First-tier Tribunal
Property chamber
(Residential Property)

Case reference	:	**CAM/26UC/LCP/2016/0005**
Properties	:	**2-136 Hughenden Road and 276-314 The Ridgeway, Marshalswick, St. Albans AL4 9QS**
Applicant	:	**Remise Investments Ltd.**
Respondent	:	**Marshalswick Farm Estate (RTM Company) Ltd.**
Date of Application	:	**12th October 2016**
Type of Application	:	**To determine the costs payable on service of RTM claim notice (Section 88 of the Commonhold and Leasehold Reform Act 2002 ("the Act")**
Tribunal	:	**Bruce Edgington (solicitor, chair)** **David Brown FRICS**

DECISION

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1. The Tribunal determines that the costs claimed by the Applicant were not incurred "*in consequence of a claim notice*" and the application is therefore dismissed.

Reasons

Introduction

2. The Respondent served a Claim Notice claiming the right to manage the several properties in this estate on the 2nd July 2013 expiring on the 2nd November 2013. On the 5th November 2010, this Tribunal had determined in **Triplerose Ltd. v 90 Broomfield Road RTM Co. Ltd.** CAM/22UF/LRM/2010/0005, that one right to manage company could not manage more than one self contained building or part of a building. That decision was overturned by the Upper Tribunal but when the matter came before the Court of Appeal in 2015 ([2015] EWCA Civ 282) the original decision of this Tribunal was re-instated.

3. As a result of that Court of Appeal decision, the Respondent withdrew its original notice and changed its Articles of Association so that it became a right to manage company for one block only. Eight other right to manage

companies were formed and nine Claim Notices were served. Whether that was the correct decision to make is a matter of conjecture. Certainly the general rule is that appeal decisions have a retrospective effect but it was certainly suggested by Lord Nicholls of Birkenhead in paragraph 40 of his leading opinion to the House of Lords in the case of **In re Spectrum Plus Ltd. (in Liquidation)** [2005] UKHL 41 that "*There could be cases where a decision on an issue of law, whether common law or statute law, was unavoidable but the decision would have such gravely unfair and disruptive consequences for past transactions or happenings that this House would be compelled to depart from the normal principles relating to the retrospective effect of court decisions*".

4. In the case of right to manage companies, there are many over the country who manage more than one self contained building. That was generally accepted as being in order because those companies usually took over several properties that were already being managed together as one entity. That appeared to be the position in this case. If, as the Respondent appears to have assumed, each of those companies ceased to be a right to manage company when the Court of Appeal determined **Triplerose v 90 Broomfield Road**, then logically, every service charge demand emanating from such companies would be unlawful and unenforceable. That would cause chaos and would fit well within the category of case anticipated by Lord Nicholls.

5. Be that as it may, the Applicant is claiming costs of £7,360.00 which were incurred between September 2015 and May 2016 because, it says, such costs were incurred "*in consequence of*" the original Claim Notice served over 2 years before any such costs had been incurred. The Respondent says that any such costs were not incurred in consequence of the original Claim Notice.

6. A directions order was issued on the 19th October 2016. The Tribunal said that it was content for the matter to be dealt with on a consideration of the papers to include the parties' submissions and it would do so on or after 8th December 2016 although this period was extended for reasons which will become clear. The parties were told that if they wanted an oral hearing, they could apply for one and it would be arranged. No such request was received.

7. The bundle of documents arrived for the Tribunal in accordance with the directions order. The Tribunal could not follow the argument put forward in reply to the general objection made by the Respondent that the costs in question were not incurred in consequence of the Claim Notice. It therefore caused a letter to be written to the Applicant's solicitors asking for further clarification. A reply was received dated 20th December 2016 and this has been carefully considered by the Tribunal.

The Law

8. Section 88(1) of the Act says that "*a RTM company is liable for reasonable costs incurred by a person who is....a landlord under a lease*

of the whole or part of any premises....in consequence of a claim notice given by the company in relation to the premises"

Discussion

9. The Respondent objects to paying any costs because it says that the costs were not incurred in consequence of a Claim Notice but were incurred in consequence of the **Triplerose v 90 Broomfield Road** decision. Other points of dispute are raised but the Tribunal will consider this first point because if that is decided in favour of the Respondent, the other points become irrelevant.

10. The Applicant, in responding to the objection says "*the costs stem from the service of the notice in July 2013 – they simply would have not been* (sic) *incurred had the respondent not served the notice. Why they were incurred is therefore irrelevant, save for the purposes of s88(2) CLRA 2002*".

11. In the letter of the 20th December, that argument is expanded. It is said that "*whilst it is accepted that the costs claimed.....were incurred as a consequence of Ninety Broomfield Road, it is also averred that these costs were only incurred as a result of the claim notice served by the respondent*". It is then said, in effect, that any costs incurred by a landlord after a Claim Notice – whenever they may have been incurred – are payable by the RTM company so long as the RTM company continues to be such.

12. It may be relevant to say that if in fact the Applicant was not opposed to a right to manage company managing the various buildings in this estate, then there is a mechanism in the Act under section 105 which would have enabled the parties to resolve the issue by agreement in very short time. That section says that the freeholder can agree to the company ceasing to have the right to manage which would then enable a new company to take over such management. This would avoid the bar in section 73(4). What actually happened was that the Applicant freeholder decided to challenge the right to manage on a number of grounds.

Conclusion

13. The Tribunal determines that the ordinary meaning of the words in section 88(1) of the Act are clear when they say that a Tribunal has to consider what caused costs to be incurred i.e. 'in consequence of' what? It concludes that the cause of the costs being incurred was the **Triplerose v Broomfield Road** case and not the original Claim Notice. Any costs incurred in consequence of the Claim Notice ceased at or about the time when the Respondent took over management. The Claim Notice then became a matter of historical interest only because it had achieved its objective.

14. The section does not say that any costs incurred after the service of a right to manage claim are payable. It specifically says that the costs payable are those which arise 'in consequence of' the Claim Notice itself. Even

the Applicant accepts that the work was undertaken in consequence of **Triplerose v Broomfield Road**.

15. The Tribunal further determines that if the Respondent had ceased to be a valid right to manage company, then there would be no liability anyway from the date of the **Triplerose v Broomfield Road** decision until it then became a right to manage company again, because section 88 makes it clear that only a right to manage company is liable for such costs. Both parties seem to accept that the Respondent was never a right to manage company 'in relation to the premises' throughout the period for which costs are claimed which would absolve it from liability.

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Bruce Edgington
Regional Judge
16th January 2017

ANNEX - RIGHTS OF APPEAL

i. 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.

ii. 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.

iii. 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.

iv. 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.