



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

Case Reference : **CHI/21UD/LCP/2015/0001**

Property : **Greenhayes, 46 Springfield Road, St Leonards, East Sussex TN38 0TZ**

Applicant : **Anthony Shields (Blockport) Limited**

Representative : **Mr G Okines, Arko Property Management**

Respondents : **(1) Greenhayes Residents Association Company Limited
(2) Greenhayes (St Leonards) Resident s Association RTM Company Limited**

Representative : **Mr Gordon Pain, director**

Type of Application : **Application for costs under Section 88(4) Commonhold and Leasehold Reform Act 2002 (“the Act”)**

Tribunal Member : **Judge E Morrison**

Date and venue of Hearing : **1 April 2015 at Bexhill Town Hall**

Date of decision : **1 April 2015**

DECISION

The Application

1. This is an application made by the landlord of Greenhayes for a determination of the costs payable by the Respondent companies pursuant to section 88(4) of the Act.

Decision

2. The costs payable by the First Respondent are Nil.
3. The costs payable by the Second Respondent are £540.00.

The Law and Jurisdiction

4. The relevant provisions of the Act are as follows:

Section 73 RTM companies

(1) This section specifies what is a RTM company.

(2) A company is a RTM company in relation to premises if—

(a) it is a private company limited by guarantee, and

(b) its articles of association state that its object, or one of its objects, is the acquisition and exercise of the right to manage the premises.

Section 74 RTM companies: membership and regulations

(1) The persons who are entitled to be members of a company which is a RTM company in relation to premises are—

(a) qualifying tenants of flats contained in the premises, and

(b) from the date on which it acquires the right to manage (referred to in this Chapter as the “acquisition date”), landlords under leases of the whole or any part of the premises.

(2) The appropriate national authority shall make regulations about the content and form of the articles of association of RTM companies.

[these regulations are found in SI 2009/2767]

Section 84 Counter-notices

(1) A person who is given a claim notice by a RTM company under section 79(6) may give a notice (referred to in this Chapter as a “counter-notice”) to the company no later than the date specified in the claim notice under section 80(6).

(2) A counter-notice is a notice containing a statement either—

(a) admitting that the RTM company was on the relevant date entitled to acquire the right to manage the premises specified in the claim notice, or

(b) alleging that, by reason of a specified provision of this Chapter, the RTM company was on that date not so entitled,

and containing such other particulars (if any) as may be required to be contained in counter-notices, and complying with such requirements (if any) about the form of counter-notices, as may be prescribed by regulations made by the appropriate national authority.

(3) Where the RTM company has been given one or more counter-notices containing a statement such as is mentioned in subsection (2)(b), the company may apply to the appropriate tribunal for a determination that it was on the relevant date entitled to acquire the right to manage the premises.

(4) An application under subsection (3) must be made not later than the end of the period of two months beginning with the day on which the counter-notice (or, where more than one, the last of the counter-notices) was given.

...

Section 86 Withdrawal of claim notice

(1) A RTM company which has given a claim notice in relation to any premises may, at any time before it acquires the right to manage the premises, withdraw the claim notice by giving a notice to that effect (referred to in this Chapter as a “notice of withdrawal”).

(2) A notice of withdrawal must be given to each person who is—

(a) landlord under a lease of the whole or any part of the premises,

(b) party to such a lease otherwise than as landlord or tenant,

(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, or

(d) the qualifying tenant of a flat contained in the premises

87 Deemed withdrawal

(1) If a RTM company has been given one or more counter-notices containing a statement such as is mentioned in subsection (2)(b) of section 84 but either—

(a) no application for a determination under subsection (3) of that section is made within the period specified in subsection (4) of that section, or

(b) such an application is so made but is subsequently withdrawn, the claim notice is deemed to be withdrawn.

- (2) *The withdrawal shall be taken to occur—*
(a) *if paragraph (a) of subsection (1) applies, at the end of the period specified in that paragraph, and*
(b) *if paragraph (b) of that subsection applies, on the date of the withdrawal of the application....*

Section 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,*

....

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.*

Section 89 Costs where claim ceases

(1) *This section applies where a claim notice given by a RTM company—*

(a) *is at any time withdrawn or deemed to be withdrawn by virtue of any provision of this Chapter, or*

(b) *at any time ceases to have effect by reason of any other provision of this Chapter.*

(2) *The liability of the RTM company under section 88 for costs incurred by any person is a liability for costs incurred by him down to that time.*

5. Costs will be payable only if reasonably incurred and reasonable in amount.
6. Pursuant to the indemnity principle, a paying party is obliged to indemnify a receiving party only for costs actually incurred.

Accordingly a party may not recover more than it is actually obliged to pay.

Procedural Background

7. Directions were given on 7 January 2015 requiring the Applicant to provide full details of its claim for costs and the Respondent to provide points of dispute. It was further directed that the application would be determined on the basis of written representations unless either party objected. The Respondents having objected, an oral hearing was arranged.

Representation and Evidence at the Hearing

8. Mr Okines, the Applicant's managing agent during the relevant period, prepared a written statement of case with supporting documentation, and represented the Applicant at the hearing.
9. Mr Pain, a director of both Respondent companies, submitted a written response and represented both Respondents at the hearing. He was accompanied by Mrs E Saunders, a member of the Second Respondent, who also made brief oral submissions.

Background

10. On 25 February 2014 the Applicant received a first Claim Notice dated 24 February 2014, claiming to acquire the right to manage Greenhayes. This notice was given by Greenhayes Residents Association Company Limited, the First Respondent. It is agreed by the parties that this company, incorporated on 20 February 2014, was not a RTM company within the meaning of section 73(2) of the Act because its articles of association did not state that one of its objects was the acquisition and exercise of the right to manage Greenhayes. Nor was there compliance with the regulations about the content and form of RTM company articles of association as set out in SI 2009/2767.
11. On 17 March 2014 the Applicant's then managing agents Arko Property Management ("Arko") sent a Counter-Notice in response to the first Notice but it was addressed to Greenhayes Residents Association RTM Company Limited, the Second Respondent. This company ("the RTM company") was incorporated on 26 February 2014 with Articles of Association that appear to comply with the requirements of SI 2009/2767.
12. On 26 February 2014 the Applicant received a second Claim Notice, this time from the RTM company. Mr Okines submitted that the Notice was incomplete as it comprised only one (front) page, and was

undated. Mr Pain disputed this, stating that the remaining pages had been copies from the first notice and had been included.

13. On 17 March 2014 Arko sent the RTM company a Counter-Notice in response to the second Notice.
14. On 21 March 2014 the Arko received by hand-delivery to their office a third Claim Notice from the RTM company. Mr Okines said this notice was missing the second page, but had two different copies of the third page, one dated 24 February 2014 and one dated 21 March 2014.
15. Later on 21 March 2014 Arko received by hand-delivery to their office a fourth Claim Notice dated 21 March 2014 from the RTM company. This contained all required pages.
16. On 25 March 2014 Arkosent the RTM company a Counter-Notice in response to the third Notice.
17. On 14 April 2014 Arko sent the RTM company a Counter-Notice in response to the fourth Notice.
18. Neither Respondent has made an application to the tribunal for a determination of its right to acquire the right to manage pursuant to section 84(3) and therefore each claim notice is deemed withdrawn at the end of a period of two months beginning with the date of the relevant counter-notice (section 87(1)).
19. The Applicant claims costs in consequence of the claim notices totalling £1500.83 + VAT, pursuant to section 88(1) of the Act.

The Submissions

20. Mr Okines produced a copy of a signed management contract between the Applicant and Arko dated 1 January 2014, pursuant to which (Appendix III) Arko was entitled to charge £100.00 per hour for providing any services to the Applicant in relation to the exercise by the lessees of the Right to Manage. The Applicant's costs had been incurred under this provision.
21. In response to a question from the Tribunal, Mr Okines accepted that costs charged for work done after deemed withdrawal of the claim notices could not be recovered (section 89(2)). This reduced the claim by £367.00.
22. Mr Okines submitted that the remainder of the costs were reasonable and reasonably incurred. An hourly rate of £100.00 was reasonable for his time. He is an experienced property manager and RTM matters are complex work. He had provided a detailed breakdown of time spent in relation to each claim notice. If the Applicant had instructed solicitors to undertake the work, their hourly rate would be more than twice as

much. All four claim notices had to be considered and counter-notices served. Mr Pain's verbal assurance that the fourth Claim Notice replaced the third one could not be relied on, as there was no formal withdrawal as required by section 86 prior to preparation of the Counter-Notice.

23. Mr Pain accepted that some work had to be carried out but said it was only necessary to respond to the fourth Claim Notice as the Applicant or Mr Okines were aware that the others were not being relied upon (due to their containing various errors). He had served the third notice after receiving the Counter-Notice to the second notice, in an attempt to put matters right. Ten minutes after serving the third notice, he realised he had forgotten to change a date on page 1 so had immediately rectified this in the fourth Claim Notice served the same day. Furthermore the counter-notices were almost identical. He disputed all the itemised costings as being too high and said that an overall figure of £200.00 would be reasonable.
24. Mr Pain also said that he had applied in January 2015 for the First Respondent to be struck off the Register, and assumed that had occurred.
25. Mrs Saunders said she was horrified to receive Arko's bill; she had not thought that there would be a large cost involved as a consequence of the claim notice(s).

Determination

26. In relation to the first Claim Notice, a total of £448.34 + VAT is sought. However this notice was not served by a RTM company as defined in the Act. Section 88 of the Act refers to "a RTM company" being liable for costs. There is no provision requiring other types of companies to be liable for costs of serving a Claim Notice, even if that Claim Notice was misconceived and/or invalid, and even though, as a matter of prudence, the Applicant considered it was appropriate to respond. Therefore no costs order can be made against the First Respondent (if it still exists). Nor can the Second Respondent – the actual RTM company – be made liable for costs of the first Claim Notice as that company did not serve the notice. Accordingly the Tribunal does not order either Respondent to pay any costs in relation to the first notice.
27. In relation to the remaining claim notices, the Tribunal concludes it was reasonable for the Applicant to instruct Arko to consider them and to prepare and serve counter notices to each. Neither the second nor third notices were formally withdrawn, and therefore counter-notices were required for each of them as well as for the fourth notice. It was reasonable for Mr Okines to check the Companies House documentation, to discuss matters with the Applicant and to keep the Applicant informed, and to raise various matters in writing with Mr Pain. He also had to consider the claim notices in light of the detailed statutory provisions and prepare counter-notices setting out precisely

the grounds relied on to dispute the RTM's entitlement to acquire the right to manage. The counter-notices are detailed. However the third and fourth counter-notices are identical in content; the second is slightly different.

28. Arko's hourly rate was not challenged by Mr Pain and the Tribunal finds it is reasonable. Arko seeks a total of £749.99 + VAT, just under 7.5 hours work. Having regard to the work required and how long it should have taken someone who held himself out as capable of dealing with this type of matter, and taking into account the degree of duplication between the three notices and counter-notices, the Tribunal concludes that a charge of £450.00 + VAT (£540.00) is reasonable, broken down into 3 hours for considering the claim notices and preparing counter-notices, and 1.5 hours for attendance and correspondence on the Applicant and Mr Pain. This sum is payable by the Second Respondent RTM company.
29. Section 89(3) of the Act states that every person who is or has been a member of the RTM company is also liable for those costs (jointly and severally with the RTM company and each other person who is so liable).

Dated: 1 April 2015

Judge E Morrison

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
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.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.