



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

Case Reference : **MAN/00BR/LCP/2017/0001**

Property : **Brattice Drive
Pendlebury
Swinton
Manchester
M27 8WE**

Applicant : **Joule Point Residents
Association Limited
(represented by Bond
Dickinson LLP)**

Respondent : **Brattice Drive (Block One) RTM
Company Limited
(represented by Widdows Pilling
& Co)**

Type of Application : **Commonhold and Leasehold Reform
Act 2002 – section 88(4)**

Tribunal Members : **Judge J Holbrook
Judge L Bennett**

**Date and venue of
Hearing** : **Determined without a hearing**

Date of Decision : **27 March 2017**

DECISION

DECISION

The amount of the costs payable to the Applicant by the Respondent in consequence of the claim notices given on 23 March 2016 and on 6 May 2016 is £2,379.60 (inclusive of VAT).

REASONS

Background

1. This is an application under section 88(4) of the Commonhold and Leasehold Reform Act 2002 (“the Act”). It was made on 20 January 2017 by Joule Point Residents Association Limited, the management company named in the residential leases of premises known as Brattice Drive, Pendlebury, Swinton, Manchester (“the Property”).
2. The Applicant seeks a determination in relation to the amount of any costs payable by the Respondent RTM company, Brattice Drive (Block One) RTM Company Limited, in consequence of the Respondent having given two claim notices under section 79 of the Act in relation to the Property. Those notices (“the claim notices”) were given on 23 March 2016 and on 6 May 2016 respectively and, in each case, the Applicant subsequently served a counter-notice alleging that the Respondent was not entitled to acquire the right to manage the Property on the relevant date. As no application was then made to the Tribunal by the RTM company under section 84(3) of the Act, the claim notices are deemed to be withdrawn (see section 87(1)).
3. The parties have consented to the application being determined without an oral hearing, and have provided written representations and documentary evidence in accordance with directions issued by the Tribunal on 30 January 2017.
4. The Tribunal did not inspect the Property.

Law

5. Section 88 of the Act provides:
 - (1) *A RTM company is liable for reasonable costs incurred by a person who is landlord under a lease of the whole or any part of any premises [or] party to such a lease otherwise than as landlord or tenant ... 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) ...

(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.*

6. Subsections (1) – (3) of section 89 provide:

(1) *This section applies where a claim notice given by a RTM company [is withdrawn or] 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).*

Argument

7. In summary, the costs claimed (inclusive of VAT) are as follows:

Solicitors' costs and disbursements:	£2,247.00
Managing agent's costs (1 st notice):	£ 600.00
Managing agent's costs (2 nd notice):	£ 300.00

Total:	£3,147.00

8. Solicitors' costs have been calculated largely on the basis of time spent on the matter by the fee earners concerned, with additional charges for a small number of letters and telephone calls; and for disbursements. In particular, 12.6 hours were spent on the matter by a grade A Associate fee earner charging £290 per hour (plus VAT). 0.2 hours were spent on the matter by a more senior grade A Associate (£325 per hour), and 1 hour was spent on it by an Associate costs lawyer (at £270). The time spent on the matter would suggest a charge for profit costs of £3,989 (plus £235.50 for letters and telephone calls). However, the costs actually claimed are limited to £1,770 (plus disbursements and VAT). The Applicant says this reflects the charges which it is actually liable to pay to its solicitors (those solicitors having agreed to discount their usual charges).

9. As far as the managing agent's costs are concerned, the Applicant has provided a list of the activities which the agent is said to have performed in consequence of receipt of the claim notices. No information has been provided to indicate how long those activities

took, however, or to explain the basis upon which the agent's costs have been calculated.

10. The Respondent objects to the costs claimed in their entirety, which it describes as grossly excessive and wholly disproportionate to the issues involved. It argues that the Applicant's objections to the claim notices "amount to an unreasonable reliance on procedural deficiency which the Applicants should have waived in the interests of proportionality". It also argues that the application for costs amounts to an attempt to frustrate the will of the majority of the Property's leaseholders to acquire the right to manage.
11. Various more specific challenges to the costs claimed have also been raised, and these are highlighted below.

Conclusions

12. Section 88(1) of the Act entitles the Applicant management company to its reasonable costs incurred in consequence of the service upon it of the claim notices. The meaning of "reasonable costs" is qualified by the reasonable expectation test in section 88(2): if the management company might reasonably have been expected to incur the costs had it been paying them itself, then it is entitled to recover them from the RTM company.
13. In determining whether a claim for costs is reasonable, the Tribunal must consider whether the costs claimed were reasonably incurred and were reasonable in amount. It must therefore be satisfied (a) that the work which has been undertaken is work which might reasonably have been undertaken in the circumstances, and (b) that the amount charged for that work is within a range of charges which the management company might reasonably have been willing to pay. If the Respondent contends that the charges were not reasonably incurred, or are not reasonable in amount, then it must show why this is the case.
14. There is also a question as to the approach which the Tribunal should take to the assessment of costs in cases such as this: should the Tribunal conduct a detailed assessment of the charges claimed item by item, or should it make a summary assessment focusing on the reasonableness of the overall charges for the totality of the work undertaken? In our view, the appropriate approach is to make a summary assessment of costs.
15. With all these matters in mind, we find that the Applicant is entitled to its reasonable costs incurred in relation to the preparation and service of counter-notices following receipt of the claim notices. There is no merit at all in the Respondent's argument that costs should be denied because of the Applicant's reliance upon "procedural deficiency" in opposing the RTM company's claim: acquisition of the right to manage may be achieved under the Act on a 'no fault' basis, but this is subject to

a number of procedural requirements. It is incumbent upon an RTM company to take care to comply with those requirements, and it should not object if the landlord (or management company) later challenges it for failing to do so. Given that, in the present case, the Respondent did not seek a determination under section 84(3) following service of either of the Applicant's counter-notices, it presumably accepted that there had indeed been procedural failings on its part. The Applicant is perfectly entitled to pursue its claim for the costs contemplated by section 88(1) in these circumstances: the fact that a majority of the leaseholders may have supported the right to manage claim(s) is irrelevant.

16. Notwithstanding the 'discount' mentioned in paragraph 8 above, in assessing the amount of the costs that are payable, it is first necessary to consider the reasonableness of the solicitors' charges disregarding that discount: we must consider whether the hourly charging rate(s) are appropriate and whether the amount of time spent on the matter was reasonable. As far as the first of those matters is concerned, the Respondent argues that the hourly rates are excessive. Whilst we certainly consider those rates to be at the upper end of the range of charges which a landlord/management company might reasonably be expected to incur on its own account for this type of work, the Applicant is entitled to recover its costs under section 88 of the Act on an indemnity basis, and no evidence has been produced to indicate that a reasonable landlord would not have accepted the charging rates in question. We therefore find that, whilst the application of the discount indicates the overall ceiling amount above which a reasonable landlord/management company would not expect to be charged for a matter such as this, the amount of the underlying charging rates themselves is not unreasonable.
17. It is then necessary to consider the reasonableness of the legal work undertaken. We find that the unit charges for letters and telephone calls are reasonable. We also find that it was reasonable for the more senior Associate to spend 0.2 hours on the matter and for a costs lawyer to spend one hour preparing a costs breakdown. However, the majority of the time spent on the matter (12.6 hours) was recorded by the more junior Associate, and we are not persuaded that charging for the entirety of this time would be reasonable in the circumstances.
18. We note that the Applicant itemises the work comprised within these 12.6 hours in the following way:
 - Considering initial instructions and preparing advice – 9.5 hours
 - Considering necessity of and preparing counter-notice – 1.9 hours
 - Preparing further counter-notice – 1.2 hours
19. We accept that each of these tasks was necessary. However, in our view, an experienced and competent solicitor might reasonably be expected to complete the initial work in considering instructions and preparing

advice in a maximum of two hours, and to prepare a counter-notice in no more than an hour. We therefore find that it would have been reasonable to charge for a maximum of four hours in total for time spent on these tasks.

20. This finding leads us to conclude that the total profit costs of the Applicant's solicitors should be reduced by £2,494 (i.e., by £39.50 more than the discount applied by the solicitors) to produce a total of £1,730.50 (exclusive of VAT).
21. The Respondent has provided no evidence in support of its assertion that it was unreasonable to incur process server's fees of £90 (plus VAT) or Land Registry fees of £15. We find these charges to be reasonable.
22. We note that the Applicant is not registered for VAT. It is therefore entitled to recover any VAT which it has incurred in respect of its section 88 costs.
23. It follows that the solicitors' costs which the Applicant may recover under section 88 of the Act are as follows:

Letters and telephone calls	£ 235.50	
Time spent on the matter	£1,495.00	
Process server's fees	<u>£ 90.00</u>	
		£1,820.50
VAT		£ 364.10
LR fees		<u>£ 15.00</u>
TOTAL		£2,199.60

24. We turn to the question whether, in addition to these solicitors' costs, the Applicant is entitled to recover charges imposed by its managing agent in respect of the agent's involvement in the right to manage claim process. The Respondent objects in principle to the claim for such costs, arguing that the work being claimed for duplicates that undertaken by the Applicant's solicitors, and also arguing that the agent "stood in the place of the Applicant" and thus should not be permitted to recover the costs of instructing its own solicitors.
25. The Applicant contends that the managing agent is appointed to deal with the day to day management of the Property, and that work involved in instructing solicitors following receipt of the claim notices was outside the scope of the work for which the agent is remunerated under its management agreement with the Applicant. The Applicant denies that there was any duplication of work as between managing agent and solicitors.
26. In principle, there is no reason why a landlord/management company should not be able to recover costs, under section 88 of the Act, incurred in respect of its managing agent's involvement in the process

of responding to the claim notices. This is subject to the proviso that such costs are only recoverable if the landlord/management company might reasonably have been expected to incur them on its own account. The amount of the costs must also fall within the range of costs which would be reasonable in the circumstances.

27. In the present circumstances, we find that it is reasonable to expect an entity such as the Applicant to engage a managing agent to attend to day to day management and administration tasks. Where such tasks concern matters which are out of the ordinary (and are not covered by standard management charges) it is reasonable to expect that additional management charges may be incurred. The task of dealing with the claim notices appears to fall into that category.
28. However, given the involvement of the Applicant's solicitors in this matter, the amount of work required of the managing agent should have been quite modest – it would presumably have been limited to passing the claim notice(s) to the solicitors, asking for advice, and indicating whether the Applicant wished to oppose acquisition of the right to manage by the Respondent. There would doubtless have been a need for communication with the Applicant (and perhaps with leaseholders also) as part of this process. Nevertheless, the Applicant has provided an extensive list of administrative activities which the agent is said to have undertaken in relation to each claim notice. In our view, the agent's involvement in the process is likely to have been more straightforward than this might suggest.
29. No attempt has been made to show how much time was devoted to the administrative tasks in question – either individually or globally. Nor is there an explanation of the method of charging employed to calculate the agent's costs of £500 in respect of the first claim notice and £250 in respect of the second (plus VAT in each case). In our judgment such charges fall outside the range of reasonable charges for the work which is likely to have been reasonably required. Based on the Tribunal's own knowledge and experience, we consider that such work would be likely to take no more than two hours to complete in total, for which a maximum charge of £150 plus VAT would have been reasonable.
30. We thus find that the reasonable costs (inclusive of VAT) payable under section 88 of the Act are £2,199.60 in respect of the Applicant's solicitors' costs plus £180 in respect of its managing agent's costs. The total amount of the costs payable by the Respondent under section 88 is therefore 2,379.60.