



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

Case Reference : LON/00AU/LCP/2015/0009

Property : 59 Huntingdon Street, London N1
1BX

Applicant : Assethold Limited

Representative : Scott Cohen Solicitors

Respondent : 59 Huntingdon Street RTM
Company Limited

Representative : Urban Owners

Type of Application : To determined costs to be paid
under s.88(4) of the Commonhold
and Leasehold Reform Act 2002

Tribunal Members : Judge Dickie
Mr H Geddes, RIBA

**Date and venue of
Hearing** : 10 Alfred Place, London WC1E 7LR

Date of Decision : 17 March 2016

DECISION

Summary of Decision

1. Costs of are payable by the RTM company to the Respondent under section 88(1) as follows:
 - a) Solicitors fees of £1507.50 plus VAT and disbursements.
 - b) Managing agent's fees of £100 plus VAT

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 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 service 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 a party to proceedings under this Chapter before a leasehold valuation tribunal only if the tribunal dismisses the 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.

The Application

2. Application has been made under section 88(4) of the Commonhold and Leasehold Reform Act 2002 (“the Act”) for a determination of the amount of costs payable by the Applicant RTM Company in consequence of the claim notice given by it to the Respondent. Directions were issued by the tribunal on 9 December 2015. Neither party has requested an oral hearing and the tribunal has determined this matter on the papers.
3. On 10 February 2015 the First Tier Tribunal (Property Chamber) in case reference LON/00AU/LRM/2014/0017 determined that the RTM company was not entitled to acquire the Right to Manage the property.
4. The Applicant seeks to charge the following costs:
 - (i) £630 plus VAT and disbursements for solicitor’s fees, plus fees of a managing agent of £300.00 plus VAT incurred in consequence of service of an RTM Claim notice dated 19th May 2014.
 - (ii) £1,057.50 plus VAT for solicitor’s fees incurred in proceedings LON/00AU/LRM/2014/001 which were dismissed by the panel. The fees include legal fees charged by two firms who acted during this period on behalf of the Applicant. There are fees billed by Conway & Co in the sum of £697.50 plus VAT for works undertaken until November 2014 and thereafter fees

billed by Scott Cohen Solicitors in the sum of £360 plus VAT for works undertaken thereafter.

5. The Applicant explains that work at both firms was “undertaken by Miss Lorraine Scott, an Associate of Conway & Co Solicitors and thereafter as Sole Practitioner at Scott Cohen Solicitors. Ms Scott had dealt with RTM matters at Conway & Co since September 2007 initially as a transferee trainee solicitor being a non practicing barrister-at-law called to the Bar of England and Wales in 1999 and thereafter having converted to Solicitor in 2009. The fee rate billed by Ms. Scott of £225.00 per hour plus VAT reflected her pre conversion experience. Works continued at Scott Cohen Solicitors by Miss Scott as sole practitioner”
6. Eagerstates Limited is the Managing Agent instructed to carry out non-standard tasks to include activities in response to an RTM claim notice for an additional fee.
7. The parties' respective positions have been set out, in accordance with the directions of the tribunal, within a Scott Schedule. The tribunal's determination on each cost item is set out in the final column of this schedule attached.

Name: F. DICKIE

Date: 17 November 2016

IN THE FIRST TIER TRIBUNAL PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

FTT REFERENCE: LON/OOAU/LCP/2015/0009

BETWEEN:

ASSETHOLD LIMITED

Applicant

-and-

59 HUNTINGDON STREET RTM COMPANY LIMITED

Respondent

SCHEDULE

Description of work	Time Spent	Respondent's Comments	Applicant's reply	Tribunal
<u>Claim Notice dated 19th May 2014</u> <u>Costs incurred:</u> 1. Conway & Co £643.15 plus VAT	Billed at 2 hours and 48 mins @ £225 ph plus disburseme			Allowed at 2 hours and 42 mins @ £225.00 ph plus disbursements

<p><u>(a) Attendances upon client:</u></p> <p>(i) This was time spent in taking instructions to act in response to claim notice dated 19th May 2014 , reporting to client and taking instructions throughout</p> <p><u>b) Attendances on Opponent</u></p> <p>(i) 4 attendances @ six minutes each</p> <p><u>(c) Engaged on documents/ other:</u></p> <p>(i) Assessment of the claim notice:</p> <p>The preliminary review of the claim notice, to include checks of the format of the document itself, to assess the time limits given and to make the appropriate diary notes, reference made to the freehold title and confirming company details on the claim notice with Company house details.</p> <p>(ii) Assessment of supporting documentation :</p>	<p>nts:</p> <p>48 mins</p> <p>24 mins</p> <p>30 mins</p> <p>30 mins</p>	<p>We feel this is an excessive amount of time. The solicitors have a large amount of experience in dealing with RTM claims for the applicant. We would suggest 15 minutes would be sufficient to take instruction on this matter.</p> <p>It is unclear what these attendances relate to. We have not received anything from Applicant other than a counter notice.</p> <p>We feel this is an excessive amount of time to review the small amount of additional documentation. We would</p>	<p>a. The Respondent has mistaken this as all 48 minutes taken in initial instruction whereas 48 minutes was the time spent in attendances upon the client throughout. The Applicant submits that given the experience of solicitors in this matter the overall attendances throughout the matter is quite low, however in all matters there is necessary time required to take instructions throughout, provide advice and to report on matters.</p> <p>b. 4 attendances is 4 correspondences sent to the RTM company copies of which are enclosed at exhibit 1.</p> <p>c. The Respondent has not objected to this time.</p> <p>d. The Applicant would submit that this was a reasonable period to review the additional documentation noted, which was all necessary to evaluate the claim.</p>	<p>The tribunal finds that 48 minutes on total attendance on client throughout is reasonable.</p> <p>The tribunal allows this.</p> <p>The tribunal allows this.</p> <p>The tribunal allows this, accepting the Applicant's reasons.</p>
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<p>this was time spent in assessment of the claim by review of additional documentation to include:</p> <p>(1) 6 Leasehold Titles (2) The Register of Members (3) The Company's articles of association (4) correspondences serving the claim notices.</p> <p>(iii) Engaged on preparation of counter notice</p> <p>Time spent in draft and preparation of the counter notice.</p>	<p>30 mins</p>	<p>suggest this should take half the time.</p> <p>The counter notice is a standard template that does not go in to any details as to why exactly the claim is disputed. We would suggest that this should only have taken 10-15 minutes to prepare.</p>	<p>Again the Applicant would suggest that is only in view of the experience of its solicitor that the time spent was considerably reduced. The register of members and articles were checked for compliance with the statutory requirements and furthermore the documents were cross referenced with each other – leasehold titles were cross referenced with the claim and further cross referenced with the Register of Members and copy correspondences.</p> <p>e. The counter notice cannot simply be taken from a template as the grounds of individual notices, details of the company, date given and client will change on individual matters. The draft includes reference to the applicable grounds and adequate time taken required to complete same with due care and attention to ensure no errors within the particulars that could invalidate the counter notice. A copy of the counter notice is included with the correspondences at exhibit 1</p>	<p>The tribunal allows this, accepting the Applicant's reasons.</p>
<p>(iv) Engaged checking delivery of counter notice on the royal mail website.</p> <p>The counter notice was sent by recorded delivery and this was time spent on the royal mail tracking service to confirm delivery.</p> <p>Disbursements:</p>	<p>6 Mins</p> <p>£3.00</p>	<p>This is an excessive amount to charge for a 30 second task. It also a task that should not be charged at solicitors rates.</p>	<p>f. Routine attendances are billed at 6 minutes and this reflects time spent in obtaining the tracking number on the receipt, logging into the royal mail service online and checking upon same with multiple attempts until the signature verification is obtained. Given the consequences of a failure to serve the counter notice the fee earner deals with all aspects of the RTM claim until delivery is confirmed.</p>	<p>Disallowed. This is an administrative task which should not be billed at a fee earner rate.</p>

<p>a. Land Registry £3.00</p> <p>b. Postage of Recorded delivery £6.40 – this was the cost of delivery of the counter notice</p> <p>c. Printing 25 pages @ £0.15. The Respondent delivered all supporting documentation by email and this was charged in relation to printing disbursements.</p>	<p>£6.40</p> <p>£3.75</p>		<p>g. The disbursements have not been disputed.</p> <p>Enclosed at exhibit 2 are copy invoices and an extract of the terms of appointment for Conway & Co which reflects that the fees payable by the Applicant are the fees that would normally be incurred within an instruction to the firm.</p>	<p>These disbursements are allowed.</p>
<p>2. Management Fees</p> <p>Eagerstates Limited £300.00 plus VAT</p> <p>This includes taking action on behalf of the Landlord and providing assistance to the Landlord’s solicitors with provision of information in relation to the property and leaseholders as held within the agent’s records. The Managing Agent receives notices on behalf of the Applicant including RTM notices and in addition to undertaking the necessary steps in anticipation of RTM, are also instructed to liaise and assist solicitors in the process of assessment of the claim. Information regarding the property including details relevant to the qualifying tenants, nature of</p>	<p>£300 plus VAT</p>	<p>This amount is excessive and it is unclear how the figure has been reached. The Applicants counter notice was based on grounds regarding the way the claim notice was signed and the way the premises were defined. It is unclear how the managing agents could have incurred costs of £300+VAT assisting in this matter. We would ask details of the hourly rate the managing agents charged. The Respondent would suggest that £100+VAT would be a reasonable sum</p>	<p>h. The managing agent charges £300.00 plus VAT as fixed fee within its management charges for services provided for the RTM claims. It is a charge applied by the management company as a reasonable fixed fee for the range of services it is required to carry out upon receipt of RTM notices. The Applicant has not provided any evidence to substantiate its claim that the sum is unreasonable or out of range of market norm. Enclosed at exhibit 3 is the agent’s invoice and management agreement which confirms this was a charge that the Applicant would incur</p>	<p>Allowed at £100 plus VAT</p> <p>The invoice from Eagerstates Ltd. is for a fixed fee, but sets out work actually carried out totalling 3 hours. The notional rate charged is therefore £100 per hour. This is at the upper end of what would</p>

<p>the premises and details pertaining to the receipt of the notices are held by the agent and require their participation in the assessment process notwithstanding the instruction of solicitors who respond on the Applicant's behalf.</p> <p>The Agent charged fees of £300.00 plus VAT on receipt of each claim notice as a fixed charge. The Applicant would refer to the RICS Service Charges and Residential Management Code, which includes the activities of an agent in response to RTM claim notices as a matter to which agents raised additional management fees as standard practice. The code differentiates between activities falling within standard management activities and matters for which additional charges may be raised.</p>		<p>to pay the managing agents in this matter.</p>	<p>if paying the fee themselves. Enclosed at exhibit 4 is RICS Service Charges and Residential Management Code, which includes the activities of an agent in response to RTM claim notices as a matter to which agents raised additional management fees as standard practice. The Applicant would the panel's attention to the case of <u>Columbia House Properties (No 3) Ltd and Imperial Hall RTM Company Limited LRX/138/2012</u> being a decision of the Upper Tribunal (Lands Chamber) which upheld the recovery of the management fee as a professional fee and highlights that the role of managing agents within the RTM is not an uncommon practice for which charges are levied.</p>	<p>be reasonable, and is too high for straightforward administrative work such as scanning.</p> <p>The fact that a fixed fee has been agreed and paid is not conclusive as to its reasonableness. The tribunal considers the cost is not reasonable. The time spent drafting two emails is excessive, as is that emailing solicitors, and administration time spent scanning the lease and providing information on the leaseholders. An hour of accounts and management time is recorded for reviewing certain matters. Since the Right to Manage was disputed, this was largely premature, and the tribunal is not persuaded as to</p>
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<p style="text-align: center;"><u>FTT Proceedings</u> <u>L0N/00AU/LRM/2014/0007</u></p> <p>3. Conway & Co £697.50 plus VAT</p> <p>a. <u>Routine Attendances</u> :</p> <p>(i) Engaged with client- time spent taking instructions and reporting throughout</p> <p>(ii) 1 attendance @ six minutes each upon opponent</p> <p>(iii) 1 attendance @ six minutes each</p>	<p>3 Hours and 6 minutes @£225.00 per hour</p> <p>48 mins</p>	<p>This item is also being charged in the other solicitors invoice. The applicant would argue that the matter going to FTT would have been discussed as part of the previously charged attendance. As such the Respondent would suggest that no fee is reasonable in this matter.</p> <p>The Respondent would ask that the Applicant clarify what attendances this refers to.</p>	<p>i. This was time billed for attendances during the course of the FTT proceedings. It is unreasonable for the Respondent to argue that instructions taken in the initial receipt of the notice would remove the need for instructions and attendances with the client throughout proceedings, which required attendances in reporting to the client on submissions, providing copy correspondences, providing advice and taking instructions throughout.</p> <p>j. The copy correspondences for these attendances upon the respondent and tribunal are enclosed at exhibit 5</p>	<p>why this freeholder needed advice from the managing agent on the ramifications of the RTM. The tribunal allows £100 plus VAT as the reasonable costs of the managing agent incurred by the landlord.</p> <p>Allowed at 2 hours and 24 minutes @ £225.00 ph plus VAT.</p> <p>The tribunal allows this sum, accepting the Applicant's position.</p> <p>The tribunal allows these two attendances as reasonable.</p>
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<p>upon tribunal</p> <p><u>(b) Engaged on documents/ other:</u></p> <p>(i) Perusal application</p> <p>(ii) Perusal directions</p> <p>(iii) Perusal Applicant's case</p> <p>(iv) Preparation statement of case</p>	<p>6 mins</p> <p>6 mins</p> <p>12 mins</p> <p>12 mins</p> <p>18 mins</p> <p>84 mins</p>	<p>The application and directions were standard for an RTM case and would not require this much time to review. The Respondent would suggest that these amounts should be halved.</p> <p>The time listed for the preparation of the statement of case is excessive. The statement was only 5 pages long and much of that simply quotes legislation/case law. The Respondent would suggest 40 minutes to be a more reasonable figure.</p>	<p>k. The Applicant will submit that the time billed reflected the time spent – works are undertaken in receipt of the documents in addition to perusing same each are logged on the Applicants system and calendar and diary entries made for directions.</p> <p>l. the Respondent has not challenged this item.</p> <p>m. The Applicant will submit that the time billed reflected the time spent. Submissions on the case and relevant legislation takes considerable time to draft in consideration of reference to supporting documentation and legislation and this time again was reduced in view of the Applicant's experience. A copy of the statement of case is enclosed at exhibit 6</p>	<p>The tribunal allows these three attendances as reasonable.</p> <p>Having already identified the alleged defects in the counter notice, the preparation of this largely standardised statement of case was routine in this case, taking into account the volume of such work undertaken by solicitors instructed. The tribunal allows 42 minutes.</p>
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<p>4. Scott Cohen £360.00 plus VAT</p> <p><u>(a) Routine Attendances :</u></p>	<p>1 hour and 36 mins @ £225.00 ph</p>			<p>Allowed at 1 hour and 36 minutes @ £225.00 ph plus VAT</p>
<p>(i) Engaged with client taking instructions, reporting throughout and providing advice</p> <p>(ii) 1 attendance @ six minutes each upon opponent</p> <p>(iii) 1 attendance @ six minutes each upon tribunal</p>	<p>36 mins</p> <p>6 mins</p> <p>6 mins</p>	<p>Again it is unclear what additional attendances were required. The Respondent would again suggest no fee is reasonable in this matter.</p>	<p>n. The attendances on the client was time spent in reporting on the additional directions and additional submission filed by the RTM company, the provision of copies of the documentation and providing advice – the time spent reflects 6 attendances and the suggestion that no fee was payable is to suggest that solicitors should conduct proceedings without reference or reporting to its client.</p>	<p>The tribunal accepts the arguments of the Applicant and allows these attendances as reasonable.</p>
<p><u>(b) Engaged on documents/ other:</u></p> <p>(i) Perusal further directions</p> <p>(ii) Perusal Opponent's additional submissions</p> <p>(iii) Perusal bundle</p> <p>(iv) Perusal Decision</p>	<p>6 mins</p> <p>18 mins</p> <p>12 mins</p> <p>12 mins</p>		<p>o. The Respondent has not indicated a dispute with the time spent on engaged on documents.</p> <p>Scott Cohen Solicitors were instructed by the Applicant at the fee rate of £250.00 for new cases for works undertaken by Lorraine Scott, however as this was an ongoing matter the fee rate remained at that previously settled for the instruction at £225.00 per hour. The copy invoice is enclosed at exhibit 7</p>	<p>The tribunal accepts the Applicant's position and allows these attendances.</p>