



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

Case Reference : CHI/00ML/LCP/2024/0003/ST

Property : Wick Hall, Furze Hill, Hove, East
Sussex, BN1 1NH

Applicant : Baron Estate Management Limited

Representative : Ms C Whiteman, Dean Wilson LLP

Respondent : Wick Hall (Hove) RTM Company Limited

Representative : Mr Joiner, RTMF Services Limited

Type of Application : Landlord's costs Right to Manage

Tribunal Member(s) : Regional Judge Whitney
Ms C Barton MRICS
Ms T Wong

Date of Hearing : 17 January 2025

Date of Decision : 1st April 2025

DECISION

Background

1. The Applicant seeks a determination pursuant to section 88(4) of the Commonhold and Leasehold Reform Act 2002 as to the amount of reasonable costs payable by the Respondent to the Applicant in consequence of a claim notice served by the Respondent to acquire the right to manage the Property.
1. The Respondent's application that it had acquired the right to manage on the relevant date was unsuccessful. The Applicant seeks a determination as to the amount of costs payable by the Respondent in respect of both the proceedings before the First-tier Tribunal and the Upper Tribunal.
2. Previous directions made by the Tribunal provided for this matter to be determined on the papers without a hearing.
3. By a case management application dated 7 November 2024 the Respondent sought an order that the application should be determined at an oral hearing.
4. Directions were given on 27th November 2024 listing the matter for a hearing. These appear to have been substantially complied with and the Tribunal had an electronic bundle of 234 pdf pages and references in [] are to pdf page numbers within that bundle.

The Law

5. The relevant law is set out in the Commonhold and Leasehold Reform Act 2002 ("the Act") and in particular:

Section 88 Commonhold and Leasehold Reform Act 2002

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 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 .

Hearing

6. The hearing took place at Havant Justice Centre. Ms Whiteman, solicitor, appeared for the Applicant and Mr Joiner of RTMF Services Limited appeared as the representative for the Respondent.
7. The Tribunal confirmed it had the bundle together with a statement of costs provided by the Applicant's solicitor and copies of the Upper Tribunal and First Tier Tribunal decisions in relation to the Right to Manage applications. We were provided with copies of two further authorities: CAM/22UB/LCP/2015/0001 Park Lodge, Billericay and Assethold Ltd v. 159-167 Prince of Wales Road RTM Company Ltd [2023] UKUT 220(LC).
8. Below is a precis only of what took place at the hearing.
9. Ms Whiteman relied on the statement [110] in support of the fact that this Tribunal had jurisdiction to determine all costs including those incurred before the Upper Tribunal. The costs application is a freestanding application and entitles the Applicant to recover its costs in "any proceedings" where it has successfully challenged an application for the right to manage. She suggested the Respondent in its statement of case re jurisdiction [148] applies the incorrect test.
10. Further Ms Whiteman suggested under section 88(3) of the Commonhold and Leasehold Reform Act 2002 her client is entitled to any costs they may have incurred including the costs of these proceedings.
11. Ms Whiteman referred to her client's reply [215]. She suggested the test to be applied is one of reasonableness. She relied upon extracts from Tanfield on Service Charges [220]. She suggested her client is entitled to costs they have incurred in any proceedings if the Tribunal

has rejected the right to manage application as was the case in this instance.

12. As to the quantum Ms Whitman reminded the Tribunal that there were 168 flats at the Property and some 112 participants to the claim. As such, consideration of the claim took substantial time.
13. Mrs Whitman explained the only specific challenge to any item on the schedule was to an item on 20 March 2022. This was a charge for £435 and the challenge is that there is insufficient detail.
14. Ms Whitman suggested on behalf of her client that evidence was provided that costs had been incurred and paid. Some costs had been reduced. The matter had been fought hard by the Respondents including appeals to the Upper Tribunal.
15. Mr Joiner explained his client was not being adversarial as to the issue regarding the recoverability of costs at the Upper Tribunal. He suggested this matter was raised by a Judge in directions and he could add little further. He reminded the Tribunal he was not a solicitor.
16. Mr Joiner relied on the Tribunals, Courts and Enforcement Act 2007 which he says applied to these proceedings and referred to Avon Ground Rents Limited and Sarah Louise Child [2018] UKUT 204 (LC). In his view he stated it is the Upper Tribunal that have authority to determine the costs in their proceedings and not this Tribunal.
17. He stated that the in principle entitlement to certain costs is not questioned, it is a matter of quantum. He suggested it is appropriate to consider the Guideline Rates and assess reasonableness in relation to those. At the relevant time for Grade A fee earners such rates were £261 per hour and £126 per hour for Grade D.
18. Mr Joiner suggested that it was failure by the Respondent to provide information which led to the hearing. He suggested the Applicant were unco-operative. Once the information was provided, he stated that he was keen to see the issue determined. Mr Joiner wished to rely upon a letter not within the bundle or raised at the start of the hearing. The Tribunal declined to allow the same to be raised at this late stage.
19. Mr Joiner suggested the costs at the Upper Tribunal of counsel were excessive. He suggests the Upper Tribunal dealt with the points shortly accepting they were bound by authority. He was not satisfied such a senior junior counsel was required.
20. Mr Joiner suggested the Respondent and its members do not have deep pockets. As for the attendance today at the Tribunal he suggested that this is unreasonable. He referred to the Civil

Procedure Rules and suggested they should apply to all civil proceedings.

21. Ms Whiteman responded briefly. She suggested there is no factual basis that costs are disproportionate. She suggested that the Respondent appeared to suggest the costs should be assessed on a standard costs basis rather than an indemnity basis which she contends for. She submits the Applicant should not be out of pocket.

Decision

22. The Tribunal thanks the parties for their submissions.
23. Firstly, we have considered whether or not we have jurisdiction to determine what if any costs are recoverable by the Applicant from the Respondent in relation to the appeal to the Upper Tribunal.
24. The Respondent relies upon section 29 of the Tribunals, Courts and Enforcement Act 2007. We are satisfied that this is not relevant to the matters we need to determine. This section relates to the costs Rules contained within the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. However this application relates to a determination under the Act of the costs payable as provided by the Act.
25. We have considered carefully the wording of Section 88(3) of the Act. The section specifically refers to “any costs”. We are satisfied that the meaning of this section is clear that the Applicant, having successfully challenged the RTM claim, is entitled to all the costs they have incurred including those incurred at the Upper Tribunal. We are supported by the two authorities referred to by the Applicant Albion Residential Limited (1) and Others -v- The Albion Riverside Residents RTM Company Limited [2014] UKUT 0006 (LC) and Triplerose Limited -v- Mill House RTM Company Limited [2016] UKUT 0080 (LC).
26. Mr Joiner relied on the Tribunals, Courts and Enforcement Act 2007 and Avon Ground Rents Limited and Sarah Louise Child [2018] UKUT 204 (LC). We are satisfied that neither of these are relevant to the issues we have to determine. This is a jurisdiction given to us by the Act and it is that Act we must apply.
27. It is next a question of consideration what costs are payable. We note the Respondent refers to the civil procedure rules. We are satisfied these are not binding upon this Tribunal. It is for us however to assess the costs and to be satisfied that costs have been properly incurred and to that extent are costs which have been reasonably incurred. We are satisfied that in so doing the assessment is more akin to an indemnity assessment in the civil courts.

28. The Respondent refers us to the Guideline hourly rates and suggests all costs should not exceed these sums. However we prefer the arguments of the Applicant. Work of this type is complex and we are satisfied that rates charged may exceed such Guideline rates. We observe that the rates charged are not substantially in excess of the Guideline rates and we are satisfied that these are reasonable.
29. Further we are told that in the main the costs have been paid by the Applicant. We are satisfied by this evidence which is demonstration that the Applicant knew it would be liable and responsible for such costs notwithstanding any claims to recover the same.
30. It is plain this has been hard fought litigation. We have considered both the original First Tier Tribunal decision and that of the Upper Tribunal. We are not satisfied that we should reduce the amounts payable due to any conduct of the Applicant. Whilst we accept that practically downloading official copy entries of the titles for all flats by the Respondent on the day of the claim may seem onerous that is the requirement. We are not satisfied that any criticisms for delays in providing information should result in any reduction in the costs. The Respondent could have conceded the challenge, and costs would have been avoided. As Mr Joiner stated by the time of the he appeal, was keen to know the outcome and so proceeded with the appeal.
31. Further for the sake of completeness we are not satisfied that any part of the Applicant's conduct is such that a reduction in the costs should be made. We reject the Respondent's submissions on this ground.
32. Mr Joiner challenged one item specifically within the schedule stating there was insufficient detail. We are satisfied the detail given: "Review of Tribunal Decision and considering next steps and response" is sufficient.
33. Mr Joiner also made criticism of the use of counsel in the Upper Tribunal. We do not accept this. We have considered carefully the use of counsel in responding to the appeal. We accept that the outcome was of significance to the Applicant and as we have previously stated matters relating to Right to Manage are complex. The use of counsel and the costs incurred were in our judgment reasonable.
34. Ms Whiteman also highlights that in rendering invoices the costs as billed to the Applicant and which they seek to recover have been reduced and amounts rounded down. She suggests this reflects any amounts of reduction which should be allowed. We take account of this in making our assessment.
35. We have then stood back and considered the costs. Whilst it is not for us to consider how and by whom they will be paid we note the Property consists of 168 flats of which 112 were said to be members

of the company. Plainly any exercises of consideration of the notice and subsequent works were going to incur substantial amounts of time and therefore cost. Limited specific challenges to items within the costs themselves have been made save for the general challenges we have dealt with above. In considering the schedule of costs we are satisfied that the costs claimed are identified and we find that the items claimed are costs reasonably incurred. In so finding we have taken account of the challenges made by the Respondent.

36. We note that at [199] confirmation has been provided that the Applicant cannot recover any VAT payable on the costs. We are satisfied that any assessment should include recovery of VAT.
37. Further the Applicant seeks the costs of these proceedings themselves. We are satisfied in principle that such costs are recoverable. We have considered carefully the schedule of such costs. Mr Joiner did not seek to challenge specific items save for his general challenges including as to hourly rates. We are satisfied the hourly rate applied is reasonable and that the costs have been incurred. We are satisfied that these costs are recoverable.
38. Turning to the total sums claimed these amounts to £55,047.10 inclusive of VAT. We are satisfied that this is the amount which the Respondent should pay to the Applicant pursuant to the terms of the Act.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application 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.

