



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

**Case reference** : **LON/00AH/LCP/2018/0001**

**Property** : **230 Norbury Avenue, Thornton Heath, Surrey CR7 8AJ**

**Applicant** : **Assethold Limited**

**Representative** : **Scott Cohen solicitors**

**Respondent** : **230 Norbury Avenue RTM Company Limited**

**Representative** : **Urban Life Property Management**

**Type of application** : **Application to determine the costs to be paid by an RTM Company under s88(4) of the Commonhold and Leasehold Reform Act 2002**

**Tribunal member(s)** : **Tribunal Judge Dutton  
Mr W R Shaw FRICS**

**Date of decision** : **9<sup>th</sup> May 2018**

**DECISION**

**Decisions of the Tribunal**

- (1) The Tribunal determines that The Respondent RTM company shall pay the costs of the Applicant as follows:
  - (a) Solicitors costs in respect of the Claim Notice dated 18<sup>th</sup> October 2017 assessed at £891 inclusive of VAT together with the postage of £7.74 again including VAT and Land Registry fees of £3 making a total of £901.74

(b) Solicitors costs in respect of the Claim Notice dated 19<sup>th</sup> December 2017 assessed at £1,122 inclusive of VAT together with postage of £7.74, again including VAT making a total of £1,129.74.

(c) Costs of Eagerstates Limited assessed at £250 plus VAT in respect of both invoices.

- (2) The Tribunal does not consider that the Respondent RTM Company has acted in such a way that could be classified as unreasonable within the meaning of rule 13 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 for the reasons set out below.

### **The application**

1. This was an application to assess the costs payable by the Respondent RTM Company under the provisions of s88(4) of the Commonhold and Leasehold Reform Act 2002 ("the Act"). The RTM Company had served two Claim Notices, one dated 18<sup>th</sup> October 2017 and a second dated 19<sup>th</sup> December 2017. It appears that the second Notice was withdrawn. It is not clear what had happened to the first Notice. The Respondent freeholder had served counter-notices to both asserting that the Applicant RTM company was not, on the relevant date, entitled to acquire the right to manage for differing reasons as set out on each Counter-Notice.
2. Directions had been issued on 6<sup>th</sup> March 2018 listing the matter as a paper determination. No party requested a hearing and the matter came before us on 9<sup>th</sup> May 2018.
3. We were provided with a bundle of papers running to some 191 pages, containing the statements from the Applicants, both in support of the application and in response to the Respondents statement. We also had the Respondent's statement. A number of exhibits were attached to each statement and response and a number of cases, both at First-Tier Tribunal and Upper Tribunal levels.

### **The law**

4. The relevant provisions of the Act are referred to below.

### **Evidence**

5. The submissions on behalf of the Applicant Assethold Limited are set out in the Statement of Case prepared by Scott Cohen Solicitors dated 21<sup>st</sup> March 2018 and a response dated 17<sup>th</sup> April 2018. For the Respondent RTM company their issues are set out in a Statement of

Case dated 29<sup>th</sup> March 2018. We noted all that was said. The areas of contention from the Respondent RTM Company's point of view were

(a) The charging rate of Scott Cohen. It is said that the Guideline rate for Oxford was £217 and not the £275 sought.

(b) The charges by Eagerstates Limited are not recoverable as the accounting work was only required at the end of the procedure, there was duplication of work between the agent and the solicitor, that the Claim Notices were served on the Applicant and not on the agent and that the costs should be "disregarded"

(c) There was a challenge to the number of letters written and that there was duplication of costs between the work done in respect of the first Claim Notice and the second one.

### **The Tribunal's decision**

6. We have considered the detailed submissions made by both sides and see no reason to repeat them in this decision. We have also considered the various cases put to us. Those at First-tier level are, of course, not binding upon us.
7. Taking into account all these factors, the Tribunal makes the following determinations.
8. The hourly rate of Miss Scott we find is reasonable. We accept her career details as set out in the Statement of Case. Also there is evidence in the form of a letter dated 17<sup>th</sup> April 2018 indicating that the Applicant accepted the hourly rate of £275. It is noted that in the terms of engagement the fee rate is recorded at £250 per hour but the difference is explained in the uplift in grade to A in October 2017. The Guidelines produced by the Court Service were, we think, reviewed in 2013 but the rates from 2010 were not changed. They are guidelines only. We find that a rate of £275 per hour for an experienced solicitor is not unreasonable and is the amount which the Applicant had agreed to pay, thus meeting the requirement of s88(2).
9. As to the fees of Eagerstate Limited we have considered the authorities put to us on this point. These include Assethold Limited v Kingswood Lodge RTM and Columbia House v Imperial Hall RTM, the later being an Upper Tribunal decision. It is our finding that the fees of a managing agent can be recovered but that the provisions of s88(2) apply. We do consider that there has been some duplication. The invoices presented to us are in effect duplicates with the same amount of work having been undertaken and the same time recorded. We note that the management agreement seems to show a charge of £250 plus VAT as a minimum under Appendix 3. It is suggested by the Applicant that the Claim

Notices were sent to the Registered Office of the Applicant, a firm of accountants, who sent those onto the agent. That seems to us to be an internal arrangement. We do however accept that some involvement of the agents would be required. They after all have the day to day knowledge of the property. We note the rate set out in the management agreement and consider that a global fee of £250 plus VAT is sufficient for the tasks they would be required to undertake to Counter-Notice level.

10. Finally the level of fees charged by Scott Cohen. We have noted all that was said in the Respondent's statement and the response of the Applicant. There is no doubt some duplication, but we find minimal only. The Claim Notices appear to have different defects raised by the Applicant. The Counter-Notices are different to reflect same. In respect of the second Notice more information was supplied, which required time to assimilate. We essentially accept the submissions made by the Applicant in the response. We do consider that the element of duplication is quite low. We propose to reflect that by reducing the time spent on the preparation of the Counter-Notices by two units each, that is to say 12 minutes at £55 plus VAT for both items of expenditure. Apart from that reduction we find the level of costs sought reasonable and in compliance with s88(2) of the Act. The amounts payable by the Respondent are set out above.

### **Rule 13 Application.**

11. We have noted what is said in the Applicant's statement of case. The unreasonable behaviour is in respect of the bringing, defending or conduct of the proceedings. We have considered the principles set out in the Upper Tribunal case of Willow Court Management v Alexander. The directions provided for the production of statements and it would appear that the Respondent has complied. The fact that the Respondent did not engage with the Applicants on seeking a conclusion on costs does not, in our finding, on the facts of this case, amount to unreasonable conduct. The Respondents response clearly set out what was in dispute. It was for the Applicant to make the application for costs, which it did and has had success. It is unclear what additional costs would have been incurred as the Respondent was quite entitled to object to the fees being sought. In those circumstances we find that there is no basis for pursuing a claim under rule 13 against the Respondent, which includes any refund of Tribunal fees.

*Andrew Dutton*

**Name:** Tribunal Judge Dutton

**Date:** 9<sup>th</sup> May 2018

## **Rights of appeal**

By 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.

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.

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.

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.

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

### ***The Relevant Law 88Costs: 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 .