



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

Case Reference : LON/00AS/LCP/2022/0004

HMCTS : PAPER REMOTE

Property : 4 Mondial Way, Harlington, Hayes, Middlesex,
UB3 5AR

Applicant : R G Securities (No.3) Limited

Representative : J B Leitch Solicitors

Respondent : 4 Mondial Way RTM Company Limited

Representative : (No appearance)

Type of Application : Costs to be paid by a RTM Company

Tribunal Members : Judge Robert Latham

**Venue of paper
determination** : 10 Alfred Place, London WC1E 7LR

Date of Decision : 1 August 2022

DECISION

The Tribunal determines that the Respondent is to pay the Applicant's costs under section 88(4) of the Commonhold and Leasehold Reform Act 2002 in the sum of £3,821.16 (inclusive of VAT of £636.86).

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has not been objected to by the parties. The form of remote hearing was P: PAPERREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. Neither party requested an oral hearing. The Applicant has provided a Bundle of Documents which extends to 169 pages.

The Application

1. By an application, dated 21 January 2022, the Applicant seeks a determination pursuant to section 88(4) of the Commonhold and Leasehold Reform Act 2002 ("the Act") in respect of the costs incurred by the Applicant landlord in relation to a Claim Notice, dated 28 July 2021, whereby the Respondent RTM Company sought to claim the Right to Manage 4 Mondial Way, Harlington, Hayes, Middlesex, UB3 5AR ("the premises").
2. On 27 August 2021, the Applicant served a Counter-notice. The Applicant denied that the Respondent was entitled to acquire the Right to Manage as the premises were not a self-contained building as defined by section 72 of the Act. On 14 September, the Respondent wrote to the Applicant asking it to reconsider its position. On 27 September, JB Leitch Solicitors responded on behalf of the Applicant.
3. The Respondent was entitled to make an application to this tribunal for a determination as to whether it was entitled to acquire the Right to Manage the property. By section 84(2) of the Act, the Respondent was obliged to make its application by no later than 27 October 2021. It failed to do so. The application was therefore deemed to be withdrawn on that date (see section 87).
4. On 4 May 2022, the Tribunal gave Directions which were amended on 7 May. Pursuant to those Directions, on 6 June 2022, the Applicant served its Statement of Case on the Respondent. The Applicant claimed the following sums:
 - (i) The costs of Pier Legal Services who initially advised the Applicant in connection with the application. The sum claimed in the Schedule (at p.132) is £2,155.20 (including VAT of £359.20). The Tribunal notes that the Applicant wrongly refers to a figure of £2,266.80 in its Statement of Case ([24] at p.18) This appears to be an error. Two solicitors and a legal secretary were engaged over the period 2 August to 27 August 2021. This is the stage at which the Respondent served its Counter-notice.
 - (ii) The costs of J B Leitch. A Form N260 Statement of Costs (at p.135-139) has been provided dated, 1 December 2021. Costs are claimed in the sum of £3,239.52 (including VAT).
 - (iii) The costs of J B Leitch in connection with the current application for costs. A further Form N260 Statement of Costs (at p.143-147) has been provided dated, 21 January 2021. Further costs are claimed in the sum of £2,138.56 (including VAT).
5. By 27 June 2022, the Respondent was directed to file its Statement in Response. It has failed to do so. The Tribunal is satisfied that the Respondent has made an informed decision not to engage with this

application. On 3 March 2022, the Tribunal sent a copy of the application to the Respondent at its registered office (71C Carnarvon Road, London, E15 4JW). On 4 May, the Tribunal sent a copy of the Directions to the Respondent. On 6 May, the Applicant notified the Tribunal that the Respondent had changed its registered office to 3a Coldharbour Lane, Hayes, UB3 3EA. On 11 May, the Tribunal sent the revised directions to the Respondent at its new Registered Office. On 13 May, the Applicant sent a copy of the application and the revised directions to the Respondent. On 6 June, the Applicant sent its Statement of Case to the Respondent. On 29 June, the Applicant wrote to the Respondent, by recorded delivery, seeking a copy of their Statement of Case which should have been served by 27 June. On 8 July, the Tribunal wrote to the Respondent asking it to explain why it had not complied with the Directions. The Respondent has not replied to any of these letters.

The Statutory Provisions

6. Section 88 of the Act provides (emphasis added):

“(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.”

7. 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).

The Principles

8. The Act confers rights on tenants of leasehold flats to acquire the Right to Manage their flats without the need to show any fault by their landlord. It is a matter of basic fairness, necessary to avoid the statute from becoming penal, that the tenant exercising their statutory right should reimburse the costs necessarily incurred by any person in receipt of such a claim in satisfying themselves that the claim is properly made and in completing the formal steps required by the Act.
9. On the other hand, the statute is not intended to provide an opportunity for the professional advisers of landlords to charge excessive fees. Section 88 (2) provides a ceiling by reference to the reasonable expectations of a person paying the costs from their own pocket; the costs of work which would not have been incurred, or which would have been carried out more cheaply, if the landlord was personally liable to meet them are not reasonable costs which the tenant is required to pay. Section 88(2) provides

protection for both landlords and tenants: for landlords against being out of pocket when compelled to surrender the right to manage and for tenants against being required to pay more than is reasonable.

10. Section 89 makes express provision where there is a deemed withdrawal of the Claim Notice. Section 89(2) provides that the RTM company is only liable for the landlord's costs up to the date of the deemed withdrawal. That date was 27 October 2021.

The Tribunal's Determination

11. On 26 July, this Tribunal first considered this application. The Tribunal was concerned that the Applicant was claiming costs incurred by the landlord after 27 October 2021, namely the date of the deemed withdrawal. After this date, the Tribunal assesses costs within a "no costs" jurisdiction. The Tribunal therefore directed the Applicant to clarify the relevant costs that it is entitled to recover prior to the date of the deemed withdrawal.
12. On 29 July, the Applicant responded:
 - (i) It confirmed that the costs of Pier Legal Services are £2,155.20 (including VAT of £359.20).
 - (ii) The costs of J B Leitch. An amended Form N260 Statement of Costs, dated 28 July, is provided limited to the costs incurred up to 27 October 2021. The revised schedule is £1,665.96 (including VAT of £277.66).
13. The Tribunal is satisfied that the sums now sought are reasonable and are payable. The Respondent has not responded to the application. The costs claimed are in line with the costs normally associated with this type of application.

**Judge Robert Latham,
1 August 2022**

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).