



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

Case Reference	:	LON/00AD/LCP/2021/0015
Property	:	20 Upper Wickham Lane, DA16 3HE
Applicant	:	Assethold Limited
Respondent	:	20 Upper Wickham Road RTM Co. Ltd
Type of Application	:	Right to Manage – Costs, Commonhold and Leasehold Reform Act 2002
Tribunal	:	Deputy Regional Tribunal Judge Martyński
Date of Decision	:	20 May 2022 Amended 25 May 2022

AMENDED DECISION

Decision summary

1. The costs payable by the Respondent in respect of its claim for the Right to Manage ('RTM') are £14,977.92.

Background

2. The background to this application, made pursuant to s.88(4) Commonhold and Leasehold Reform Act 2002 ('the Act') can be summarised in the following chronology:-

11.06.18	Claim Notice from the RTM Company
11.09.18	RTM Company applies to the FTT for declaration of the RTM

- 28.01.19 FTT decision on preliminary issue, decision confirms that the RTM's application was not defective
- 27.11.19 Upper Tribunal dismisses Assethold's appeal against the FTT's decision
- 10.12.20 FTT finds that the RTM has not been acquired.

3. In this application, the Applicant seeks a determination of the costs payable to it by the Respondent of three separate stages in the proceedings as follows:-

Initial assessment of the claim for the RTM	£2,653.80
Costs of the FTT proceedings	£14,677.80
Costs of the UT proceedings	£2,827.00

The Applicant provided a breakdown of all these costs using the County Court form N260.

- 4. The directions given on this application set the matter down on the Paper Track for a decision on the papers without a hearing. Neither party requested a hearing. The Respondent has not taken any part in the proceedings.
- 5. I have therefore made this decision on the basis of the tribunal's files, the documents submitted by the Applicant and the Applicant's application and Statement of Reply.

Assessment in the light of the Respondent's lack of reply

6. In its Statement of Reply, at paragraph 3, the Applicant states;

As the Court of Appeal have confirmed in *Thinc Group v Armstrong* [2012] EWCA Civ 1227, for a court or tribunal to determine a dispute on the basis of the case not put forward by a party or not raised by the court or tribunal is unfair and not permissible.

- 7. I take that to mean that it would be wrong for me to reduce the costs claimed by the Applicant because the Respondent has not raised any objection and the Applicant has not been informed, prior to this decision, of any issues on costs that the tribunal wishes to raise.
- 8. I reject this contention. Section 88 of the Act provides as follows:-

88Costs: 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.

(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.

9. It is clear therefore that; (a) the RTM Company is only liable for 'reasonable' costs. If I found any of the costs claimed by the Applicant not to be reasonable, I could not determine that they were payable by the RTM Company, regardless of objection from it; (b) the question of the amount of costs payable is to be 'determined' by the tribunal. The question put to the tribunal by the Applicant is to be determined by the tribunal, that determination does not necessarily require input from the Respondent.

Costs of initial assessment

10. As to the work carried out by solicitors, this was done by a Grade A fee-earner based in Oxfordshire. That fee-earner specialises in Right to Manage claims. It is reasonable for the Applicant to use a specialist, and given the complexity and importance of the issues, it is reasonable to use a Solicitor of Grade A standing.
11. However, the recently updated guidelines for solicitors' rates gives the figure of £261 for the hourly rate for a Grade A Solicitor based in Oxfordshire (as opposed to the £275.00 claimed). There is no reason that I can see in this case, which did not have any particularly unusual features, to allow a figure above that sum. The work claimed by the Solicitor all appears to be appropriate and done within a reasonable time. Accordingly, the Solicitor's reasonable costs are assessed at £1539.90.
12. Included in the charges for this part of the case are managing agent's fees of £500. Whilst I appreciate that there would be some liaison between the agents and solicitors on the issue of the measurements of the subject premises (which go to whether or not the RTM exists), I do not accept that these costs are reasonable when considering the provisions of s.88(2) of the Act. I have reduced these costs to £250.00.
13. The total assessment for the costs of this stage is therefore:

Solicitor's costs	£1,539.00
Agent's fees	£250.00
Disbursements	£6.50
VAT	£359.10
Total	£2,154.60

Costs of Upper Tribunal proceedings

14. In its Statement of Reply, the Applicant includes in its chronology the following;

FTT correspondence 19th September 2018 notifying Respondent the application is out of time

It then goes on to state the following in support of the claim for costs;

The preliminary issue which dictated 2 additional attendances was raised by the Tribunal itself and whilst it ultimately resolved in the Respondent's favour the Applicant was obliged to participate at the FTT. The Applicant took the decision to appear on the preliminary issue but is notable that permission was granted by the FTT as the issue was one which was arguable. The Applicant would highlight that had it been successful the Respondent would have in turn avoided the present costs of the FTT.

15. This does not appear to be correct. The issue raised by the FTT was the question of whether or not the application had been made in time. In its decision dated 27 November 2019, the UT states as follows;

The then freeholder applied to the FTT to strike out the application on the basis that it was made by Mr Sami Bakshish, one of the lessees, and not, as the statute requires, by the respondent, the RTM Company. The FTT determined, as a preliminary issue on 29 January 2019, that the application had been made by the respondent and that therefore the application was valid. This is an appeal by the present freeholder from that decision, with permission granted by the FTT. [paragraph 4]

There is no appeal from the FTT's decision that the application was made in time [paragraph 5]

16. It appears to me therefore, that the issue raised by the tribunal, was not an issue in the appeal.
17. The appeal concerned an objection raised regarding the identity of the person who made the application. This objection was raised by the landlord and pursued on appeal by the current Applicant, Assethold.
18. It would be perverse if the Respondent was charged with paying that costs of the Applicant's unsuccessful appeal to the UT. Accordingly I do not consider that these costs were reasonably incurred.

Costs of FTT proceedings

19. I have considered these costs taking into account the following;
- (a) The comments I have previously made regarding hourly rates

- (b) Some of the costs will have been incurred in the point taken in the FTT by the Applicant which was dismissed by the Upper Tribunal
- (c) I agree that the use of the managing agent at hearings is reasonable and is very probably cheaper than using Counsel / solicitors
- (d) The charge for postage of £6.50 (which I have allowed for the initial assessment stage) looks like a standard charge. It is unsupported with evidence so far as I can see

20. Bearing in mind the above, I have made minor deductions from the time claimed for correspondence, attendances and work on documents to reflect my decision that costs incurred in pursuing the point dismissed by the UT are not reasonable. I have also made deductions from the managing agent's fees for the hearing on 16 January 2019 bearing in mind this point.

21. I have reduced the managing agent's fees for the preliminary hearing on 23 October 2018 as the fees appear unreasonable for such a hearing.

22. I have not allowed the claim in respect of postage.

23. The total assessment for the costs of this stage is therefore:

Solicitor's costs	£6,551.10
Agent's fees	£4,000.00
Surveyor's fees	£135.00
VAT	£2137.22
Total	£12,823.32

24. To assist the parties, attached to this decision is a copy of the Applicant's costs summary for this stage showing my deductions.

**Mark Martyński,
Deputy Regional Tribunal Judge**

ANNEX - RIGHTS OF APPEAL

1. 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.
2. 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.
3. 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.

4. 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.