



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

Case reference	:	LON/00BG/LCP/2018/0005
Property	:	Galaxy Building, 5 Crews Street, London E14 3TU
Applicant	:	Proxima GR Properties Limited
Representative	:	Ms E Fingleton, solicitor for Estates & Management
Respondent	:	Galaxy Building and Orion Point Owners RTM Company Limited
Representative	:	Mr M Reeds and Mr G Reeds, leaseholders of Apollo Building
Type of application	:	Determination of costs to be paid by RTM company
Tribunal members	:	Judge P Korn Mr T Sennett FCIEH
Hearing Date and Venue	:	24th October 2018 at 10 Alfred Place, London WC1E 7LR
Date of decision	:	3rd December 2018

DECISION

Decision

1. Pursuant to section 88(4) of the Commonhold and Leasehold Reform Act 2002 ("**the Act**") costs of £4,665.00 are payable by the Respondent to the Applicant.
2. Pursuant to paragraph 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 the Tribunal orders the Respondent to reimburse to the Applicant the application fee of £100.00 and the hearing fee of £200.00.

Application

3. This is an application under section 88(4) of the Act 2002 to determine the amount payable by the Respondent to the Applicant in respect of costs incurred by the Applicant in consequence of the Respondent having served notice claiming a right to manage the Property.
4. The costs arise from two unsuccessful 'right to manage' claims brought by the Respondent, the first of which was determined by the First-tier Tribunal.

Respondent's position

5. The Respondent served a claim notice on the Applicant on 28th April 2017 and it was challenged by the Applicant on a number of grounds. The Respondent's understanding was that the Applicant had received a standing instruction to challenge all claim notices but that otherwise its role was simply to send claim notices to the managing agent to deal with. Despite the Applicant's limited role, the Respondent received voluminous requests for information from the Applicant's solicitor which the Respondent considered to be wholly inappropriate.
6. When a second claim notice was served, the Applicant then raised a new ground of objection not previously raised in the context of the first claim notice, arguing that the buildings were not qualifying buildings. Had it raised this point earlier the Respondent could have considered it properly at that stage, and much extra time and cost could have been avoided.
7. The Respondent also argued that the Applicant had not incurred any costs as the costs had instead been incurred by Estates & Management Limited.
8. In addition, the Respondent's understanding was that it was the management company under the lease (FirstPort) who was the one properly considering the claim notices, rather than the Applicant, and yet FirstPort's costs as originally claimed (but then not pursued) were only £300.00. This contrasted with what the Respondent characterised as the absurd amount of £4,665.00 claimed by the Applicant.

Applicant's position

9. Estates & Management Limited acts on behalf of the Applicant, and Ms Fingleton is an in-house solicitor at Estates & Management. The lease is a tripartite lease with FirstPort being a party to the lease as the management company.
10. The First-tier Tribunal determined on 31st August 2017 that the Respondent was not entitled on the relevant date to acquire the right to manage the Property.

11. Ms Fingleton received a number of telephone calls following service of the Applicant's counter-notice and, as a courtesy, she advised the Respondent in one telephone call that its initial claim notice was "doomed to fail" as it had failed to serve notice on FirstPort. She invited the Respondent to withdraw its claim notice and to start again. The Applicant does not merely act as a conduit and it did not challenge the Respondent's claim notice simply on a standing instruction from FirstPort.
12. An in-house solicitor at Estates & Management assesses each RTM claim on its merits on an individual basis, and the Respondent's implication of some element of bad faith was considered to be unfounded. The in-house team always requests certain information in order to check whether the RTM company has correctly followed the procedures set out in the Act, because – if successful – the RTM company will divest the landlord and others of contractual rights.
13. The in-house solicitor wrote to the Respondent on 4th May 2017 requesting certain information and advising that if that information was not received in good time the Applicant would serve a counter-notice. The in-house solicitor received no response and so sent a second letter on 16th May 2017, and a response was then received containing most of the information. On its becoming apparent that the notice had not been served on FirstPort, the Applicant served a counter-notice opposing the claim on this basis.
14. A second claim notice was received on 4th October 2017. Again the in-house solicitor sent the normal request for information, but the Respondent replied that it would not provide that information unless it received formal confirmation that the solicitor had authority to act for the Applicant. That confirmation of authority was duly supplied but the Respondent objected to the date of the letter of authority, and so a further letter of authority dated 12th October 2017 was supplied. The Respondent then refused to supply the information on the ground of data protection. There followed further exchanges of correspondence culminating in the Applicant serving a counter-notice on the grounds (a) that the premises were not self-contained and (b) that it had not been provided with sufficient evidence fully to assess the merits of the claim.
15. Regarding the Applicant's failure to raise the qualifying building point in its initial counter-notice, the Applicant did not accept that there was an obligation on a person who was objecting to a claim to raise all grounds on which that person might ultimately rely in the initial counter-notice, and the Applicant cited the Upper Tribunal decision in *Fairhold (Yorkshire) Limited and Trinity Wharf (SE16) RTM Co Limited (2013) UKUT 0502 (LC)* in support of its position. The onus was on the Respondent to ensure that the claim was fully compliant with the Act.

16. As regards the question of recovery of in-house costs, it was clear from the decision in *Re Eastwood (deceased); Lloyds Bank Ltd v Eastwood (1975) Ch 112* that a litigant can recover its costs where the litigation has been conducted by a solicitor employee, and under Solicitors Regulation Authority rules an employed solicitor is not restricted just to acting for his or her direct employer company.
17. As regards FirstPort's costs, the Applicant provided a witness statement from Azmon Rankohi, an in-house solicitor at FirstPort. FirstPort's involvement with the first claim notice was very limited as this notice was not served on FirstPort. As regards the second notice, again FirstPort's involvement was limited as the Respondent refused to supply it with any information to enable it to assess the merits of the claim, and therefore FirstPort was forced simply to serve a counter-notice as a protective measure. FirstPort decided for commercial reasons not to take any formal action to pursue recovery of the relatively small amount of costs incurred.
18. As regards the level of the Applicant's costs, although the point had not been raised by the Respondent the Applicant referred the Tribunal to the Upper Tribunal decision in *The Trustees of John Lyon's Charity and Terrace Freehold LLP (2018) UKUT 0247 (LC)* as authority for the proposition that where specialist practitioners are used it is perfectly proper within that specialism to employ solicitors who have considerable experience. The Applicant submitted that RTM issues can be highly technical and require specialist knowledge.

Reasons for decision

19. The relevant section of the Act reads as follows:-

Section 88

- (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 ... 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.*
20. It is not denied by the Respondent that the Applicant is a person fitting within the description in sub-section 88(1) above.
21. In our view there is no real evidence to support the Respondent's assertion that the Applicant – through its managing agents' in-house solicitors – challenged the claim notices in bad faith rather than on the basis of real objections. There is also no proper basis for the Respondent's implication that the Applicant was seeking information from the Respondent that it neither needed nor wanted.
22. As regards the Respondent's complaint that it received voluminous requests for information, on the basis of the documentation supplied and submissions made we do not consider these requests to have been unreasonable. The process itself was quite a long one, but a large part of the reason for this was the Respondent's unwillingness to supply the information requested and its failure on two occasions to serve valid claim notices.
23. As to the Applicant's failure to raise all grounds at the same time, we agree with the Applicant – especially in the light of the Upper Tribunal decision in *Fairhold (Yorkshire) Limited and Trinity Wharf (SE16) RTM Co Limited* – that the Applicant was under no obligation to do so. It was for the Respondent to ensure that it complied with the Act and to take independent advice where necessary. That said, it should be noted that the decision in the *Fairhold* case was a decision under section 84(3) of the Act and concerned whether the RTM company had acquired the right to manage. It is therefore not, in our view, direct authority for the Applicant's position on costs. In the context of costs, if there were evidence to show that the Applicant had acted cynically in deliberately choosing not to raise the qualifying building point initially then there might be an argument that this would be a legitimate ground for limiting costs on this basis. However, on the basis of the information and evidence before us, we do not accept that the Applicant was acting in bad faith. There is some evidence that the Applicant warned the Respondent informally that its first notice was doomed to fail, and there is also evidence that the Applicant struggled to obtain sufficient information from the Respondent to enable it to consider the matter thoroughly from the start. There is also insufficient evidence that the Applicant had worked out the qualifying building point from the start and yet deliberately chose not to raise it.
24. As to the Respondent's submission that the Applicant has not itself incurred any costs, we do not accept this. *Re Eastwood* is clear authority for the proposition that in-house legal costs can be recovered in the same way as those of external solicitors, and there is no proper basis for arguing that as Ms Fingleton worked for Estates & Management rather than directly for the Applicant her fees are

irrecoverable. It is clear that Estates & Management was the Applicant's agent and that Ms Fingleton's legal expertise was part of the service being provided by Estates & Management to its principal.

25. The explanation provided in Azmon Rankohi's witness statement as to why FirstPort's costs were relatively low and as to why formal recovery was not pursued is in our view a credible one. Our factual finding is that the Applicant's role was more central than FirstPort's and that it was reasonable for the Applicant to take the approach that it did in order to establish whether each claim notice was valid.
26. As to the amount of the Applicant's costs, we have considered the description of the tasks performed and the amount of time charged, as well as the amount of time written off. In our view the amount charged is reasonable in the context of the tasks performed and the reasons for performing those tasks, including the extra work caused by the Respondent's reluctance at various stages to provide the information sought. We agree with the Applicant that the assessment of RTM claims is quite a technical matter and that in principle it is reasonable to use an experienced solicitor to deal with the matter. Whilst there is an argument for saying that more administrative tasks can and sometimes should be performed by more junior staff, there is also a case for arguing that it is sometimes quicker and more logical for the experienced solicitor to deal with some of those tasks him or herself. Each case will be fact-sensitive, but on the basis of the evidence provided we consider the costs charged overall in this particular case to have been reasonably incurred.

Application and hearing fees

27. The Applicant also seeks reimbursement by the Respondent of the application and hearing fees paid by it in relation to these proceedings pursuant to paragraph 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
28. We have upheld the Applicant's claim in its entirety. Whilst we consider the Respondent's objections to have been made in good faith, we also consider the Respondent's arguments to have been weak and not properly substantiated. In the circumstances it is appropriate to order the Respondent to reimburse the Applicant in respect of the application and hearing fees.

Name: Judge P Korn

Date: 3rd December 2018

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).