



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

Case reference : **LON/00BJ/LCP/2020/0003**

HMCTS code : **P:PAPER**

Property : **33 Garratt Terrace, London SW17 0QE**

Applicant : **Assethold Ltd**

Representative : **Scott Cohen, solicitors.**

Respondent : **33 Garratt Terrace (London) RTM
Company Limited**

Representative : **Prime Management (PS) Limited**

Type of application : **Costs – payable by an RTM company
under s.88(4) Commonhold and
Leasehold Reform Act 2002**

Tribunal member : **Judge Pittaway**

Date of decision : **20 January 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers. The form of remote hearing was P:PAPERREMOTE, A face-to-face hearing was not held because the tribunal considered that the application might be determined by summary assessment, pursuant to rule 13(7)(a), without a hearing, on the basis of the written submissions from the parties unless any party requested a hearing and neither party did.

The documents that the tribunal referred to are in a bundle of 88 pages the contents of which the tribunal has noted. In particular the tribunal has had regard to the 'Applicant's schedule of costs & supporting documentation', the Respondent's Statement of Case and the Applicant's Statement of Response. The applicant referred to cases to which the tribunal had regard as set out below.

The decisions made and reasons are set out below.

Decision of the tribunal

The tribunal determines that the amount of costs payable by the respondent is

1. £660 plus VAT in respect of Scott Cohen's legal fees; and
2. Disbursements of £6.70 plus VAT

Background

- (1) The Applicant seeks an order under section 88(4) of the Commonhold and Leasehold Reform Act 2002 (the "**2002 Act**") as to the amount of costs payable by a RTM Company.
- (2) Section 88 of the 2004 Act provides that
 - '(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) The costs claim arises out of an application for a determination that the applicant was entitled to acquire the right to manage 33 Garratt Terrace London SW17 0QE (**‘the Property’**).
- (4) By Directions dated 12 October 2020, amended 8 December 2020, the applicant was directed to provide the respondent a schedule of costs sufficient for summary assessment, invoices substantiating the costs and any other documents relied on.
- (5) The directions provided for the respondent to provide a statement in response and for the applicant to provide a statement in reply.
- (6) The directions also stated that the tribunal considered that the application on the basis of written submissions from the parties using the document bundle provided.

The applicant’s case

1. The applicant’s schedule of costs claims fees of £1,292.50, disbursements of £6.70 and VAT on both sums. It also claimed fees of £300 plus VAT incurred by the applicant’s agent, Eagerstar.

The fees of £1,295.50 were

- Initial instructions and advice 30 minutes
- Reviewing documents and assessing claim notice 30 minutes
- Reviewing supporting RTM documents 36 minutes
- Preparation of counter-notice 42 minutes
- Routine attendances 144 minutes

Fees were calculated at an hourly rate for Ms Lorraine Scott, a principal of the firm Scott Cohen and a Grade A fee earner, on the basis of an hourly rate of £275 per hour, with short outgoing letters and routine phone calls charged at 1/10th of an hour and all other work timed in 6 minute units. The applicant included an extract of the firm' terms of appointment confirming this level of charge.

2. The schedule of costs also listed fees for Eagerstate in the sum of £300 plus VAT .

The respondent's case

3. In response the respondent's statement explained that the claim notice had been withdrawn on 23 June 2020 because the Royal Mail records did not specify the date of the recorded delivery of the claim notice and the respondent therefore felt unable to rely on it.
4. The respondent submits that following receipt of the claim notice the applicant unnecessarily duplicated work, citing a request for the articles of association from the respondent which duplicated the applicant's claim to have reviewed the same, presumably obtained from Companies House. The respondent challenges the time taken to draft the counter-notice on the basis that it is a template and should have taken no longer than 15 minutes to prepare. The respondent also challenges the time taken on 'attendances' as excessive, the correspondence with the RTM company consisting of short e mails and one template letter. It submits that these should had taken no more than 30 minutes of time.
5. The respondent submits that the Eagerstate invoice should be disallowed as no notices were served on that company and as the claim was not progressed Eagerstate's involvement in the claim was nil.
6. The respondent submits that a more appropriate charge would be (£577 plus disbursements) based on time spent by the applicant's solicitors on the claim of 1 hour 45 minutes at £275 per hour plus VAT made up as follows

- Initial instructions and advice 30 minutes
- Reviewing documents and assessing claim notice 15 minutes
- Reviewing supporting RTM documents 15 minutes
- Preparation of counter-notice 15 minutes
- Routine attendances 30 minutes

The applicant's further reply

7. In this the applicant submitted that its costs met the test of reasonableness set out in section 88(2) of the 2002 Act, as the landlord would reasonably be expected to incur this level of cost if incurring the costs itself. The applicant submitted that the hourly rate was reasonable and within the expected range for a transaction of this nature, referring the tribunal to a recent first-tier tribunal case *Albacourt Properties Ltd v W.Court Joint Enterprise Dwelling Initiative Co. Ltd.* MAN/00BU/LCP/2019/0001.
8. As to Eagerstate's fees the applicants submits that fees in relation to a RTM claim are outside the scope of the applicant's management agreement with the applicant, and that the fees are reasonable. It submits that Eagerstate's involvement is necessary immediately on receipt of the claim notice, to correspond with relevant parties and the solicitors and review its management of the property in its entirety in relation to scheduled works and services. In this connection the applicant referred the tribunal to *Columbia House Properties (No.3) Ltd v Imperial Hall RTM Company Ltd* [2014] UKUT 0030 (LC) ('**Columbia**') and *Assethold Ltd v 125 Croydon Road (Penge) RTM Company Limited* LON/00AF/LCP/2019/0004.
9. In response to the respondent's submissions the applicant referred to the fact that it had sought to clarify with the respondent whether the respondent proposed to rely on the claim notice, which was only withdrawn after the counter notice had been given. The applicant submitted that the time spent on assessing the claim notice and review of documentation and preparation of the counter-notice was reasonable.
10. The applicant submits that it is correct to charge in units no smaller than 1/10 of an hour on routine attendances or in units of six minutes, as that is the basis of

Reasons for the tribunal's decision

11. The tribunal are not assisted by the decisions in the cases referred to by the applicant. The decision in the Upper Tribunal case, *Columbia*, was in relation to an appeal allowed against a tribunal which had decided that all the costs of the landlord were unreasonable, and which was remitted to the first tier tribunal for redetermination for failure by the tribunal to give reasons for its decision. It is distinguishable on its facts.

This tribunal is not bound by previous decisions of the first tier tribunal. The tribunal notes that the only first tier tribunal cases provided by the applicant are two involving the applicant's representative and it is concerned there may be other relevant cases that have not been brought to its attention. It further notes that, unlike here, in neither case referred to did the respondent provide a statement of case.

12. Not all the costs claimed meet the test of reasonableness set out in section 88(2). Any costs incurred by such a landlord consequent on a

claim by a RTM company in respect of professional services rendered to the landlord 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.

The tribunal does not doubt that the agreement between Scott Cohen and the applicant exists, so that the costs might have been incurred by the landlord, but of itself that does not make the charges under the agreement reasonable. The terms of engagement of Scott Cohen with the applicant show that the applicant might have been personally liable for their costs, but that is not evidence that the costs themselves are reasonable.

13. The respondent has not challenged the level of fee charged by the applicant's solicitor, namely £275 per hour, but rather the length of time spent on various aspects of the claim, arguing that this was what was unreasonable.
14. The respondent did not challenge the amount of time spent by the applicant on initial advice and instructions.
15. While not clear from the applicant's schedule of costs it appears that the landlord's counter-notices were served on 23 June 2020, the day upon which the respondent withdrew its notice of claim because it was uncertain as to whether it could rely on its claim notice having been correctly served. The tribunal note that the respondent had not responded to various e mails from the applicant asking it to clarify whether the respondent was relying on its claim notice. Because the respondent was slow in responding to the applicant's request for this clarification the tribunal finds that it was reasonable for the applicant to serve the counter-notice, and the tribunal accepts the applicant's submission that care and time need to be taken in the preparation of the counter-notice. The tribunal therefore considers it reasonable that 42 minutes should have been spent on this.
16. The tribunal finds, from the information provided by the applicant in its Schedule of Costs and the submissions, that either there was unnecessary duplication of work between that set out under the heading 'Engagement on review of documents – assessment of Claim Notice' and 'Engagement on review of supporting RTM documents' or that an unreasonable amount of time has been allocated to the work undertaken under those two headings. For example, the tribunal find that requesting the articles from the respondent was a duplication of work as it would appear that these had already been obtained from Companies House.
17. From the information provided to it the tribunal finds that it was not reasonable for the applicant to spend 144 minutes on 'routine attendances'. Given Ms Scott's stated experience the tribunal consider that she should be able to undertake this work in a more time-efficient

manner than someone less experienced. The tribunal notes that there were five letters enclosing the counter-notice sent out on 23 June all in the same form, except one was addressed to Prime Property Management rather than the respondent. It would not be a cost reasonably expected to be incurred by the applicant for these letters to be charged as 30 minutes of time, as it appears they would be on the basis of the terms of appointment. The applicant submits that it is correct to charge in units no smaller than 1/10 of an hour on routine attendances. This may be the basis of charge agreed with the applicant but where a number of such attendances take less than 6 minutes and each is charged at 6 minutes this may give rise to a disproportionate, and therefore unreasonable charge. The tribunal finds the respondent's counter-proposal of 30 minutes of time on routine attendances to be reasonable.

18. There is no evidence before the tribunal that Eagerstate incurred any costs. There is no invoice from Eagerstate in the bundle to support the applicant's claim for fees of £300 plus VAT. Nor is there any evidence that there were potentially ongoing matters that Eagerstate would have to consider at an early stage after receipt of the notice of claim. The tribunal notes that a letter from Scott Cohen to respondent of 21 October 2020 said that documentation was awaited from their client's agent and would be forwarded in due course. There is no such documentation in the bundle. The tribunal also notes that the respondent's statement that this is a block of 4 flats in a converted house which suggests that it was not a property in respect of which there would be numerous ongoing matters. In the absence of any invoice from Eagerstate, or evidence as to any costs incurred by it, the tribunal determines no costs are payable to Eagerstate.
19. The tribunal therefore determines that the amount of costs payable by the respondent is £660 plus VAT in respect of Scott Cohen's legal fees and Disbursements of £6.70 plus VAT

Name: Judge Pittaway

Date: 20 January 2021

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).