



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

**Case reference** : **LON/00AP/LCP/2016/0002**

**Property** : **160 Ferme Park Road, London N8  
9SE**

**Applicant** : **Assethold Limited**

**Representative** : **Scott Cohen Solicitors**

**Respondent** : **160 Ferme Park Road RTM  
Company Limited**

**Representative** : **Urban Owners Limited**

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

**Tribunal member** : **Judge N Hawkes**

**Venue** : **10 Alfred Place, London WC1E 7LR**

**Date of paper  
determination** : **24<sup>th</sup> May 2016**

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**DECISION**

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## **Decisions of the Tribunal**

(1) Costs in the sum of £931.93 (inclusive of VAT) are payable by the respondent to the applicant in respect of the costs incurred by the applicant in consequence of the claim noticed dated 24<sup>th</sup> April 2014.

(2) Costs in the sum of £999 (inclusive of VAT) are payable by the respondent to the applicant in respect of the costs incurred by the applicant in the First-tier Tribunal (application reference LON/00AP/2014/0016).

(2) Costs in the sum of £2,424 (inclusive of VAT) are payable by the respondent to the applicant in respect of the costs incurred by the applicant in the Upper Tribunal (appeal reference LRX/31/2015).

## **The Background**

1. The Tribunal has received an application under section 88(4) of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act"), to determine the costs payable by the applicant RTM Company.

2. Section 88 of the 2002 Act provides:

### *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,*

*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.*

3. By a claim notice dated 24<sup>th</sup> April 2014, the respondent gave notice that it intended to acquire the right to manage the property on 1<sup>st</sup> September 2014. The applicant served a counter notice dated 22<sup>nd</sup> May 2014 contending that the claim notice did not comply with sections 80(8) and 80(9) of the 2002 Act and, in particular, that the claim notice was not signed in the manner prescribed by section 44 of the Companies Act 2006.
4. The matter came before the First-tier Tribunal and, on 6<sup>th</sup> November 2014, it was determined that the respondent (who was the applicant in the proceedings before the previous Tribunal but who will be described as the respondent throughout this decision) acquired the right to manage the property on 1<sup>st</sup> September 2014.
5. The applicant applied for permission to appeal the determination of 6<sup>th</sup> November 2014. By a decision dated 16<sup>th</sup> January 2015, the Tribunal refused the applicant permission to appeal on the grounds that the application for permission was out of time.
6. However, it subsequently came to light that the application for permission to appeal had been sent to the Tribunal by email within time and, by a further decision dated 12<sup>th</sup> March 2015, the Tribunal (a) reviewed its decision and found that the applicant would acquire the right to manage the property on such date as provided by section 90(4) of the 2002 Act being the date three months after the determination becomes final and (b) otherwise refused permission to appeal.
7. The applicant then applied to the Upper Tribunal (Lands Chamber) for permission to appeal. Permission to appeal was granted by the Upper Tribunal on 11<sup>th</sup> May 2015.
8. By a letter dated 3<sup>rd</sup> July 2015 from the respondent, the Upper Tribunal was informed that the respondent had withdrawn the claim notice dated 24<sup>th</sup> April 2014. By letter dated 10<sup>th</sup> September 2015, the parties were informed that the Registrar construed the respondent's correspondence as being its consent to the withdrawal of the appeal and that, if such a construction were wrong, in any event the Registrar gave

his consent to the withdrawal of the appeal. The parties were informed that the Upper Tribunal would be closing its file.

9. By email dated 16<sup>th</sup> September 2015, the applicant's solicitors requested that the Registrar re-consider the decision to close the file in light of the findings of the Upper Tribunal in *Post Box Ground Rents Ltd v Post Box RTM Co Ltd [2015] UKUT 230 (LC)*.
10. By decision dated 27<sup>th</sup> November 2015, the appellant's appeal was reinstated and then dismissed. However, following further correspondence from the appellant's solicitors, the decision dated 27<sup>th</sup> November 2015 was amended on 29<sup>th</sup> January 2016. The amended decision includes provision that the appeal is allowed and substituted with the decision that the claim to acquire the right to manage is dismissed.
11. The application to determine the costs to be paid by the respondent RTM company is dated 4<sup>th</sup> February 2016. Directions were given on 26<sup>th</sup> February 2016. No party has requested an oral hearing and this application has been determined on the papers. The numbering below refers to the numbering of the Scott Schedule. The Tribunal has carefully considered the parties' written submissions which will not be set out in full below.

### **The determination**

12. As regards item 1(a)(i), the Tribunal accepts the applicant's explanation; finds that the time spent is reasonable; and makes no deduction.
13. Item 1(a)(ii) is not in dispute.
14. As regards item 1(b)(i), the Tribunal accepts the applicant's explanation; finds that the time spent is reasonable; and makes no deduction.
15. Item 1(c)(i) is not in dispute.
16. As regards item 1(c)(ii), the Tribunal accepts the applicant's explanation; finds that the time spent is reasonable; and makes no deduction.
17. As regards item 1(c)(iii), the Tribunal accepts the applicant's explanation; finds that the time spent is reasonable; and makes no deduction.

18. As regards item 1(c)(iv), the Tribunal accepts the applicant's explanation; finds that it is reasonable to charge in respect of 6 minutes of solicitor's time; and makes no deduction.
19. Disbursements (a) and (b) are not in dispute.
20. As regards disbursement (c), the Tribunal considers that it is reasonable to print documents for the purposes of holding them on the paper file. The Tribunal notes that the rate charged per page has not been challenged. Accordingly, the Tribunal makes no deduction in respect of disbursement (c).
21. As regards item 2 (management fees) the respondent points to the fact that the counter notice was based on grounds concerning the manner in which the claim notice had been signed and the way in which the premises were defined. The Tribunal finds that, having regard to the nature of the issues raised, the management fees are not reasonable. The Tribunal accepts the respondent's submission that £100 + VAT should be payable. Accordingly, a deduction of £150 + VAT falls to be made under this heading.
22. As regards item 3(a), the Tribunal accepts that this is not a duplication of the previously charged attendance. However, the Tribunal considers that, having regard to the nature of the application and the discussions with the client which would have already taken place, a charge representing 42 minutes would be reasonable. Accordingly, a deduction of £112.50 + VAT falls to be made under this heading.
23. As regards items 3(b) and (c) the Tribunal notes that the letters provided to the respondent were copies of the letters provided to the Tribunal and allows 36 minutes in total under these two headings. Accordingly, a deduction of £45 + VAT falls to be made under these headings.
24. Item 3(c)(i) is not in dispute.
25. As regards item 3(c)(ii), the Tribunal finds that the time spent is reasonable and makes no deduction.
26. As regards item 3(c)(iii), the Tribunal accepts the respondent's submissions and finds that, in all the circumstances, a charge representing 60 minutes would be reasonable. Accordingly, a deduction of £67.50 + VAT falls to be made under this heading.
27. Items 3(c)(iv), 3(c)(v), 3(c)(vi) and are not in dispute.
28. The Upper Tribunal fees are not in dispute.

29. As regards item 4(a), having regard to the history of the matter which is set out above, the Tribunal accepts the applicant's explanation; finds that the time spent is reasonable; and makes no deduction.
30. As regards item 4(b), the correspondence enclosed at exhibit 27 has been accounted for at item 3(b) above. The Tribunal therefore allows 12 minutes in respect of the two telephone calls. Accordingly, a deduction of £112.50+VAT falls to be made under these headings.
31. Item 4(c) is not in dispute.
32. As regards item 4(d), the Tribunal accepts the applicant's explanation; finds that the time spent is reasonable; and makes no deduction.
33. Item 4(e) is not in dispute.
34. As regards item 4(f)(i), the Tribunal accepts the applicant's explanation; finds that the time spent is reasonable; and makes no deduction.
35. As regards items 4(f)(ii), 4(f)(iii) and 4(f)(iv), the Tribunal accepts the applicant's submissions and makes no deduction under these headings.
36. As regards item 4(f)(v), the applicant would have been familiar with the issues at this stage. The tribunal accepts the respondent's submissions and finds that a charge representing 30 minutes would be reasonable under this heading. Accordingly, a deduction of £67.50 + VAT falls to be made under this heading.
37. As regards item 4(f)(vi), the Tribunal accepts the applicant's explanation; finds that the time spent is reasonable; and makes no deduction
38. Item 4(f)(vii) is not in dispute.
39. As regards item 4(f)(viii), the Tribunal accepts the applicant's explanation; finds that the time spent is reasonable; and makes no deduction
40. Items 4(f)(ix), 4(f)(x), 4(f)(xi) and 4(f)(xii) are not in dispute.

### Conclusion

41. In relation to the costs incurred by the applicant as a consequence of the claim notice dated 24<sup>th</sup> April 2014, the applicant claims the sum of £1,111.93 in total, inclusive of VAT. The deductions set out above total £180 (£150 + VAT). Accordingly, the balance payable is £931.93.

42. In relation to the costs incurred by the applicant in the First-tier Tribunal with reference LON/00AP/2014/0016, the applicant claims the sum of £1,269.00 in total, inclusive of VAT. The deductions set out above total £270 (£225 + VAT). Accordingly, the balance payable is £999.
43. In relation to the costs incurred by the applicant in the Upper Tribunal with reference LRX/31/2015, the applicant claims the sum of £2,640 in total, inclusive of VAT. The deductions set out above total £216 (£180 + VAT). Accordingly, the balance payable is £2,424.

Judge N Hawkes

24<sup>th</sup> May 2016