



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

Case Reference	: CHI/00ML/LCP/2023/0002/BS
Property	: 73 Buckingham Road Brighton, BN1 3RJ
Applicant	: Assethold Limited
Representative	: Scott Cohen Solicitors Limited
Respondent	: 73 Buckingham Road RTM Company Limited
Representative	: Dean Wilson LLP
Type of Application	: Landlord's costs Right to Manage
Tribunal Member(s)	: Judge R Cooper
Date of Decision	: 7/08/2024

DECISION

1. The Applicants, Assethold Limited, seek a determination of their costs pursuant to s88(4) of the Commonhold and Leasehold Reform Act 2002 in connection with a Right to Manage (RTM) claim served by the Respondents on 10/05/2021. They also seek reimbursement of their application fee in the sum of £100.
2. The Respondents are 73 Buckingham Road RTM Company Limited. They oppose the application on the grounds the costs had already been determined by Judge Davey on 11/01/2022, and on the grounds the costs claimed are not reasonable.

Background

3. The Applicants are the freehold owners of the property at 73 Buckingham Road, Brighton, BN1 3RJ ('the Property'). Scott Cohen Solicitors Limited ('Scott Cohen') are their solicitors, and Eagerstates Limited ('Eagerstates') are their managing agents for the Property.
4. The Respondents are a Right to Manage Company that was incorporated on 25/11/2020 [12]. An initial Right to Manage Claim dated 21/12/2020, was withdrawn on 8/04/2021 following a Counter Notice served by Scott Cohen, and a subsequent Claim Notice dated 10/05/2021 was served on the Applicants on 21/05/2021. A Counter Notice was served by the Applicants on 16/06/2021. The Respondents issued an application for determination of its right to manage to the Tribunal and the matter was heard by Judge Davey on 13/12/2021. The Respondent's application was allowed, and the Judge's decision was issued on 6/01/2022 [137].
5. On 13/12/2021 Judge Davey also heard an application for costs issued by the Applicants. His decision was issued on 11/01/2022 [148].
6. The Applicants now make an application for costs in relation to the Notice of Claim dated 21/05/2021. The application was received by the Tribunal on 19/09/2023.
7. Directions were given on 11/04/2024 and the timescales were later amended on the 1/06/2024 following an application by the Respondents who had only recently discovered the correspondence from the Tribunal. The Directions have been complied with.
8. The directions included confirmation that the application would be dealt with on the papers without a hearing unless either party objected. No objections were received, and the Tribunal is satisfied it is proportionate and in the interests of justice to proceed on the papers.

The application for costs

9. The costs sought by the Applicants in respect of the Claim Notice dated 10/05/2021 in summary are as follows:
 - Solicitors' fees of £775 plus VAT – representing 2 hours for a Grade A fee earner (at £275 per hour), and 1.5 hours for a Grade D fee earner (at £150 per hour)
 - Disbursements of £6.85 for postage, and
 - Managing Agents fees of £300 plus VAT.
10. In summary, the solicitors' costs are said to relate to

- Preliminary consideration of the Claim Notice (checking party and property details, time limits and diarising the same),
- obtaining and considering relevant documents (including from Companies House regarding the RTM company, freehold and leasehold titles, checking qualifying tenants' identities and register of members), and
- the preparation and service of a Counter Notice on 16/06/2021 [46].

A copy of Scott Cohen's invoice (dated 24/03/2023) has been produced [56], together an excerpt from their letter of engagement and evidence of postage.

11. The Managing Agents fees are said to be non-standard work which related to the receipt of the Claim Notice, checking of all relevant information, the taking of necessary steps regarding services, outstanding works and accounts in anticipation of RTM, liaison with the solicitors and advice to the Applicant regarding the implications of RTM. An invoice from Eagerstates has been provided which is dated 13/02/2024. It is for £300 plus VAT. The times given for the various items work indicate they were engaged in 6 hours work charged and £50 per hour [80].
12. On 7/08/2023 the Applicants sought these costs from the Respondent by letter. The letter was sent to 73 Buckingham Road rather than the Respondent's registered address. In the absence of a response to that and a subsequent letter (21/08/2023), the Applicants issued this application.
13. The Respondents, in summary, object to the costs because they say the Applicants costs of this RTM Claim had already been determined by Judge Davey in a decision dated 11/01/2022 which covered costs up to the hearing before the Tribunal on 13/12/2021. They say Judge Davey determined the Applicants' reasonable costs to be £481.25 for solicitors' costs, £6.85 disbursements, and £100 for the managing agent's fees. The Respondents also question the accuracy of Scott Cohen's schedule of costs and rely on Judge Davey's view that Eagerstate Ltd's invoice was inflated.

The law

14. Section 88 of the Commonhold and Leasehold Reform Act 2002 ('the 2002 Act') provides as follows:
 - (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.

Determination

15. In considering the Applicants' application, the Tribunal has considered all the documents in the bundle comprising 170 pages. These include *inter alia* the application, statement of case, Companies House documentation, copies of the Respondents' Notice dated 10/05/2021 and the Applicants Counter Notice and documents relating to the costs claimed (including invoices, evidence of postage), the Respondents response, copies of correspondence and two decisions of Judge Davey relating to the Property and the Respondents' RTM application.
16. The Applicants, in summary say the costs are reasonable and are reasonably incurred. They rely on two first tier Tribunal decisions in relation to other costs applications Assethold Limited have made where costs were allowed in full (55 Penge Road and Lansdowne Manor). These decisions are not binding on this Tribunal, as every case turns on its own particular facts, although they have been considered. The Applicant also relies on *Colombia House Properties (No 3) Ltd v Imperial Hall RTM Company Ltd* LRX/138/2012 an Upper Tribunal decision, which is binding on the Tribunal.
17. In opposing the Application, the Respondents say that the First-tier Tribunal has already determined the Applicants costs now being claimed. They rely on Judge Davey's determinations relating to the RTM application (heard on 13/12/2021) and the determination regarding costs

(dated 11/01/2021) and have produced some emails passing between the company and Dean Wilson Solicitors.

18. In relation to the question of whether this Tribunal has jurisdiction to consider this application, I have to decide whether the costs covered by this application have already been determined. The Respondents have not provided a copy of the previous application or the supporting documents which would have provided clear information about the of that subject matter of that application. However, having considered the decision of Judge Davey [149], this Tribunal is satisfied from paragraphs 3 and 4 that the application for costs he determined related solely to the first Claim issued by the Respondent RTM Company on 21/12/2020. The chronology refers to service of that Claim on or around 6/01/2021, and its was subsequent withdrawal on 8/04/2021 following service of the Applicants' Counter Notice. No mention is made in that decision of the second Claim made by the Respondents on 10/05/2021 or the Applicants costs relating to the it.
19. This Tribunal is, therefore, satisfied that it must determine the current application in accordance with s88 of the 2002 Act.
20. In relation to the reasonableness of the costs incurred by the Applicants, the Tribunal makes the following determination.
21. It is reasonable for the Applicants to rely on solicitors in relation to the Respondents' second Claim. The Tribunal finds the fees claimed for the Grade A fee earner of £275 per hour to be reasonable. However, the Tribunal finds the fees for the Band D fee earner to be unreasonable. The partial terms of business letter makes no reference to fees other than those of Lorraine Scott (£275 per hour) [78]. A fee of £126 is allowed for the Band D fee earner consistent with the 2021 Guidelines on Hourly Rates. Although Scott Cohen's bill was not issued until March 2023, the Tribunal is satisfied any work would have been carried out in 2021.
22. The Tribunal notes that in its statement of case, the Applicants confirm that their solicitors were, at the time of the Notice, retained by the Applicants in relation to a number of matters. They say, *'the fees billed in the present matter represents the fees the Applicant would normally pay the firm upon an instruction and includes provision for a disbursement'*. It is, therefore, not clear whether the basis of charging is simply the 'normal fee' or was based on time actually spent. Only a portion of the terms of business letter have been served which only indicates an hourly rate.
23. As to the work undertaken by Scott Cohen, given that the Second Claim dated 10/05/2021 followed swiftly after the withdrawal of the First Claim Notice on 8/04/2021, the Tribunal is satisfied that there would have been a considerable overlap in the work involved. The Applicants'

solicitors would have already obtained and considered the paperwork from Companies House as well as evidence of Freehold Title in connection with the December 2020 Claim Notice served in January 2021.

24. Whilst it accepts the solicitors would need to check that their previous information regarding leasehold titles and the identities of the qualifying tenants remained, the Tribunal finds the time charged is excessive and is more likely than not to include an element of duplication. In addition, given the work had previously been undertaken by a Grade A fee earner in relation to the first Notice, the work could reasonably have been carried out by a more junior fee earner. As the drafting of the Counter Notice only states the statutory grounds relied on, the Tribunal finds the 30 minutes claimed not reasonable. On balance, the Tribunal considers the 2 hours preparation claimed by a Grade A fee earner excessive in the circumstances.
25. The Tribunal notes a number of discrepancies in the documents relied on by the Applicants, and no reasons have been provided as to why it took the solicitors until 24/03/2023 for the invoice for the work relating to this matter to be raised. These call into question whether the works claimed to have been done in relation to this application were in fact carried out to the extent claimed, and whether the charges being claimed were in fact paid by the Applicants.
26. In the statement of case, the Applicant refers to 9 attendances on the applicant, RTM and others representing 54 minutes [46] whereas the schedule itself refers to 11 such attendances [58] including 12 minutes dealing with royal mail [54]. As a disbursement for tracked postage has been claimed, the latter is not reasonable. The invoice refers to 1.5 hours of work by a Grade D fee earner, yet the schedule refers to a Grade B fee earner [61]
27. Having considered these matters in the round, the Tribunal finds on balance 30 minutes for a Grade A fee earner (£137.50 + VAT) and 1.4 hours for a Grade D fee earner (£176.40 + VAT) to be reasonable in all the circumstances. **Total £313.90 + VAT**
28. The Tribunal finds the disbursement of £6.85 reasonable. **Total £6.85**
29. In relation to the Management Fees of £300, the Tribunal accepts that non-standard fees incurred by a managing agent in connection with a Claim may be determined payable. This is confirmed by the Upper Tribunal in *Colombia House Properties (No 3) Ltd v Imperial Hall RTM Company Ltd* LRX/138/2012 relied on by the Applicants. It is also consistent with the RICS Management Code.

30. However, in relation to this application for costs, the Tribunal finds the amount claimed not to be reasonable for the following reasons.
31. Eagerstates' invoice was not issued until 13/02/2024 nearly 5 months after the application for costs was made and three years after the work was allegedly carried out. No explanation has been provided for this delay. As it is a non-standard fee that is said to be claimable, the failure to invoice for work allegedly done three years earlier does call into question whether Eagerstates did in fact charge the Applicants for the work at all. No evidence has been provided that payment has been received.
32. Although the Invoice states that charges are '*as per the management agreement*' [80], no copy of that agreement has been produced. There is no other evidence before the Tribunal demonstrating the basis on which the fees were charged by Eagerstates apart from the invoice itself which suggests an hourly rate of £50 per hour. Clearly some form of documentation was produced to Judge Davey as it is referred to in his decision. Paragraph 43 of Judge Davey's decision indicates that at the time of the initial Claim Eagerstates Ltd appear to have charged a flat rate of £100 + VAT per flat [157]. This appears consistent with the managing agents' fees in respect of 55 Penge Road (one of the two First Tier Tribunal determinations relied on in this application). The invoice produced in respect of the Property, however, shows the Managing Agent now charging on a different basis, namely an hourly rate.
33. The Tribunal finds that £50 per hour is not an unreasonable fee in and of itself. However, the Tribunal finds the time allegedly spent on this matter not reasonable for the following reasons.
34. The invoice relied on by the Applicant [80], shows Eagerstates allegedly spent one hour notifying the Applicant and their solicitors that the second Claim had been received. This is unnecessary given that the Applicant had been served directly [63] and is an excessive amount of time in any event. All that would be required was an email notification.
35. The Tribunal finds the 2.5 hours charged for providing information regarding the leaseholders to largely be a duplication of work that would have already been undertaken in relation to the first Claim (for which only 1 hour was originally charged according to paragraph 4 of Judge Davey's decision [157]). As the RTM application proceeded, the Tribunal does accept some work would clearly have been necessary in relation to assessing the current position with services, works, insurance etc. However, the time allegedly taken of 2 hours is excessive given that the agent would only be updating the position from the previous Claim for which it was said had only taken 1.5 hours [157]. This is a single property comprising five flats and the Tribunal was satisfied such updating would not be significant given that less than 6 months had elapsed. Given the

nature of the Applicant company, the Tribunal also finds an attendance of 30 minutes explaining the implications of a RTM claim unreasonable and unnecessary. The Tribunal considers 1.5 hours reasonable in all the circumstances and allows £75 + VAT. **Total £75 + VAT.**

Order

36. The Respondents are to pay to the Applicants:
- **£313.90 + VAT in respect of the Scott Cohen's fees,**
 - **£6.85 in respect of disbursements, and**
 - **£75.00 + VAT in respect of Eagerstates' fees**
37. In relation to the application fee of £100 the Tribunal orders the Respondents to pay 50%. Although the application has been successful, the Respondents have also successfully argued the fees claimed were not reasonable.

Judge R Cooper
7/08/2024

Note: Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office that has been dealing with the case. It should be sent by email to rpsouthern@justice.gov.uk
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

