



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

Case Reference : CAM/00KB/LRM/2023/0014
HMCTS Code : P(PAPERREMOTE)

Property : 19-25 Pendennis Road and 48-54 Dover Crescent, Bedford MK41 BNJ

Applicant : Assehold Limited

Represented by : Scott Cohen Solicitors

Respondent : 19-25 Pendennis Road & 48-54 Dover Crescent RTM Company Ltd

Date of Application : 6 November 2023

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 : 4 December 2024

DECISION

The tribunal determines that £975.85 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. 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.
2. Directions were given on 27 August 2024 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 invoices substantiating the claimed costs and any other documents upon which reliance was placed. The respondent did not reply to that schedule and the bundle was produced by the applicant as detailed above. No request for a hearing was made and I am satisfied that it is appropriate for the matter to be determined on the basis of that bundle.
3. The validity of the claim notice dated 6 August 2021 was disputed by the respondent on two grounds. The first was that the property did not comply with the definition of premises in section 72(1) of the 2002 Act. The second was that by reason of section 73(2) of the 2002 Act, the Company was not a RTM as defined by that section. No further particulars were given. The subsequent application in respect of the Right to Manage, reference CAM/00KB/LRM/2021/0003 was determined on the papers on 12 April 2022. Both objections were determined to be without substance and the RTM Company was successful.
4. Due to the conduct of Assethold Limited in those proceedings, the tribunal subsequently determined that the RTM Company was also entitled to an order for costs in their favour under Rule 13(1) of the Tribunal Procedure Rules 2013. An order was made for £5,030 plus VAT to be paid by Assethold in a decision dated 17 August 2022.

The applicant’s case

5. The total costs claimed in respect of the claim notice are £1,755.85 inclusive of VAT and disbursements. They are made up of £1,155.85 in respect of Scott Cohen’s fees and £600 in respect of Eagerstates Ltd, the managing agents acting for the applicant.

6. Scott Cohen's costs are based on the hourly rate of £275 for Lorraine Scott, the principal of the firm (Band A) and £150 for Millie Halewood, described as a Band D fee earner. In the Statement of Case in support of the claim, it was explained that the Grade D fee earner was used where appropriate to reduce costs. The total claim of £952.50 plus VAT was said to break down as 2 hours 6 minutes for Ms Scott and 2 hours 30 minutes for Ms Halewood.
7. The bulk of the time claimed referred to perusing the claim notice and RTM documents and preparing the counter notice. The schedule divided that time between those three categories of work into 1 hour 24 minutes for Ms Scott and 1 hour 30 minutes for Ms Halewood. Routine attendances by email brought that time up to the amounts stated in paragraph 6 above. In addition, disbursements were claimed of £6.85 for postage and £6 for HMLR fees plus VAT. The bundle contained a copy of an invoice for £1,155.85 sent to the applicant c/o Eagerstates Limited dated 25 September 2023.
8. The Statement of Case provided further details of the work done, including taking instructions from the client/client's agent on receipt of the notice. It confirmed that the applicant accepts its liability for the sums claimed.
9. The bundle also enclosed a copy of an invoice for £600 sent by Eagerstates Ltd to the applicant c/o the property dated 13 February 2024. That invoice recorded "agreed costs as per management agreement" and detailed 1 hour taken to notify the freeholder and solicitor that the RTM had been served, 2.5 hours providing information on the property, 2 hours to instruct the accounts and management team "to review the file and implication of RTM" and 30 minutes to consult and meet the freeholder to advise of ramifications of RTM: a total of 6 hours at an indicative rate of some £84. No documents were provided evidencing any of this work or the agreement with the applicant.
10. The Statement of Case set out the basis for this part of the claim, submitting 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. Reference was also made to the RICS Code which recommends that the agent has a menu of charges for such non-standard work.
11. The applicant also sought reimbursement of their application fee of £100 under rule 13(2) of the Tribunal Procedure Rules 2013.

The respondent's case

12. As stated above, the respondent did not reply to the application, or the letters sent by Scott Cohen beforehand.

The tribunal's decision

13. 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. 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.
14. While I accept that the use of an assistant may reduce costs, I am not convinced that it is reasonable for the assistant to spend more time than their principal on the documents. There must be an element of duplication. I therefore reduce her time by 1 hour. The attendances were divided between the fee earners and appear reasonable, as are the disbursements. This reduces Scott Cohen's costs to £975.85 (including VAT).
15. 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, other than the invoice, no evidence was provided of any work done other than the confirmation by the solicitors that the agent received the notice and sent it to them. I am also troubled by the date of the invoice, which indicates that it was produced after this application was sent to the tribunal. No copy was provided of the management agreement said to contain the agreed 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.
16. That makes the total costs payable by the respondent £975.85, 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: 4 December 2024

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).