freehold title and six leasehold titles. On the Statement of Costs for Hamble Court 7-12 Company Ltd a sum of £39.50 to *Obtain leasehold office copy entries & plans*. The work of obtaining the freehold title has not been duplicated and six minutes is not an unreasonable amount of time to spend obtaining the six leasehold titles for that block. There is no evidence of duplication, and the costs are not unreasonable. As such, the sums of £118.50 and £39.50 are allowed.

15. While the work in respect of the two blocks is separate, there is evidence that the matters have been worked on in parallel to mitigate costs for both. The same assistant solicitor has worked on both matters throughout. Several emails and letters appear to have been split between the two matters with identical or similar entries on each Statement of Costs. In other cases, individual letters or emails, which it is presumed related to only one block, have been applied to only one matter. The costs for work on reviewing documents and drafting of the two separate Counternotices also appears to have been equally split. In the case of each mirrored entry, the total time spent across both matters is not such that it would be considered an unreasonable amount of time even for a single matter. This would suggest that where possible the work was done in tandem for the benefit of both RTM companies.
16. There is no evidence before the Tribunal that Wallace LLP have embarked upon an exercise to inflate the costs or treated the matters as *a profit making opportunity*. Only one item has been directly challenged, which is addressed above, leaving the Tribunal without evidence before it that might suggest any of the other costs applied are for unnecessary work or of an unreasonable level. Here the provision of a schedule addressing each item charged, which the Tribunal could complete would have assisted.
17. There being no evidence of the costs being unreasonable, the Tribunal determines that the sums listed in each of the Statements of Cost submitted by the Applicant are reasonable in so far that the work listed appears to be reasonably incurred and undertaken in a reasonable amount of time. The costs are not found to be in excess of what any party engaging Wallace LLP to carry out such work would be required to pay for that work to be undertaken. As such, the Tribunal determines that the full sums set out in the Statements of Costs are payable in fully by the RTM companies.

Judge C Payne

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).

Appendix of relevant legislation

Commonhold and Leasehold Reform Act 2002

Section 79 Notice of claim to acquire right

- (1) A claim to acquire the right to manage any premises is made by giving notice of the claim (referred to in this Chapter as a “claim notice”); and in this Chapter the “relevant date”, in relation to any claim to acquire the right to manage, means the date on which the notice is given.
- (2) The claim notice may not be given unless each person required to be given a notice of invitation to participate has been given such a notice at least 14 days before.
- (3) The claim notice must be given by an RTM company which complies with subsection (4) or (5).
- (4) If on the relevant date there are only two qualifying tenants of flats contained in the premises, both must be members of the RTM company.
- (5) In any other case, the membership of the RTM company must on the relevant date include a number of qualifying tenants of flats contained in the premises which is not less than one-half of the total number of flats so contained.
- (6) The claim notice must be given to each person who on the relevant date is –
 - (a) landlord under a lease of the whole or any part of the premises,
 - (b) party to such a lease otherwise than as landlord or tenant, or
 - (c) a manager appointed under Part 2 of the Landlord and Tenant Act 1987 (referred to in this Part as “the 1987 Act”) to act in relation to the premises or any premises containing or contained in the premises.
- (7) Subsection (6) does not require the claim notice to be given to a person who cannot be found or whose identity cannot be ascertained; but if this subsection means that the claim notice is not required to be given to anyone at all, section 85 applies.
- (8) A copy of the claim notice must be given to each person who on the relevant date is the qualifying tenant of a flat contained in the premises.
- (9) Where a manager has been appointed under Part 2 of the 1987 Act to act in relation to the premises, or any premises containing or contained in the premises, a copy of the claim notice must also be given to the tribunal or court by which he was appointed.

Section 84 Counter-notices

- (1) A person who is given a claim notice by a RTM company under section 79(6) may give a notice (referred to in this chapter as a

“counter-notice”) to the company no later than the date specified in the claim notice under section 80(6).

- (2) A counter-notice is a notice containing a statement either –
 - (a) admitting that the RTM company was on the relevant date entitled to acquire the right to manage the premises specified in the claim notice, or
 - (b) alleging that, by reason of specified provisions of this Chapter, the RTM company was on that date not so entitled,and containing such other particulars (if any) as may be required to be contained in counter-notices, and complying with such requirements (if any) about the form of counter-notices, as may be prescribed by regulations made by the appropriate national authority.
- (3) Where the RTM company has been given one or more counter-notices containing a statement such as is mentioned in subsection (2)(b), the company may apply to the appropriate tribunal for a determination that it was on the relevant date entitled to acquire the right to manage the premises.
- (4) An application under subsection (3) must be made not later than the end of the period of two months beginning with the day on which the counter-notice (or, where more than one, the last of the counter-notices) was given.
- (5) Where the RTM company has been given one or more counter-notices containing a statement such as is mentioned in subsection (2)(b), the RTM company does not acquire the right to manage the premises unless –
 - (a) on an application under subsection (3) it is finally determined that the company was on the relevant date entitled to acquire the right to manage the premises, or
 - (b) the person by whom the counter-notice was given agrees, or the persons by whom the counter-notices were given agree, in writing that the company was so entitled.
- (6) If on an application under subsection (3) it is finally determined that the company was not on the relevant date entitled to acquire the right to manage the premises, the claim notice ceases to have effect.
- (7) A determination on an application under subsection (3) becomes final –
 - (a) if not appealed against, at the end of the period for bringing an appeal, or
 - (b) if appealed against, at the time when the appeal (or any further appeal) is disposed of.
- (8) An appeal is disposed of –
 - (a) if it is determined and the period for bringing any further appeal has ended, or
 - (b) if it is abandoned or otherwise ceases to have effect.

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 a landlord or tenant, or
 - (c) a manager appointed under Part 2 of the Landlord and Tenant Act 1987 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 a 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 any amount of any costs payable by a RTM company shall, in default of agreement, be determined by the appropriate tribunal.

Section 89 Costs where claim ceases

- (1) This section applies where a claim notice given by an RTM company –
 - (a) is at any time withdrawn or deemed to be withdrawn by virtue of any provisions 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 section (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.

Section 112 Definitions

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- (2) In this Chapter “lease” and “tenancy” have the same meaning and both expressions include (where the context permits) –
 - (a) a sub-lease or sub-tenancy, and
 - (b) an agreement for a lease or tenancy (or for a sub-lease or sub-tenancy),but do not include a tenancy or will or at sufferance.
- (3) The expressions “landlord” and “tenant” and references to letting, to the grant of a lease or to covenants or to terms of a lease, shall be construed accordingly.

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