



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

- Case Reference** : CHI/45UC/LCP/2016/0004
- Property** : 1-2 Alexandra Terrace, Clarence Road,
Bognor Regis, PO21 1LA
- Applicant** : Sinclair Gardens Investments (Kensington)
Limited
- Representative** : Mr. P Chevalier, WH Matthews & Co,
Solicitors
- Respondent** : 1-2 Alexandra Terrace RTM Company
Limited
- Representative** : Urban Owners Limited
- Type of Application** : Sections 88 and 89 Commonhold and
Leasehold Reform Act 2002 –
determination of costs
- Tribunal Member** : Judge J G Orme
- Date and venue of hearing** : 5 December 2016
Determination without a hearing
- Date of Decision** : 13 December 2016

DECISION

For the reasons set out below, the Tribunal determines that the costs payable by the Respondent, 1-2 Alexandra Terrace RTM Company Limited, to the Applicant, Sinclair Gardens Investments (Kensington) Limited, as a consequence of the claim notice served by the Respondent on the Applicant on 9 March 2015 are £5,440.00.

Reasons

Background

1. Sinclair Gardens Investments (Kensington) Limited ("the Landlord") is the landlord of premises at 1-2 Alexandra Terrace, Clarence Road, Bognor Regis PO21 1LA ("the Property").
2. By a claim notice dated 9 March 2015, 1-2 Alexandra Terrace RTM Company Limited ("the Company") claimed the right to manage the Property. By a counter notice dated 30 March 2015, the Landlord alleged that the Company was not entitled to acquire the right to manage the Property.
3. By an application to the Tribunal dated 30 April 2015, the Company applied to the Tribunal to determine whether it was entitled to a right to manage the Property. Both parties filed statements of case. By a decision dated 20 August 2015, the Tribunal determined that the Company was entitled to acquire the right to manage the Property.
4. The Landlord was granted permission to appeal against that decision and by a notice of appeal dated 6 October 2015, the Landlord appealed to the Upper Tribunal. The appeal was listed to be heard on 5 May 2016. By a letter dated 2 March 2016, the Company's representative informed the Landlord that the Company withdrew the claim notice. By an order dated 30 March 2016, the Upper Tribunal ordered that the Company's application for a determination that it was entitled to acquire the right to manage the Property be dismissed in consequence of the withdrawal of the claim. The order further provided that any application for a determination of the costs payable to the Landlord in consequence of the withdrawal should be made to the First-tier Tribunal in the event that it could not be agreed.
5. By an application dated 10 August 2016, the Landlord applied to the Tribunal pursuant to sections 88 and 89 of the *Commonhold and Leasehold Reform Act 2002* for a determination of the amount of its costs incurred in consequence of the claim notice which had been served on it. The Landlord claimed costs in the total sum of £5,560 including VAT and disbursements.

6. On 31 August 2016, the Tribunal issued directions providing for both parties to exchange statements of case. It gave notice that it intended to determine the application without a hearing pursuant to *Rule 31 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013/1169*.
7. Neither party has requested an oral hearing.

The Law

8. *Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002* (“the Act”) provides a mechanism whereby leaseholders of property may acquire the right to manage that property. The landlord may oppose that application if it has grounds on which to do so.
9. Section 88 of the Act provides:
 - 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 the 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.*
10. Section 89 provides:
 - 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.*

- 3) Each 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).
- 4) But subsection (3) does not make a person liable if -
 - a) the lease by virtue of which he was a qualifying tenant has been assigned to another person, and
 - b) that other person has become a member of the RTM company.
- 5) The reference in subsection (4) to an assignment includes -
 - a) an assent by personal representatives, and
 - b) assignment by operation of law where the assignment is to a trustee in bankruptcy or to a mortgagee under section 89(2) of the Law of Property Act 1925 (c 20) (foreclosure of leasehold mortgage).

11. In a decision of the Upper Tribunal in *Fencott Limited v Lyttelton Court 1 14-34a RTM Company Limited and others [2014] UKUT 0027*, the Deputy President said that section 88(1) creates a liability in general terms making a RTM company liable for reasonable costs incurred in consequence of a claim notice (paragraph 84). That general liability is subject to qualification by sections 88(2) and (3). Section 88(3) creates an exception to the general rule preventing the recovery of costs incurred in proceedings before a tribunal unless the application is dismissed. The Deputy President confirmed at paragraph 85 that costs incurred before a tribunal are costs incurred in consequence of a claim notice. At paragraph 87, the Deputy President confirms that where a claim is allowed by a tribunal but subsequently dismissed on appeal, the landlord is entitled to his costs of both the application before the tribunal and of the appeal.

The Submissions

12. The landlord's submissions are set out in a statement made by Mr. P Chevalier, the Landlord's solicitor, dated 21 September 2016 together with 6 appendices.
13. In his statement, Mr. Chevalier sets out his qualifications, his charging rate at £250 per hour plus VAT, details of the work done by him in consequence of the claim notice and he confirms that the costs claimed do not exceed the amount which the Landlord is liable to pay to its solicitors.
14. Mr. Chevalier quantifies the Landlord's costs as:

Considering claim notice	38 units @ £25	£950.00
Application to FTT	73 units @ £25	£1,825.00
Appeal to UT	66 units @ £25	£1,650.00
VAT @ 20%		£885.00
Upper Tribunal fees		£250.00
Total		£5,560.00
15. At appendix F to Mr. Chevalier's statement is a copy of a letter written by the Landlord to its solicitors confirming that it accepts that it is liable

to pay the solicitors £5,560.00, that the hourly rate has been agreed, and that it is important to the Landlord that any claim for a right to manage is properly investigated and that it is important that an experienced solicitor carries out those investigations.

16. The Company's submissions are set out in a document entitled "*points of dispute*" in which it comments on each item of work claimed by the Landlord. The Tribunal notes that the points of dispute do not accurately reflect the amount of time claimed in Mr. Chevalier's statement in that in the points of dispute it is alleged that 38 units are claimed for considering the claim notice, 76 for the application to the FTT and 54 for the appeal. Where the amounts claimed conflict, the Tribunal takes the amount stated in Mr. Chevalier's statement as being the correct amount claimed.
17. In relation to the 38 units claimed for considering the claim notice, the Company accepts 24 units. As to the balance, it says that the work done was duplicated or excessive time was spent. In relation to the 73 units claimed for the application to the FTT, the Company accepts 41 units. As to the balance, it says that the time engaged was excessive. It disputes one item of 4 units for considering the claimants reply saying that that has already been claimed. That is accepted by the Landlord. In relation to the 66 units claimed for the appeal, the Company accepts 25 units. As to the balance, it says that the part of the work was excessive, 6 units cannot be claimed as the work was carried out after the date of the withdrawal of the claim notice and that 2 units for preparing a note of costs is not recoverable as the work was not done in consequence of the claim notice.

Conclusions

18. The Company does not dispute its liability to pay the Landlord's costs incurred in consequence of the service of the claim notice. It does not dispute its liability to pay the costs incurred by the Landlord in connection with the application to the First-tier Tribunal or to the Upper Tribunal. The Company does not dispute the hourly rate charged. It disputes the amount of costs claimed, saying that the work carried out was excessive and involved duplication and that the Landlord is not entitled to recover some of the costs.
19. The Company is only liable to pay reasonable costs. Section 88(2) of the Act defines what are reasonable costs. The costs are only reasonable "*to the extent that costs in respect of such services might reasonably be expected to have been incurred by [the Landlord] if the circumstances had been such that [it] was personally liable for all such costs*". The Tribunal must assess the costs on that basis. It is not assessing costs on a party and party basis.
20. The Tribunal accepts the submission made by Mr. Chevalier on behalf of the Landlord that the sole test to be applied by the Tribunal is whether the Landlord would reasonably pay the costs claimed if it was paying them itself.

21. The Landlord has agreed the hourly rate to be charged by Mr. Chevalier and it has given evidence that it requires a claim to right to manage to be thoroughly investigated. The Company has provided no evidence to the contrary.
22. The Tribunal considers that the Landlord was entitled to instruct someone of the experience of Mr. Chevalier and that the hourly rate charged by Mr. Chevalier is reasonable. Mr. Chevalier has explained the work that he had to carry out in consequence of the claim notice. Although the Company allege that some of that work was duplication or excessive, the Tribunal considers that the work was properly carried out in order to comply with the Landlord's instructions to investigate the claim thoroughly.
23. The Company has produced no evidence to suggest that the Landlord would not have instructed Mr. Chevalier to carry out the work that he did carry out or that it would not have been prepared to pay for that work to be carried out if it was going to have to pay those costs itself without an expectation of recovery from the Company.
24. The Tribunal does not accept the submission made on behalf of the Company that its liability to pay costs automatically terminated on 2 March 2016 when the Company notified the Landlord that it was withdrawing its claim notice. The Company presumably based that submission on the terms of section 89(2) of the Act. However, that is based on too literal an interpretation of the wording of that sub-section. At that time of withdrawal of the notice, the appeal was in progress and it had to be brought to a proper conclusion by having an order drawn up. It would be extraordinary if the Company could bring its liability to pay costs abruptly to an end by serving notice of withdrawal, leaving the existing proceedings in the air. The Landlord is entitled to its costs of having a proper order drawn up as a consequence of the withdrawal of the claim notice and the solicitors providing a report to the Landlord.
25. The Tribunal does not accept the submission on behalf of the Company that it is not liable to pay the costs of preparing details of the costs to be paid by the Company. Those costs form part of the costs which the Landlord has incurred in consequence of the service of the claim notice.
26. The Landlord has accepted that 4 units of time were wrongly included in the claim for costs. They should be excluded. 4 units with VAT amounts to £120. That sum will be deleted.
27. The Company has raised no objection to the charging of VAT or the disbursement which is claimed.
28. With the exception of the sum of £120, the Tribunal finds that the overall amount of fees claimed by the Landlord is within the range of what it would be reasonable to pay solicitors of admitted experience and expertise in this area of the law for work undertaken in response to the

claim notice, including the application to the First-tier Tribunal and a successful appeal to the Upper Tribunal.

29. For those reasons the Tribunal determines that the amount of costs payable by the Company to the Landlord is the figure of £5,560 claimed by the Landlord less £120, namely £5,440.
30. As has been recorded, the claim notice which was given by the Company was withdrawn on 2 March 2016. In the circumstances, Section 89 of the Act applies. By virtue of section 89(3), each person who is or has been a member of the Company is also liable for those costs jointly and severally with the Company and each other person who is so liable, subject to the exception provided by section 89(4).
31. At paragraph 12.2 of the application, the Landlord states that the Company is liable for the costs of the assessment of costs. The Landlord has provided no information in relation to those costs and the Tribunal can make no determination in respect of that issue.

Right of Appeal

32. Any party to this application who is dissatisfied with the Tribunal's decision may appeal to the Upper Tribunal (Lands Chamber) under section 176B of the *Commonhold and Leasehold Reform Act 2002* or section 11 of the *Tribunals, Courts and Enforcement Act 2007*.
33. A person wishing to appeal this decision must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with this application. 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. 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. 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.
34. The parties are directed to Regulation 52 of the *Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 SI 2013/1169*. Any application to the Upper Tribunal must be made in accordance with the *Tribunal Procedure (Upper Tribunal)(Lands Chamber) Rules 2010 SI 2010/2600*.

J G Orme
Judge of the First-tier Tribunal
Dated 13 December 2016