

L446



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

Case Reference : CHI/29UG/LCP/2014/0001

Property : 22 Harmer Street, Gravesend,
Kent DA12 2AX

Applicants : Assethold Ltd (landlord)

Representative : Conway & Co, solicitors

Respondent : 22 Harmer Street RTM Company Ltd
(RTM Company)

Representative : Maltbys, managing agents

Type of Application : Commonhold & Leasehold Reform
Act 2002 s.88(4) (costs)

Tribunal Member : Judge Mark Loveday

Date of Decision : 23 April 2014

DECISION

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INTRODUCTION

1. This is an application for a determination of costs under s.88 of the Commonhold and Leasehold Reform Act 2002 (“the Act”). The matter relates to a Right to Manage application made by lessees of 22 Harmer Street, Gravesend.
2. The background can be stated relatively briefly. The Applicant is the freehold owner of the property, which apparently includes five flats let on long leases. The Applicant employed Eagerstates Ltd as managing agents for the property under the terms of an agency agreement dated 10 December 2012.
3. By a Claim Notice dated 20 August 2013, the Respondent claimed the Right to Manage under Chapter 1 of part 2 of the Act. The Applicant retained Conway & Co solicitors to deal with the notice. On 20 September 2013, Conway & Co served a counter-notice denying the right to manage as a result of four specified defects in the Claim Notice. The Applicant has produced a fee note from the solicitors dated 13 December 2013 (£833.96 inclusive of VAT) and an invoice from the managing agents dated 21 October 2013 (£300 inclusive of VAT) for work allegedly carried out in connection with the claim.
4. By an application dated 6 January 2014, the Applicant sought a determination that the Respondent was liable for the above costs. The Tribunal gave directions on 17 January 2014, and ordered that the matter was to be dealt with without a hearing on the basis of written representations only.
5. The Applicant’s solicitors have submitted a Statement of Case dated 7 January 2014 and have made additional comments in response to the Points of Dispute. The Respondent relies on Points of Dispute dated 14 March 2014 prepared by its agents Maltbys estate management.
6. The relevant legislative provisions appear at s.88 of the Act:
“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 a leasehold valuation 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 a leasehold valuation tribunal.”

SUBMISSIONS

8. The Applicant submitted that the costs were payable under s.88(1) and (2) of the Act. The fees billed by Conway & Co represented what the Applicant would normally pay to the solicitors upon any instruction and it included provision for disbursements. Work was carried out by an associate at the solicitor’s firm who was a specialist landlord and tenant lawyer and whose hourly rate was £225 – apart from 20 mins work by a paralegal whose hourly rate was £165. A detailed breakdown of work done was provided, which included:

- a. Engaged with client (initial instructions) 20 mins @ £225 ph;
- b. Engaged with client (advice) 15 mins @ £225 ph;
- c. Engaged on documents (assessment of claim notice) 30 mins @ £225 ph;
- d. Engaged on review of documents 40 mins @ £225 ph;
- e. Engaged on preparation of counter notice 30 mins @ £225 ph;
- f. Routine correspondence 30 mins @ £225 ph;
- g. Engaged on obtaining Land Registry titles on Land Registry website (15 mins) and time engaged on Royal Mail website (5 mins). This work was carried out by the paralegal at £165 ph;
- h. Disbursements of £21.22.

The Statement of Case exhibited an extract from the solicitors’ instruction letter, the fee note, the notices and correspondence.

9. As to the managing agents’ fees, the Applicant stated that the managing agents were instructed to carry out additional tasks which were not part of their usual management activities, such as the provision of information to the solicitors about the property. The Statement of Case exhibited supporting documentation, including the managing agents’ retainer and the fee note. The Applicant relied on a previous LVT decision in relation to 8-9 Estreham Road London SW16 5NT (LON/00AY/LCP/2013/0010) as an example where managing agents’ fees were allowed under s.88(4) of the Act.

10. The Respondent submitted that 3hrs and 5mins was excessive for work undertaken by the solicitors. Some items have been duplicated. Time spent on advice to the client (15 mins) duplicated the time spent on assessing the claim notice (30 mins) and reviewing documents (40 mins). This time, which amounted to 85 minutes, “should be reduced to 30 mins, thereby reducing the charge of Conway & Co by 15 minutes @ £225 per hour”.

11. The Respondent submitted that it was not liable to pay the managing agents' fees. The Applicant did not need to incur these charges. The notices were served on the landlord, not the managing agents. There was nothing to support the contention that the Act allows a claim by the freeholder's agents to have their costs included in the claim.
12. In reply, the Applicant argued that there was no duplication of solicitors' time. It had given a clear breakdown of time spent by the lawyers on each aspect of the claim, whereas the Respondent had not given any detail about what was complained about. As far as the managing agents' fees were concerned, it was reasonable to employ agents to deal with the receipt of statutory notices and handover of responsibility to the RTM company. The Applicant referred to the recent Upper Tribunal decision in *Columbia House Properties (No.3) Ltd v Imperial Hall RTM Company Ltd* [2014] UKUT 0030 (LC) where managing agent's fees were allowed under s.88 of the Act.

DECISION

13. Legal fees. As far as the legal fees are concerned, the Respondent does not challenge the hourly rate charged by the specialist associate at Conway & Co. Furthermore, it does not challenge the costs of work by the solicitors on taking initial instructions (20 mins), preparation of the counter notice (30 mins), routine correspondence (30 mins), obtaining Land Registry titles on Land Registry website (15 mins by the paralegal) and time engaged on Royal Mail website (5 mins by the paralegal) or disbursements. It follows that £355 in fees (80 mins @ £225 ph and 20 mins @ 165 ph) and disbursements of £21.22 are not in issue.
14. As the remaining elements of the solicitors' fees (which amount to 85 mins work @ £225 ph) the Points of Dispute are not entirely clear whether the Respondent submits this work should be reduced by 15 mins or reduced to 30 mins. The Tribunal assumes the latter.
15. In respect of each of the three items in dispute:
 - a. The Applicant's Statement of Case gives some detail about the advice at para 10b. The Tribunal accepts that this work was carried out and considers that the time taken was not excessive. The Tribunal is satisfied that it was reasonable to take instructions from the client before serving any Counter Notice – and this also necessarily involved an element of advice about the result of the solicitors' investigation of the validity of the Claim Notice. Moreover, the solicitors billed some 15 minutes of work for advising on some quite complex issues, which evidently involved no fewer than four separate technical objections to the Claim Notice. If the circumstances had been that the Applicant was personally liable for the solicitors' costs in this respect, the Tribunal is satisfied that the Applicant might reasonably have been expected to have incurred those costs.
 - b. As far as time spent on assessing the Claim Notice, the Statement of Case again gives some detail of the work carried out at para 10c. The solicitors undertook a preliminary review of the notice itself, and checked the format, time limits etc. There was then the process of

seeking details of the Respondent company from Companies House and cross checking this against the information in the Claim Notice. The solicitors then checked the freehold title, reviewed the number of qualifying tenants and assessed the membership criteria. The Tribunal accepts that this work was carried out and that the time taken was not excessive. These were potentially time consuming processes, and a period of 30 mins was reasonable. As to the specific allegation in the Points of Dispute, this work plainly did not duplicate the taking of instructions above. If the circumstances had been that the Applicant was personally liable for the solicitors' costs in this respect, the Tribunal is satisfied that the Applicant might reasonably have been expected to have incurred those costs.

- c. The Statement of Case again gives considerable detail about the work done on the review of documents by the solicitors, which is evidently the most important part of the process in evaluating the RTM claim. At para 10d, the Applicant states that the solicitors considered the five leasehold titles, the register of members, the Company Articles, a Notice of Invitation to Participate and correspondence. The solicitor then cross-referenced the various documents with the Claim Notice, checked the Notice of Invitation to Participate and ensured the Respondent was a valid RTM Company. The Tribunal accepts that this work was carried out and that the time taken was not excessive. 40 mins to undertake all these processes is an appropriate time to take to evaluate all these matters. As to the specific allegation in the Points of Dispute, the work on documents plainly did not duplicate the taking of instructions above. There is a certain potential overlap between this work and the 40 mins taken on assessing the Claim Notice, but in this instance the solicitors allocated 30 mins to the initial process of the initial perusal of the Claim Notice and assembly of documentation, and 40 mins to the process of considering that documentation. There is therefore no real overlap between the two categories of work. If the circumstances had been that the Applicant was personally liable for the solicitors' costs in this respect, the Tribunal is satisfied that the Applicant might reasonably have been expected to have incurred those costs.

16. Finally, the Tribunal has considered whether, taken as a whole, a total of 85 mins for assessing the validity of the Claim Notice and advising the client is excessive. The Tribunal concludes it is not. The solicitor had to peruse 5 leasehold titles, the Register of Members, Company Articles, a Notice of Invitation to participate, correspondence and the Claim Notice itself. She then had to assess these documents in the light of the statutory requirements and case law on the validity of RTM Claim Notices. This is a complex area of law, and the Applicant was entitled to be satisfied that the Respondent was entitled to exercise the Right to Manage and to have a full report on the solicitor's conclusions. 85 mins is not excessive for all this work. If the circumstances had been such that the Applicant was personally liable for the solicitors' costs in this respect, the Tribunal is also satisfied on this ground that the Applicant might reasonably have been expected to have incurred legal fees of £318.75 (85 mins @ £225).

17. Managing agents' fees. The Tribunal has been provided with a copy of Eagerstates Ltd management agreement. Under clause 3.1, the agents agreed to provide a list of "services" specified in Schedule 1, for which their charge was £205 per flat + VAT. Under clause 3.2 the agents agreed to provide a list of "additional services for the client for additional charges" listed in Schedule 3. One of the additional services listed in Schedule 3 was "Providing any form of services to the Client over and above this Management Agency Agreement in relation to the exercise by the lessees of Enfranchisement, the Right to Manage or as the result of the Appointment of a Manager by a LVT". The fee was "minimum £250 + VAT plus £150 + VAT per hour for court appearance or serving counter notices". There is no other reference in the management agreement to the Right to Manage (save for clause 12.3 which deals with termination of the agreement). The Tribunal is therefore satisfied that the agents were entitled to charge an additional fee for services in connection with the Right to Manage claim.
18. The Tribunal is also satisfied that Eagerstates Ltd provided the services set out in their fee Invoice. The invoice is very detailed, and explains that the charge of £250 was for 2hrs and 35 mins work involved in notifying the freeholder of the RTM Notice, providing the solicitor with information, consulting with the accounting and management team to review the file and consulting with the freeholder. There is no suggestion this work was not carried out and the Tribunal is satisfied that these services were provided. The only real objection to the managing agents' fees is that in principle, the Act does not allow a claim by the freeholder's agents to have their costs included in the claim. This contention was advanced by the Respondent at a stage when the only authority relied upon was the LVT case of 8-9 Estreham Road London SW16 5NT. However, since the Points of Dispute were completed, the Upper Tribunal decision in Columbia House Properties (No.3) Ltd v Imperial Hall RTM Company Ltd [2014] UKUT 0030 (LC) has become available.
19. The LVT decision in 8-9 Estreham Road is not one that binds this Tribunal. A careful perusal of the decision in Columbia House Properties shows that the RTM Company in that case did not object to the recovery of managing agents fees in principle – even though the Deputy President of the Lands Chamber allowed a similar claim for agents' fees in full. However, the Tribunal is in no doubt that such fees are in principle recoverable under s.88. The provision states that an "RTM company is liable for reasonable costs incurred by ... a landlord ... in consequence of a claim notice given by the company in relation to the premises". There is no limitation at all on the nature of the provider of the services which give rise to such costs. Indeed, s.88(2) makes it clear that "costs" in s.88(1) may include fees charged by third party providers, where it refers to "costs incurred by such a person in respect of professional services rendered to him by another". Again, s.88(2) is without limitation – and there is no suggestion that "professional services" should be read in anything other than its ordinary sense. In this case, the managing agents provided "professional services" and

there is no principle that managing agents' fees are irrecoverable. The Tribunal takes some comfort from the decision in Columbia House Properties in that respect, but the point is clear enough from the legislation itself.

20. In short, if the circumstances had been that the Applicant was personally liable for the managing agents' fees, the Tribunal is satisfied that the Applicant might reasonably have been expected to have incurred the costs of professional advice and assistance from the managing agents.

CONCLUSIONS

21. The Respondent is liable under s.88 of the Act for legal costs of £833.96 and managing agents' fees of £300 for work carried out in connection with the Right to Manage claim.

Judge Mark Loveday
23 April 2014

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. 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.
3. 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.
4. 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.