

475



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

Case reference : LON/00AD/LCP/2014/0011

Property : THE GRANGE, 293-295 MAIN ROAD, SIDCUP, KENT DA14 6QL

Applicant : ASSETHOLD LTD

Representative : CONWAY & CO SOLICITORS

Respondent : THE GRANGE (SIDCUP) RTM CO LTD

Representative : WOOLSEY, MORRIS & KENNEDY

Type of application : Application to determine the costs to be paid by a RTM company under s88(4) Commonhold and Leasehold Reform Act 2002

Tribunal member(s) : Tribunal Judge Lesley Smith

Date and venue of hearing : 24 November 2014 at 10 Alfred Place, London WC1E 7LR (without a hearing)

Date of decision : 24 November 2014

DECISION

Decisions of the tribunal

The tribunal determines that the Respondent is to pay the Applicant's costs under s88(4) of the Commonhold Leasehold Reform Act 2002 ("CLARA") in the sum of £975.18 in relation to solicitor's costs and £354 in relation to managing agent's costs.

The application

1. The Applicant seeks a determination pursuant to section 88(4) CLARA for its costs of dealing with a claim by the Respondent for the right to manage a property at The Grange, 293-295 Main Road, Sidcup, Kent DA14 6QL ("the Property"). Costs are claimed in the sum of £1128.18 (including VAT) plus disbursements of £6.40 (plus VAT) for solicitor's costs and in the sum of £400 plus VAT for management fees.

Background to the application

2. By notice dated 19 May 2014, the Respondent gave notice to the Applicant to acquire the right to manage the Property ("the Notice"). The Applicant's solicitor sought further documents in order to consider the Notice. Those documents were provided by the Respondent's surveyor under cover of a letter dated 27 May 2014. By letter dated 23 June 2014, the Applicant's solicitor served counter notice disputing the validity of the Notice.
3. The landlord as stated in the Notice is Assethold Ltd. It appears from a Form TR1 transfer document dated 22 January 2010 that the registered proprietor of the Property, Grangewalk Developments Ltd, transferred its freehold interest in the Property to Assethold Ltd. The tenants of the Property were informed of the transfer of ownership on 22 January 2010 and have since that date been paying rents to Assethold Ltd. However, the office copy entries in relation to the Property continue to show Grangewalk Developments Ltd as the freehold owner. The Respondent submits that accordingly, the Applicant is not a person named within s88 CLARA and is not entitled to recover costs. It is also submitted by the Respondent that the Applicant is not entitled to recover the costs of management fees in addition to the costs of the solicitor and that the costs are excessive in amount.
4. In response, the Applicant has produced the documents showing the transfer of the freehold interest and submits that there have been difficulties in relation to registration (without providing particulars of what those difficulties are) but that it is in fact the freehold owner and landlord of the Property. The Applicant also submits that the Respondent is estopped from denying the Applicant's entitlement to costs by reason of the service of the Notice on it and continued dealings

in relation to the right to manage and by payment of rents etc to the Applicant.

5. A directions order was initially made on 15 August 2014 for a paper determination. Due to non compliance with directions on both sides, a further directions order was made on 14 October 2014 providing for the matter to be dealt with at an oral hearing on 3 December 2014. That was subsequently varied by a further directions order on 23 October 2014 leading to an oral hearing on 26 November 2014. The parties subsequently agreed in correspondence that there was no need for an oral hearing and that the matter should proceed on the papers. The Respondent applied to the Tribunal on 14 November to strike out the application due to the Applicant's failure to submit bundles to the Tribunal. The Applicant's solicitor explained in her letter of 19 November 2014 that she had been following the wrong directions order which explained the default and she apologised for this error. The Tribunal accepts that explanation and declines to strike out the application.

Liability for solicitor's costs

6. In relation to its argument based on estoppel, the Applicant relies on the case of **Plintal SA and Palvetto Properties Inc v 36-48A Edgewood Drive RTM Company Ltd and 50-62A Edgewood Drive RTM Company Ltd (LRX/16/2007)**. In that case, the RTM Companies had failed to validly serve the notices of claim. However, the Lands Tribunal decided that the RTM companies were estopped from denying the right to costs under s88, having maintained that the notices were valid and properly served. The ratio of this decision is to be found at paragraph 19 as follows:-

"...By maintaining their application to the LVT the RTM companies were asserting that the claim notices were valid and were validly served. They were asking the LVT to determine that they had the right to manage the premises. That was their primary contention as expressed in their reply. It was only if the LVT found itself unable to determine in their favour the right to manage that they sought to accept and rely on the appellants' contention that the claim notices had not been validly served. In these circumstances the appellants could not have sat back in reliance on the RTM companies' acceptance that the notices had not been validly served because that acceptance was only contingent on the failure of the RTM companies' primary case.."

7. In the view of the Tribunal, this ratio applies with even more force where, as here, the dispute is not a legal one concerning validity of notices which might not be capable of determination until the Tribunal proceedings but one of fact as to who is the landlord of the Property. The Respondent made a very clear choice in deciding to serve the

Notice on Assethold Ltd. The Respondent now seeks to rely on the office copy entries as proof that Assethold Ltd is not in fact the landlord and relies on the wording of section 88 to argue that as such it is not entitled to seek its costs. However, the Respondent either did not seek office copy entries before serving the Notice and now seeks to rely on its error (if error it is) to deny the Applicant its costs or took the deliberate decision to serve the Notice on Assethold Ltd even though its freehold interest in the Property was not as yet registered.

8. Further, in any event, in the absence of any evidence to the contrary, the Tribunal accepts that Assethold is in fact the landlord based on the transfer document and notification from the solicitors as to the transfer of freehold interest in 2010. Although the Respondent asserts that as a straightforward transfer there is no reason why the transfer would not be registered some 4 years after that took place, it has offered no evidence that the transfer did not take place or that registration is not still underway. Unless it is asserted that the transfer document is not genuine or has not proceeded or that the Applicant is not entitled to the rents which it has been collecting over the past 4 years, it is not clear how the Respondent can now dispute that Assethold Ltd is in fact the landlord and therefore in fact entitled to claim costs pursuant to section 88.

Liability for management agent's costs

9. The Respondent submits that claiming the costs of the managing agent as well as costs of a solicitor for work associated with a claim to right to manage is not reasonable. The Applicant relies in this regard on the case of **Columbia House Properties (No 3) Ltd and Imperial Hall RTM Company Ltd (LRX/138/2012)**. As a matter of principle, the Tribunal does not consider it unreasonable for a landlord to claim his costs of a managing agent to carry out work in relation to a right to manage claim. Here, the general nature of the work carried out by the managing agent is set out in the Applicant's case and an invoice is supplied dated 31 July 2014, for carrying out this work (including a breakdown of the time taken). Accordingly, the Tribunal accepts that work was done by the managing agent and that it is not unreasonable for the managing agent to charge for that work, subject to the amount being reasonable.

Quantum of costs

10. The solicitor's costs are claimed on the basis of time spent of 4 hours and 9 minutes at £225 per hour and disbursements of £6.40 plus VAT. The Respondent submits that 4 hours and 9 minutes of personal attendance is excessive and that the time spent should not exceed 2 hours and should be paid at a rate of £180 plus VAT. No reasons are given for how the 2 hours time period is reached or the basis for a charge of £180 per hour.

11. The Tribunal has carefully examined the figures claimed in relation to legal costs and determines as follows:-

Initial attendance on client – 25 mins claimed: **Agreed**

Assessment of claim notice – 30 mins claimed: **Agreed**

Engaged on documents (as set out) – 100 mins claimed: **reduced to 1.5 hours (90 minutes)**

Preparation of counter notice – 40 mins claimed: **reduced to 30 mins as grounds should have been evident from analysis claimed in documents perusal above**

Routine attendances – 8 claimed at 6 mins each: **there is only evidence of 1 outgoing to Respondent and incoming should be included in perusal of documents; no evidence of attendances on client but accept 4 reasonable. Therefore reduced to 5 attendances at 6 mins each = 30 mins**

Checking Royal Mail website – 6 mins claimed: **not necessary. Disallowed**

Disbursements £6.40: **Agreed**

12. In relation to the rate charged, whilst this is on the high side of what is reasonable, this is the rate charged to the Applicant by the firm concerned for a person of this solicitor's experience. Accordingly, the Tribunal does not reduce the rate claimed. The total amount for solicitor's costs is therefore 3 hours and 25 minutes (215 minutes) at £225 per hour totalling £806.25 plus VAT of £161.25 plus disbursements of £6.40 plus VAT totalling £7.68. **The overall total for solicitor's costs is determined to be £975.18.**

13. In relation to managing agent's costs, there does appear to be some duplication of effort. It appears that the managing agent has charged at a rate of £100 per hour. In relation to the breakdown given in the invoice, the Tribunal determines as follows:-

E mails notifying freeholder and solicitor of Notice: 30 mins claimed – **reduced to 6 mins per e mail = 12 mins**

Providing solicitor with information on property: 1.5 hours claimed – **reduced to 1 hour as appears some overlap with solicitor's examination of documents**

Instructing accounts and management team to review file and implication of RTM: 1.5 hours claimed – **Agreed**

Consult and meet freeholder to advise of ramifications of RTM: 30 mins claimed – **reduced to 15 mins as appears to overlap with solicitor's role**

14. The Tribunal considers the rate of £100 per hour plus VAT to be reasonable. Accordingly, the managing agent's costs are reduced to 2 hours and 57 minutes at £100 per hour together totalling £295 plus VAT of £59. **The total for managing agent's costs is therefore determined to be £354.**

Name: Ms L Smith

Date: 24 November 2014