



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

Case Reference : CHI/45UC/LCP/2019/0001

Property : Batworth Park House, Crossbush, Arundel
BN18 9PG

Applicant : Fountain Retirement Housing Association

Representative :

Respondents : Batworth Park House (1-9) RTM Co. Ltd
Batworth Park House (10-13) RTM Co. Ltd
Batworth Park House (18-21) RTM Co. Ltd

Representative : RTMF Services Limited

Type of Application : Application to determine Landlords Costs

Tribunal Member(s) : Judge D. R. Whitney

Date and Venue of Hearing : Determination on Papers

Date of Decision : 17th December 2019

DECISION

The Application

1. The Applicant is the freeholder of the Property. The Respondents are the three Right to Manage Companies formed for the purpose of acquiring the right to manage of 1-9 Batworth Park House, 10-13 Batworth Park House and 18-21 Batworth Park House.
2. By way of tribunal determination dated 6th November 2018 under reference numbers CHI/45UC/LRM/2018/008-0010 the tribunal determined that the Respondents to this application were entitled to the Right to Manage. This application was made by the Applicant to determine the costs payable by the Respondents under the statutory provisions.
3. An application was made on 20th August 2019 and directions were issued on 26th September 2019. The directions have been complied with.
4. The Applicant served the Tribunal with a hearing bundle of documents. References in [] are to pages in the hearing bundle.

The Law

5. The relevant law to this application may be found in section 88 of the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”):
Section 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.

Determination

6. The application claims costs of £2926.20. The bundle includes [Tab B] an invoice for £2,959. It appears from the papers it is the lower amount which is now being sought.
7. The amount claimed includes time spent by directors of the Applicant in dealing with the application and costs for various professional advisers.
8. The Respondent contends that the totality of the sums claimed are unreasonable. Various specific arguments are raised. It suggests a total sum of £800 would be reasonable referring to a scale supposedly proposed by the Law Commission but no further details are provided. The tribunal assumes this is reference to the current work of the Law Commission upon which they have yet to issue its proposals.
9. The Respondent contends various sums have been incurred in connection with the previous tribunal proceedings. It is suggested in respect of these costs that given the Applicant was unsuccessful in resisting the claim that section 88(3) of the 2002 Act applies and such costs are irrecoverable.
10. Certain sums are said to have been incurred prior to the service of any notice of claim and as such are irrecoverable.
11. Issue is taken with the instruction of various advisers and the costs incurred by them.
12. A Scott Schedule has been produced and a copy annotated with the tribunals comments and determinations is attached.
13. The tribunal determines that no costs incurred prior to the service of the Notices of Claim are recoverable. Until claim notices are served no entitlement to costs arises.
14. In respect of time spent attending upon Mr Mossop it is unclear what advice was asked for or given by Mr Mossop. No details are provided as to his professional qualifications and the tribunal is not satisfied, given the lack of particularity as to the advice given, that any advice provided falls within that contemplated by section 88 of the 2002 Act. This is disallowed.

15. The tribunal does allow the time spent hand delivering the counter notice. The counter notice is an important document. Delivery by a certain date is time critical. The cost claimed is not dissimilar to that one would expect a courier to charge. It is for the Applicant to determine what they consider the best method of service and personal service is reasonable. This cost is allowed.
16. Turning next to the solicitor's fees an un-itemised invoice is attached at [Tab D]. the Respondent challenges these costs on the basis that they include cost of preparing a counter notice which it contends is irrecoverable under Section 88 (3) of the 2002 Act. Further the Respondent contends the Applicant should be able to recover the VAT element.
17. The tribunal does not accept the Respondents submissions. In this tribunals determination the costs recoverable include the costs of preparing the counter notice, if one is to be served. Further the Applicant has confirmed they are not VAT registered and so it is reasonable that they may recover the total amount, including VAT.
18. The tribunal does accept the Respondents argument that charges relating to the previous tribunal are not recoverable. All such costs are not allowed.
19. The tribunal has looked at the costs incurred by the directors. No breakdown of the sums claimed has been included but this totals some 28 hours of time. This tribunal considers such sums excessive. We accept given the complexities of the estate which consisted of 4 blocks and where 3 blocks were looking to exercise their right to manage that careful consideration was required. However not to the extent claimed given the reliance upon solicitors to advise on the claim and draft counter notices. Taking a broad brush approach the tribunal will allow a sum of £450 being 10 hours of the lead directors time.
20. The tribunal does not allow the time claimed for preparation of the bundle and costs schedule. This is purely an administrative task and the tribunal is cogent of the amount already allowed for the costs incurred by the directors.
21. The tribunal has stood back and looks at the costs in the round. It is satisfied that its determinations are reasonable given the costs cover 3 separate claims. Whilst all are linked and have similar features each did require consideration on its own merits. The tribunal is satisfied that in reaching the above determinations appropriate consideration has been given to all such issues.
22. The tribunal determines that the sum recoverable by the Applicant from the three Respondent companies on a joint and several basis is £1810.30.

Judge D. R. Whitney

RIGHTS OF APPEAL

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