



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

Case reference : LON/OOAD/LCP/2017/0001

Property : Park Lodge, 2 Chislehurst Road,
Sidcup, Kent, DA14 6DP

Applicant : AB Group Limited (freeholder and
landlord)

Representative : John Pursley, TWM solicitors

Respondent : Park Lodge RTM Company Limited
(RTM company)

Representative : Urban Owners Limited

Type of application : For a determination of the costs
payable by the RTM company to the
freeholder under section 88 of the
Commonhold and Leasehold
Reform Act 2002 ('the Act')

Tribunal members : Judge James Driscoll

Venue : 10 Alfred Place, London WC1E 7LR

Date of decision : 19 June, 2017

DECISION

Summary of the decision

1. The RTM company is to pay to the landlords the sum of £590 (exclusive of VAT) in respect of their costs as determined under section 88 of the Act.

The claim

2. In this matter the applicant is the freeholder of the subject premises and the landlord under the leases of the 12 flats contained in the premises. It seeks a determination of the recoverability of its costs incurred in dealing with a claim to the right to manage (RTM). The respondent is an RTM company formed to acquire the management of the block on behalf of the participating leaseholders. The application is made under section 88 of the Commonhold and Leasehold Reform Act 2002. It was made on or about 7 March 2017.
3. Directions were given by the tribunal on 13 March 2017.

Consideration of the claim

4. Neither party sought an oral hearing so, in accordance with the directions, I proceeded to consider the application on the basis of the bundle of papers filed on behalf of the applicant. After the delivery of the bundles the tribunal received a schedule from the landlord's solicitors which listed the items of work they carried out with comments from the RTM company coupled with replies from the landlord's solicitors.
5. In addition to the papers filed I relied also on my own professional experience of the RTM and other aspects of leasehold management.
6. I started by reminding myself that section 88 of the Act provides that an RTM company is liable for the reasonable costs incurred by the landlord. Section 88 of the Act is as follows: *(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.*
7. However, *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 (section 88(2)).*
8. Further an *'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'* (section 88(3)).

9. 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 (now the First-tier Tribunal (Property Chamber) (section 88(4)).
10. From this I consider that the tribunal must consider whether the costs charged are 'reasonable' subject to the caveat that they are only reasonable to the extent that if the landlord might reasonably have been expected to incur them.
11. The applicant is the owner of the freehold of the subject premises and the landlord under leases of flats in those premises. From reading the papers filed it appears that the subject premises consists of 12 flats. Of these 7 have been sold to private individuals on long leases and the remaining five are held by Homeshire Limited which the filed papers suggest is a subsidiary of the applicant.
12. The basis on which Homeshire 'owns' the five units was not entirely clear from reading the papers. However, it appears that both parties assumed that it does so on a leasehold basis and that these leases are qualifying leases under the Act. It was, presumably, on that basis, that the parties appeared to agree that the premises qualify for the RTM and that the RTM claim notice was supported by the requisite number of qualifying leaseholders. It is also worth noting that the RTM considered that these five leases are qualifying leases as they sent participation notices to the addresses of the five flats concerned.

The RTM claim

13. Before giving a notice claiming the RTM the RTM company must first give a participation notice to any qualifying leaseholder and invite them to become a member. Copies of the participation notices are included in the bundle. A copy was given to each of the individual leaseholders. Copies were given to Homeshire Limited sent to the postal address of each of the five flats it owns. Each of these flats is sublet to either an assured or an assured shorthold tenant. (It appears that Homeshire was unaware of the participation notices until after the RTM claim was given.)
14. When I read the bundle I noted that it included a statement of Mr Pursley the solicitor advising the applicant. It refers to the schedule of costs and states his opinion that the costs are reasonable. However, he does not explain how he reached this conclusion; nor does the statement provide any chronology of the RTM claim and how it unfolded. It would also have been helpful if he had included his submissions how the 'reasonableness' of the charges should be approached. Those advising the RTM company did not file a statement in reply.
15. The bundle refers me to a previous decision of this tribunal on the costs issue. However previous decisions of this tribunal are not binding precedents so I did not gain any assistance from that decision which is on a different claim with a different factual background.

16. To work out how the legal costs were incurred and claimed I read copies of correspondence between the parties and their advisors (pages 43 to 139 of the bundle). This relates to work done during the period May to December 2016 by which point the parties had agreed the entitlement to acquire the RTM and that Homeshire Limited is entitled to be a member. There were very few items in the bundle from Urban Owners, a company which advises the RTM company.
17. In summary, I read the landlord's statement, copies of the correspondence and the schedule of costs.
18. During the May to December 2016 period the landlords gave a counter-notice denying the RTM claim on the grounds that the RTM company had failed to serve a participation notices on all of the qualifying leaseholders. Those advising the company then applied to this tribunal for a determination but this was later settled so the application was withdrawn.
19. A number of issues are apparent from reading the copy correspondence and the schedule.
20. First, the only objection to the validity of the RTM claim was non-service of the participation notice. Those advising the RTM company had decided to serve copies at the address of each of the flats held by Homeshire Limited. The landlord's solicitors expressed the view that this might well amount to a valid service (citing a leading authority on the issue). They also indicated that in time an RTM claim would succeed provided the statutory procedures were complied with.
21. Second, a counter-notice was given on the basis of non-service, as this would strengthen (according to the landlord and their solicitors) the landlord's negotiating position in seeking to have Homeshire Limited becoming members. However, on my reading of the Act, a person is entitled to be a member of an RTM company if she or he is a qualifying leaseholder (see: section 74(1)(a) of the Act.) Moreover, under the the RTM Companies (Model Articles) (England) Regulations 2009 (article 26) it appears that any qualifying leaseholder who is not already a member has the statutory right to apply to become a member. It follows that Homeshire as a qualifying leaseholder of flats in the subject premises has the statutory right to become a member at any time.

Reasons for the decision

22. I start with some general propositions.
23. The test in section 88 is reasonableness subject to the caveat in section 88(2). In the absence of any submissions on the meaning of this word I have concluded first, that the role of the tribunal is to assess the reasonableness of the costs claimed and whether it was reasonable for the landlord to go the expense of seeking legal advice on a particular issue. Second it is also relevant to ask whether it is reasonable for the RTM company to pay these costs. Third, it is also relevant to ask whether the landlord would have incurred the costs if he was personally liable to pay them (section 88(2)).
24. I consider that the landlord was entitled to seek specialist advice on the claim. However, a specialist lawyer might reasonably be expected to deal with an RTM claim more expeditiously than a non-specialist. It is also relevant to remind oneself that many of the relevant documents, such as the memorandum and articles of association of a RTM company, participation notices, claim notices and so on are prescribed by statutory instrument. An experienced practitioner will be familiar with this prescribed documentation.
25. The documentation also suggests that the landlord seeks its costs for matters such as arranging for the Homeshire Limited to become members of the RTM company. But these are costs incurred on behalf of that leaseholder and I cannot see how it can be reasonable for the company to bear those costs. (Nor am I convinced that it is necessary to seek legal advice on what is a simple application under the 2009 regulations referred to above).
26. From reading the schedule it appears that the parties and their advisors disagreed on (a) the hourly rate claimed by Mr Pursley, (b) on the hours claimed for reading documents, and (c) the costs claimed in giving a counter-notice
27. Having considered the costs schedule and copy correspondence I conclude that the landlord was entitled to go to the expense of seeking specialist legal advice on the validity of the RTM claim. In order to give advice the lawyer would have to consider various documents (though these are in the main in a prescribed form which an experienced advisor will be familiar with).
28. I also consider that the time charged (£295 per hour) is not excessive. (Those advising the RTM claimed that the appropriate rate should be £250 per hour). I base this conclusion on the basis of my professional knowledge and experience.
29. After perusing the claim notice and the participation notices and other documents I conclude that it is reasonable to require the RTM company to pay for 1 and 1/4 hours of Mr Pursley's time in advising on the RTM claim and advising on the effects of the RTM.

30. However, I do not consider that it is reasonable for the company to pay for the professional time in preparing a counter-notice. Mr Pursley had expressed some scepticism as to the validity of the non-participation point. The landlord appeared to be of the view that Homeshire Limited needed to negotiate to become a member of the company. For the reasons given in above I consider that this was false premise. Whilst the landlord was perfectly entitled to instruct Mr Pursley to draft and serve a counter-notice I do not consider it reasonable for the RTM company to have to pay for this professional work. It seems to me that Homeshire could have applied at a much earlier stage to become members of the RTM company. As I noted above all qualifying leaseholders have a statutory right to apply to the company to be registered as a member of it. I do not consider that giving a counter-notice is a pre-requisite to applying to become a member. Nor do I consider it reasonable for the RTM company to pay for any legal work in connections with applying to become members of the company.
31. Finally, I conclude that it was reasonable for the landlord to seek advice over the effect of the RTM on its position as landlord. It was also reasonable for the landlord to correspond on these matters with the RTM company's representatives and the current managing agents. In all I consider it reasonable for the RTM company to pay for an additional 45 minutes of Mr Pursley's time in dealing with this.
32. This means that in all I determine that it is reasonable for the RTM company to pay for a total of two hours of Mr Pursley's time. Thus I determine that reasonable recoverable legal costs payable by the RTM should be based the sum of £590 (exclusive of VAT).

Rights of appeal

33. Under 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.
34. 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.
35. 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 it not being within the time limit.
36. The application for permission to appeal must identify the decision of the tribunal to which it relates (that is to 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.

37. If this tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

James Driscoll
19 June, 2017