



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

**Case Reference** : **MAN/00BN/LRM/2020/0013**

**Property** : **9 & 11 Athol Road, Manchester,  
Lancashire, M16 8QW**

**Applicant** : **9 and 11 Athol Road RTM  
Company Ltd**

**Representative** : **Mr Turner, MLP Law Limited  
Solicitors**

**Respondents** : **December Group Limited  
annex A.**

**Representatives** : **Messrs Philip Green & Jonathan  
Edelstein Howard of Edge Property  
Management Company Ltd**

**Type of Application** : **Commonhold & Leasehold Reform  
Act 2002 - Section 88**

**Tribunal Member** : **Regional Surveyor N. Walsh**

**Date** : **14 June 2021**

**HMCTS Code** : **P: Paper Remote**  
**(Paper, video,  
Audio)**

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**DECISION**

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## **DECISION**

**The Applicant is ordered to pay costs to the Respondent in the sum of £8,529.74**

## **REASONS**

### **Background and application**

1. The Tribunal received an application, dated 10 September 2020, from the Applicant for a determination of entitlement to no-fault right to manage under section 84(3) of the Commonhold and Leasehold Reform Act 2002.
2. A subsequent withdrawal application by the Applicant, dated 21 December 2020 and following receipt of the Respondent's Statement of Case, was consented to by the Tribunal at a remote video Case Management Hearing on 9 February 2021 and the Applicant's application was dismissed. The Tribunal confirmed its decision in a Case Management Hearing Note and Order dated 22 February 2021.
3. In accordance with S88 of the Commonhold and Leasehold Reform Act 2002, the Respondent made an application for costs. The Tribunal issued directions for the conduct of the application for costs within its Case Management Hearing note dated 22 February 2021. The parties were informed that the application for costs would be dealt with on the basis of their written representations, without an oral hearing being arranged, unless a hearing was requested. No such request was received. We have received detailed submissions from both parties and supporting documentary evidence, and we are grateful to the parties for the assistance that they have provided to the Tribunal.

### **The relevant law on costs**

4. The relevant legislation is set out in sections 88 and 89 of the Commonhold and Leasehold Reform Act 2002 as follows:

#### Section 88

- (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 [F1the 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 [F2the appropriate tribunal].

#### Section 89

- (1) This section applies where a claim notice given by a RTM company—
  - (a) is at any time withdrawn or deemed to be withdrawn by virtue of any provision of this Chapter, or
  - (b) 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).
- (4) But subsection (3) does not make a person liable if—
  - (a) the lease by virtue of which he was a qualifying tenant has been assigned to another person, and
  - (b) that other person has become a member of the RTM company.
- (5) The reference in subsection (4) to an assignment includes—

- (a) an assent by personal representatives, and
- (b) assignment by operation of law where the assignment is to a trustee in bankruptcy or to a mortgagee under section 89(2) of the Law of Property Act 1925 (c. 20) (foreclosure of leasehold mortgage).

### **Written submissions**

5. The Landlord has a statutory right under the 2002 Act, as set out above, to the costs it incurred in responding to the Applicant's application. Where an unsuccessful application has been made to the Tribunal, by virtue of S88(3), the Landlord's costs of the proceedings are also recoverable up until the moment the Tribunal either consents to the withdrawal of the application and / or dismisses the application. This right is capped by two tempering constraints. Firstly, that the costs are reasonable and secondly, by virtue of S88(2) that any costs for professional services will only be reasonable to the extent that the Landlord could reasonably have been expected to incur them if he/she was personally liable for the costs. This much is accepted by both parties.
6. The Respondent has provided a detailed breakdown of the costs that it has incurred, which in the main relate to the managing agent and solicitor fees. The managing agent, Mr Green of Edge Property Management Company Limited, contends that the Respondent's costs have been significantly inflated because of the actions of Mr Crawford, a director of the Applicant company, who allegedly conducted a campaign of harassment and intimidation against the managing agents by bombarding them with numerous, unnecessary and unfounded e mails.
7. In response, while the Applicant accepts that it is liable under the 2002 Act to meet the Respondent's reasonable costs, it considers costs of £10,887.40, inclusive of VAT, to be excessive and disproportionate given the early stage at which the application was withdrawn by the Applicant.
8. The Applicant in its written submissions raises a number of specific challenges to the amounts being sought by the Respondent. Firstly, the Applicant's representative disputes the legitimacy of including a VAT charge, citing Rule 13(8) of the Tribunal Procedure Rules 2013 and the Practice Direction to CPR Part 44. It is the Applicant's contention that because the Respondent is able to recover VAT as an input tax, it is inappropriate to levy a VAT charge on the costs being sought.
9. Besides this VAT issue, the main thrust of the Applicant's challenge relates to the reasonableness of the costs being sought. The Applicant highlights that the relationship between Mr Crawford and Mr Green

had become antagonistic and that the source of these differences relates to wider management issues at the Property. The Applicant's representative contends that many of the e mails Mr Crawford sent should be viewed in this context and accordingly, relate to wider management issues at the Property and not to the RTM application per se.

10. In support of this contention, the Applicant cites particular examples of a number of short e mails sent by Mr Crawford and also correspondence with external third parties. The Applicant questions whether the length of these e mails merit a 10-min or 15-min cost allocation, and also asserts that in many instances these e mails in fact relate to matters wholly unconnected with the RTM application. The rate for legal work charged by Myersons solicitors is also challenged by reference to the guideline rates approved by the Supreme Court Costs Office and the grade at which that work was undertaken. Finally, the Applicant disputes the time attributed for the attendance at Case Management Hearing and whether it was necessary for both Mr Green of Edge Property Management Company Limited and Mr Edelstein of the Respondent to be in attendance.
11. The Respondent, in the reply provided by Mr Green, has provided the Tribunal with a comprehensive response outlining its position in respect of each of these matters.

### **Discussion and conclusions**

12. The Tribunal notes that the Applicant does not seek to dispute the hourly charge rates applied with the exception of the Respondent's solicitors' hourly rate. The Tribunal has considered the rates levied by the managing agent and also consider these to be reasonable.
13. The Applicant has challenged the hourly charge rate for legal services supplied, though not the hours spent by the Respondent's solicitors on the basis of the grade fee guidelines approved by the Supreme Court. The Tribunal notes that the guidance was approved in 2010 and has not been updated for inflation since. Given this and the fact that Myserson's hourly rate at £215 is only slightly above the guidance rate for a grade A fee earner of £201, the Tribunal does not consider a significant reduction to the rates per se is warranted. However, given the level of legal input required in responding to this application and the relatively limited legal hours incurred in advising on the appropriate response to Mr Crawford's e mails, the Tribunal considers that a grade B fee earner would be a more appropriate rate to apply. Particularly, as there appears to have been little direct legal responses to Mr Crawford's e mails. The Tribunal finds however overall that the Respondent's management agent appears to have engaged legal services appropriately and not excessively.

14. The Tribunal has reviewed the e mails sent by Mr Crawford. These are clearly very antagonistic and threatening in nature. The Tribunal considers that these were undoubtedly an unhelpful and unnecessary way to engage with the Respondent especially when making a “no-fault” RTM. The result of which has inevitably inflated costs for the Respondent, which the Applicant must now under the statute reimburse the Respondent for. Notwithstanding the fact that there may be wider management disputes, the rights or wrongs of which the Tribunal is no in position to comment on, the e mails that we have been presented with appear to substantially relate to the RTM application and seek to pressurise the Respondent into either accepting the validity of the RTM application or withdrawing its counter notice.
15. Having reviewed the Respondent’s responses, they appear to have been professional and measured despite the nature of the e mails being received. We consider that the time taken to review these e mails is also overall not disproportionate or unreasonable, given that in many instances Mr Crawford copied in numerous influential and unrelated third parties such as members of parliament, the Housing Ombudsman, etc. We do, however, consider there may have been some slight double counting of time between the management agents and solicitors.
16. We did also consider that given the repetitive nature of Mr Crawford’s e mails whether such scrutiny was required or appropriate on each occasion and whether a better course of action may have been to simply acknowledge receipt and advise no further consideration or response would be undertaken prior to a Tribunal determination. On balance we find however that the Landlord’s and its agents actions were reasonable and proportionate. Given the nature of the e mails and particularly the fact that they were copied to leaseholders and external parties, they posed a real and consequential reputational risk to both the management agents and the Respondent; this thereby renders the action taken to review and consider these e mails reasonable and proportionate.
17. The Tribunal accepts the Applicant’s contentions in respect of VAT. The Respondent has produced no evidence, despite having the opportunity to do so, to suggest that the VAT paid by the Landlord was not recovered in full from HMRC. This is not a technical argument, as the Respondent’s agent suggests, the Respondent was liable to meet the cost of VAT but this VAT charge was either ultimately recoverable or it was not. No evidence has been presented that it was not. It would not be appropriate for the Respondent to gain a 20% windfall on the basis of a tax charge which it should not retain. The logic behind the guidance set out in CPR 44 is compelling and should therefore be followed. The Applicant is not being invoiced for these services directly and therefore should not be charged VAT, it is instead reimbursing the Respondent for the net costs that it has actually had to bear.

18. We do not accept the Applicant's submissions in respect of the costs associated with attending the Case Management Hearing. We consider that it would be unreasonable not to recompense the Respondent for the time taken by Messrs Green and Edelstein to prepare for and attend the Case Management Hearing. The Applicant's assertion that it is only appropriate to allow the Respondent to recover the actual 30 min time of the hearing and not the down time incurred due to IT technical difficulties is not reasonable nor fair. The Respondent and his agent were clearly engaged for the time period claimed, were trying to resolve the IT technical issues encountered and liaising with the video hearing support team to enable them to properly participate in the Case Management Hearing.
19. Following an examination of items of cost claimed and consideration of the parties' submissions, for the reasons outlined above we find the Applicant liable to meet 95% of the Respondent's costs net of VAT.

### **The terms of the order**

20. We are satisfied that the order for costs should require payment of the costs reasonably and properly incurred by the Respondent in responding to the RTM claim and in these proceedings.
21. The Respondent seeks costs of £8,978.67 (exclusive of VAT) and £10,887.40 inclusive of VAT in this regard. On the basis of the findings and reasons set out above, we conclude that it is appropriate for the Applicant to be ordered to pay costs to the Respondent in the sum of £8,529.74. No amount is payable in respect of VAT.

N. Walsh  
Regional Surveyor  
14 June 2021