



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

Case reference : **LON/00BC/LCP/2016/0009**

Property : **Agin Court103 New Wanstead
London E11 2TJ**

Applicant : **Agincourt RTM Company Limited**

Representative :

Respondent : **Arora Estates Limited**

Representative : **Mr Ajay Arora**

Type of application : **Determination of the costs payable
pursuant to s88 of the
Commonhold and Leasehold
Reform Act 2002**

Tribunal member(s) : **Professor Robert M. Abbey**

**Date and venue of
hearing** : **12 January 2017 at 10 Alfred Place,
London WC1E 7LR**

Date of decision : **12 January 2017**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the managing agent's fees are payable and reasonable in the sum of £240 inclusive of VAT. The tribunal further determines that the legal costs are payable and reasonable in the sum of £1425.
- (2) The tribunal makes the determinations as set out under the various headings in this decision

The application

1. The applicant seeks a determination pursuant to s.88 of the Commonhold and Leasehold Reform Act 2002 (the Act) of the costs payable by the Applicant and claimed by the Respondent.
2. The respondent seeks an order for costs pursuant to Rule 13 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 S.I. 2013 No. 1169 (L. 8)
3. The relevant legal provisions are set out in the Appendix to this decision. Additionally, rights of appeal are set out below in an annex to this decision

The paper based decision

4. The tribunal decided that in view of the limited nature of the application that the decision could be taken on paper and without the cost of an oral hearing. Written submissions were requested of the parties.
5. The tribunal had before it and considered in detail several letters, submissions, copy precedents, copy title deeds and documents from the parties to the dispute.

The background

6. The applicant is the right to manage company who served a claim notice dated 22 August 2013 under s79 of the Act to exercise the right to manage the property.
7. The respondent on 13 September 2016 sent an invoice to the applicant seeking payment of legal costs of £1425 and managing agent's fees of £240. It is these sums that are in dispute and are the items referred to the tribunal by the applicant pursuant to an application dated 12

October 2016 seeking a determination of the costs under s.88 of the Act.

The costs and fees claimed

8. Arora Estates submitted an invoice dated 12 September 2016 to the applicant from which it sought payment of the costs and fees set out in paragraph 7 above. With that invoice it also provided a schedule of legal costs setting out the kind of information that might be required when dealing with a claim for costs in litigation. The schedule stated the hourly rate and the number of units of time and the costs levied for the work listed in the schedule. Accompanying this was a copy contract of employment for Mr Ajay Arora as an employed in house solicitor for Arora Estates Limited.
9. At the same time an invoice dated 18 February 2014 from Synergy Home Management was also produced in the sum of £240 and where the work involved was described as “Costs in connection with hand over of the management on acquisition by RTM”. The invoice was addressed to the respondent. Subsequently the tribunal was shown a schedule of managing agent’s costs dated 8 November 2016. The schedule stated the hourly rate, (£100 per hour) and the number of units of time and the costs levied for the work completed in relation to the RTM company and listed in the schedule.
10. The applicant in its statement of case made it clear that the application was about the reasonableness of the costs and fees claimed. The applicant does not seek to contest the respondent’s right to claim costs, (see paragraphs 28 and 29 of the applicant’s statement of case). However, the applicant does say that the costs are unreasonably high and or that the respondent would not have incurred these costs and fees had it been personally liable for the costs thus falling foul of the terms of s.88(2) of the Act.
11. The applicant also confirmed that it does not seek to contest the demand purely as a consequence of the time delay between the RTM claim and the lodging of the demand for payment of the costs and fees. The applicant does however point out that having made a request for a computer generated daily time sheet demonstrating how the time was spent and the costs incurred it were disappointed not to receive this information as all they received was the schedule mentioned above.
12. I have looked closely at the costs schedule and I have considered all of the amounts of time shown to see if they are proportionate to the nature of the work listed and therefore completed. There are seven elements to the schedule. Starting from the top I cannot find anything to object to or to be considered unreasonable in elements 1,2 3 4 and 7. This leaves elements 5 and 6. Although both are on the high side, I am not satisfied that they are unreasonable or disproportionate and

therefore I am prepared to approve them along with the other elements mentioned previously. I therefore find myself able to make a summary assessment of the legal costs and therefore agree the Schedule of Costs made by the in house solicitor for the respondent and dated 12th September 2016 in the sum of £1425. I can also confirm that the hourly rate claimed of £250 is reasonable and proportionate given that Mr Arora is a Grade A solicitor and is charging at £250 per hour. This falls within the 2010 Supreme Court Costs hourly rates guidelines for summary assessment as they relate to this solicitor and his location.

13. Dealing with the managing agents fees the applicant has advised that the respondent is a minority shareholder in Synergy Home Management. The applicant has asked the tribunal to consider if there is the possibility of a sham or bogus commercial arrangement. The tribunal has considered the point but can find no evidence of this there being a proper invoice and list of works in the schedule. The tribunal is therefore satisfied that on the balance of probabilities the invoice is proper and payable. The tribunal has also considered in detail the schedule of works listed for the managing agent and in all the circumstances considers that 2 hours for this work is reasonable and proportionate. The tribunal therefore approves the fees claim for the agents as reasonable and therefore payable by the applicant in the sum of £200 plus VAT making the sum claimed of £240 in total. Finally it should be noted that there is case law that confirms that a landlord's costs in dealing with an RTM application could include managing agents costs incurred in regard to the RTM applications, see *Columbia House Properties (No 3) limited v Imperial Hall RTM Company Limited UKUT 0030 (LC) LRX/138/2012*.

Rule 13 Costs Application

14. The respondent has applied for costs pursuant to Rule 13. The tribunal's powers to order a party to pay costs may only be exercised where a party has acted "unreasonably". Taking into account the guidance in that regard given by HH Judge Huskinson in *Halliard Property Company Limited v Belmont Hall & Elm Court RTM, City and Country Properties Limited v Brickman LRX/130/2007, LRA/85/2008*, (where he followed the definition of unreasonableness in *Ridehalgh v Horsefield [1994] Ch 205 CA*), the tribunal was not satisfied that there had been unreasonable conduct so as to prompt an order for costs.
15. I am also mindful of a very recent decision in the case of *Willow Court Management Company (1985) Limited v Mrs Ratna Alexander [2016] UKUT 0290 (LC)* which is a detailed survey of the question of costs in a case of this type. At paragraph 24 of the decision the Upper Tribunal could see no reason to depart from the views expressed in *Ridehalgh*. Therefore following the views express in this recent case at a first stage I need to be satisfied that there has been unreasonableness. At a second

stage it is essential for the tribunal to consider whether, in the light of the unreasonable conduct it has found to have been demonstrated, it ought to make an order for costs or not; it is only if it decides that it should make an order that a third stage is reached when the question is what the terms of that order should be.

16. In *Ridehalgh* it was said that ““Unreasonable” also means what it has been understood to mean in this context for at least half a century. The expression aptly describes conduct which is vexatious, designed to harass the other side rather than advance the resolution of the case, and it makes no difference that the conduct is the product of excessive zeal and not improper motive. But conduct cannot be described as unreasonable simply because it leads in the event to an unsuccessful result or because other more cautious legal representatives would have acted differently.
17. The acid test is whether the conduct permits of a reasonable explanation. If so, the course adopted may be regarded as optimistic and as reflecting on a practitioner's judgment, but it is not unreasonable. I do not believe that the applicant has acted unreasonably. To my mind there is clear evidence of reasonable actions by a prudent and well managed RTM Company seeking to challenge costs in a proper responsible and effective way.
18. I therefore refuse the respondent's costs application and thus make no order for Rule 13 costs.

Name: Judge Professor Robert
M. Abbey

Date: 12 January 2017

ANNEX - RIGHTS OF APPEAL

1. 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.
2. 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.
3. 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 not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. 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.

Appendix of relevant legislation

Commonhold and Leasehold Reform Act 2002

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

The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 S.I. 2013 No. 1169 (L. 8)

Rule 13

(Orders for costs, reimbursement of fees and interest on costs)

(1) The Tribunal may make an order in respect of costs only—

(a) under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;

(b) if a person has acted unreasonably in bringing, defending or conducting proceedings in—

(i) an agricultural land and drainage case,

(ii) a residential property case, or

(iii) a leasehold case; or

(c) in a land registration case.

- (2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.
- (3) The Tribunal may make an order under this rule on an application or on its own initiative.
- (4) A person making an application for an order for costs—
- (a) must, unless the application is made orally at a hearing, send or deliver an application to the Tribunal and to the person against whom the order is sought to be made; and
- (b) may send or deliver together with the application a schedule of the costs claimed in sufficient detail to allow summary assessment of such costs by the Tribunal.
- (5) An application for an order for costs may be made at any time during the proceedings but must be made within 28 days after the date on which the Tribunal sends—
- (a) a decision notice recording the decision which finally disposes of all issues in the proceedings; or
- (b) notice of consent to a withdrawal under rule 22 (withdrawal) which ends the proceedings.
- (6) The Tribunal may not make an order for costs against a person (the “paying person”) without first giving that person an opportunity to make representations.
- (7) The amount of costs to be paid under an order under this rule may be determined by—
- (a) summary assessment by the Tribunal;
- (b) agreement of a specified sum by the paying person and the person entitled to receive the costs (the “receiving person”);
- (c) detailed assessment of the whole or a specified part of the costs (including the costs of the assessment) incurred by the receiving person by the Tribunal or, if it so directs, on an application to a county court; and such assessment is to be on the standard basis or, if specified in the costs order, on the indemnity basis.
- (8) The Civil Procedure Rules 1998(a), section 74 (interest on judgment debts, etc) of the County Courts Act 1984(b) and the County Court (Interest on Judgment Debts) Order 1991(c) shall apply, with necessary modifications, to a detailed assessment carried out under paragraph (7)(c) as if the proceedings in the Tribunal had been proceedings in a court to which the Civil Procedure Rules 1998 apply.
- (9) The Tribunal may order an amount to be paid on account before the costs or expenses are assessed.