



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

Case reference	:	LON/00AJ/LCP/2024/0007
Property	:	25-30 Hill Court, Hanger Lane, Ealing, London W5 3DE
Applicant	:	Avon Freeholds Limited (Company No: 07399653)
Representative	:	Scott Cohen Solicitors Ltd
Respondent	:	Hill Court C RTM Company Ltd
Representative	:	RTMP Services Ltd
Type of application	:	Application to decide the costs to be paid by an RTM company under s.88(4) of the Commonhold and Leasehold Reform Act 2002
Tribunal member	:	Mrs S Phillips MRICS
Venue	:	10 Alfred Place, London WC1E 7LR
Date of Decision	:	18 November 2024

DECISION

THE TRIBUNAL'S SUMMARY DECISION

1. The Tribunal finds the reasonable costs payable by the Respondent to the Applicant in respect of its claim pursuant to section 88(4) Commonhold and Leasehold Reform Act 2002 are £1,361.85 (inclusive of disbursements and VAT). This sum is to be paid within 28 days of the date of this Decision.

The Application

2. This is an application under section 88(4) of the Commonhold and Leasehold Reform Act 2002 (“the Act”), to decide the costs payable by a Right to Manage (“RTM”) company.
3. In support of the application, the Applicant provided the Tribunal with a bundle of 139 pages. In addition to this the Tribunal considered separate email correspondence from both parties regarding VAT, a point raised by the Respondent. The Tribunal has had consideration to all this information in its Decision. An oral hearing was not requested by either party.

Background

4. The Applicants are the freeholders of premises at 25-30 Hill Court, Hanger Lane, London W5 3DE. Their solicitors are Scott Cohen Solicitors Ltd, and their managing agents are Y&Y Management Limited. The Respondents, Hill Court C RTM Company Limited, are an RTM company. They were incorporated on 19 October 2021 (page 12 of the bundle). They claimed the Right to Manage via a claim notice dated 21 January 2022 (pages 57-60 of the bundle).
5. On 3 June 2024, the Applicants made an application under section 88(4) of the Act, seeking reimbursement of costs incurred as a consequence of the giving of the RTM claim notice dated 21 January 2022.
6. A statement of costs provided by the Applicants at page 50 of the bundle, summarises the costs incurred as:
 - Solicitor Fees of £660.00 excl. VAT
 - Management Fees of £375.00 excl. VAT
 - Disbursements of £9.85
 - **Total Claim of £1,044.85 incl. of disbursements excl. VAT (£1,251.85 incl. of disbursements and VAT)**

The Law

7. Section 88 of the Act states the following:

88 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.

(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].

The Applicant's and Respondent's submissions

8. The Applicant is seeking reimbursement of costs incurred as a consequence of the giving of an RTM claim notice dated 21 January 2022. The costs relate to legal services and non-standard management activities. The Applicant also makes the point that they have in addition incurred the cost of the Tribunal's application fee of £110, which was necessary as the Respondent had not set out their position in relation to the costs at any stage.
9. The Respondent's representative emailed the Tribunal on 12 September 2024 confirming that they were not instructed by their client to oppose the reasonableness of the Applicant's section 88 application in relation to time-costs and disbursements. However, they did wish to question whether the sum payable should be net of VAT. They made reference to the HMRC Guidance Note on such matters together with CPR PD 44.2.4/2.5.
10. The Tribunal issued directions by letter dated 15 October 2024, requiring the Applicant to make any submissions on the point of VAT. The Respondent was then given the opportunity to respond if they wished.
11. On 30 October 2024 the Applicants representative contacted the Tribunal to advise that their client is not VAT registered.

VAT Point

12. Civil Procedure Rule PD 44 para 2.3 states the following:

“VAT should not be included on a claim for costs if the receiving party is able to recover the VAT as input tax. Where the receiving party is able to obtain credit from HMRC for a proportion of the VAT as input tax, only that proportion which is not eligible for credit should be included in the claim for costs.”
13. As the Applicant has confirmed they are not VAT registered, they would be unable to obtain credit from HMRC for the VAT paid. As such the Tribunal will not be making any adjustment to the sum payable and the amount payable will include VAT.
14. The Civil Procedure Rules do not govern procedure before this Tribunal. However, the position regarding VAT on a claim for costs set out in PD 44 para 2.3 applies equally to this Tribunal as it does to the Courts.
15. The Respondent has queried whether, as described in PD 44 para 2.5, a certificate signed by the Respondent’s legal representatives or auditors should be provided in the form illustrated in Precedent F in the Schedule of Costs Precedents annexed to PD 47. As there is no equivalent obligation in the Tribunal’s Rules (the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013) it is not relevant to this application. The Tribunal see no reason to doubt the Respondent’s VAT position as set out in the Respondent’s solicitor’s email of 30 October 2024 is correct.

Application Fee

16. At paragraph 3 of the Applicant’s Statement of Case at page 99 of the bundle, the Applicants also request that an order be made for reimbursement of this amount.

Determination

17. The costs claimed by the Applicant appear entirely reasonable and have been accepted by the Respondent. The Tribunal accepts that RTM work is a niche area for solicitors. It is justified to have a Grade A fee earner who specialises in leasehold management. The Tribunal acknowledges the Applicant solicitors attempts to minimise costs by a lower grade fee earner undertaking work where possible.
18. In addition, the management fees are justified, and the description of work undertaken clear. Their fees for the work involved are not excessive.

19. Overall, the costs claimed are reasonable and should be paid, including VAT for the reasons set out above, by the Respondents.
20. Lastly, due to the lack of engagement from the Respondents in relation to the costs that have been sent through the Applicants court fee of £110 for the submission of this application is also payable by the Applicant.
21. The total sum payable by the Respondent to the Applicant is £1,361.85 (inclusive of disbursements and VAT).

Mrs S Phillips MRICS 18 November 2024

ANNEX – RIGHTS OF APPEAL Appealing against the Tribunal's decisions

1. A written application for permission must be made to the First-tier Tribunal at the Regional tribunal office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.
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 state the grounds of appeal and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers.
5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.