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|  Crest |  | FIRST-TIER TRIBUNAL**PROPERTY CHAMBER (RESIDENTIAL PROPERTY)** |
| **Case reference** | **:** | **LON/00BE/LCP/2023/0002P** |
| **HMCTS code** | **:** | **P:PAPER** |
| **Property** | **:** | **1 Camberwell Station Road, London SE5 9JJ** |
| **Applicant** | **:** | **Assethold Ltd** |
| **Representative** | **:** | **Scott Cohen Solicitors Limited.** |
| **Respondent** | **:** | **1 Camberwell Station Road (London) RTM Company Limited** |
| **Representative** | **:** | **None stated** |
| **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** | **:** | **10 August 2023** |

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| **DECISION** |

**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: PAPER. 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 at the hearing were in a bundle provided by the applicants of 119 pages. The respondent had not provided any documentation for the bundle.

The decisions made and reasons are set out below.

**Decisions of the tribunal**

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

* £605 plus VAT in respect of Scott Cohen’s legal fees;
* Disbursements of £6.85plus VAT

The Tribunal disallows the claim for the fees of Eagerstates Limited.

The reasons for the Tribunal’s decisions are given 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.
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.’*

1. The costs claim arises out of an application for a determination that the applicant was entitled to acquire the right to manage 1 Camberwell Station Road, London SE5 9JJ (‘**the Property**’).
2. By Directions dated 22 May 2023 the applicant was directed to provide the respondent a detailed schedule of the costs it claims by 16 June 2023.
3. The directions provided for the respondent to provide a case in answer by 6 July 2023 and for the applicant to provide a statement in reply (if it wished) by 20 July 2023 and to provide a bundle of documents to the Tribunal by 26 July 2023.

 **The applicant’s case**

1. The applicant claims solicitor’s fees of Scott Cohen Solicitors Limited of £611.85 (inclusive of disbursements) plus VAT and management fees of £400 plus VAT.
2. The legal fees were broken down as follows

Engaged on documentation

* Assessment of claim 30 minutes
* Assessment of supporting documentation 36 minutes
* Preparation of counter-notice 30 minutes

Engaged on attendances 36 minutes

Attendances were billed in units of 6 minutes. 36 minutes represents 2 attendances upon the RTM company and 4 attendances upon the client/client’s agent

Disbursements

Postage £6.85 + VAT

1. The total time of 2.20 hours was billed at a rate of £275 per hour being the charge out rate of Lorraine Scott, a principal of the firm and a Grade A fee earner. The fee billed was stated to be the fee rate payable by the applicant to the firm under the terms of its instruction, which includes provision for the payment of disbursements.
2. It was the applicant’s submission that the costs are payable pursuant to sections 88(1) of the 2002 Act and meet the reasonableness test set out in section 88(2) of the 2002 Act, namely whether it might reasonably be expected that the Landlord would incur the costs if incurring the costs itself. The bundle before the tribunal includes an extract of Scott Cohen’s terms of appointment.
3. In its statement of case the applicant submitted that its costs met the test of reasonableness set out in section 88(2) of the 2002 Act, as the landlord would reasonably be expected to incur this level of cost if incurring the costs itself. The applicant submitted that the hourly rate was reasonable and within the expected range for a transaction of this nature, referring the tribunal to a first-tier tribunal case *Albacourt Properties Ltd v W.Court Joint Enterprise Dwelling Initiative Co. Ltd.* MAN/00BU/LCP/2019/0001.
4. The applicant submitted that it was reasonable to instruct an experienced practitioner in the niche field of RTM, as this may result in time and therefore cost saving. The applicant submits that the withdrawal of the claim notice is evident justification in the choice of an experienced practioner.
5. The applicant’s statement of case stated, at paragraph 10 that copy invoices and disbursement receipts were attached at Exhibit 4. Exhibit 4 refers back to page 38 of the bundle, which is the pro -forma invoice of Scott Cohen. This invoice treats both the management fees of Eagerstates and the postage charge as disbursements. There is a copy of the certificate of posting in the bundle to substantiate the disbursement charge of £6.85 for postage.
6. The applicant submitted that Eagerstates’ fees of £400 plus VAT were for tasks that the agents were instructed to carry out which were additional to standard management activities, in consequence of receiving the RTM Claim Notice and that the fees are reasonable. It submits that Eagerstate’s involvement is necessary immediately on receipt of the claim notice, to correspond with relevant parties and the solicitors and review its management of the property in its entirety in relation to scheduled works and services. In this connection the applicant referred the tribunal to *Columbia House Properties (No.3) Ltd v Imperial Hall RTM Company Ltd* [2014] UKUT 0030 (LC) (***‘Columbia’***) which upheld the recovery of a management fee and that managing agent involvement is common in RTM applications.
7. The applicant also referred the tribunal to the RICS Code of Practice, Service charge residential management Code 3rd Edition, and its recommendation at Clause 3.5 that the agent has a schedule of charges for duties outside the scope of its normal annual fees. The applicant states, at paragraph 29 of its statement of case, that the management agreement with Eagerstates contains a separate schedule at Appendix 3 of charges for duties outside the scope of its annual management fee.
8. There is no invoice for Eagerstates’ fees in the bundle.

**The respondent’s case**

1. The respondent did not comply with directions and provided no case in answer to the applicant’s statement of case.

**Reasons for the tribunal’s decision**

1. The bundle before the Tribunal consisted only of documents provided by the applicant. The respondent did not comply with the Tribunal’s directions and the Tribunal would remind the respondent of note (c) to its Directions which warns that such failure may result in the Tribunal deciding all issues against it pursuant to rules 9(7) and (8) of its 2013 Rules.
2. There was no evidence from the respondent as to what would have constituted a reasonable level of charge or time spent on the transaction by either the solicitor or the managing agents.
3. The Tribunal finds that not all costs claimed by the applicant are recoverable only because the costs in respect of such services might have been incurred by the applicant if the circumstances had been such that he was personally liable for all such costs. The costs must also meet the test of reasonableness set out in section 88(2). Any costs incurred by a landlord consequent on a claim by a RTM company in respect of professional services rendered to the landlord 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. The Tribunal finds Ms Scott’s costs to be reasonable. It finds that it is reasonable for a fee earner of Ms Scott’s seniority and expertise to be instructed in an RTM application. It finds Ms Scott’s charge-out rate to be reasonable. and it finds the time spent on the transaction, as broken down by Scott Cohen in its summary assessment, and in the absence of any challenge by the respondent, to be reasonable.
5. The Tribunal therefore finds costs of £605 plus VAT to be reasonable solicitor’s costs.
6. There was no challenge to the disbursement of £6.85 plus VAT and the Tribunal finds this disbursement to be reasonable.
7. As for Eagerstates’ fees the tribunal accept that managing agent involvement is common in RTM applications and that, as decided in ***Columbia,*** a management fee may be recovered under s88(2).
8. There is nothing in the bundle before the tribunal to evidence that Eagerstates were involved in the application, that acting on an RTM Claim Notice entitles it to charge a fee additional to its annual fee or as to how a fee of £400 was calculated. The bundle does not contain the Appendix 3 of the management agreement referred to in the applicant’s statement of case which might have assisted in clarifying that Eagerstates was entitled to charge an additional fee. There is no invoice from it. There is no evidence as to how a fee of £400 might be calculated. It is simply referred to as a disbursement in the summary of costs provided by the applicant. It is not referred to in Scott Cohen’s pro forma invoice.
9. In the absence of any evidence as to the same the tribunal disallows the claim for Eagerstates’ fees.

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| **Name:** | Judge Pittaway | **Date:** | 10 August 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).**