



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

Case reference : **LON/00AN/LCP/2022/0009**

HMCTS code : **P:PAPER**

Property : **Flats 1-18 Admiral Square, London
SW10 0UU**

Applicant : **Chelsea Harbour Limited**

Representative : **Harold Benjamin Solicitors Limited**

Respondent : **Admiral Court (Chelsea Harbour) RTM
Company Limited**

Representative : **None stated**

Type of application : **Costs – payable by an RTM company
under s.88(4) Commonhold and
Leasehold Reform Act 2002**

Tribunal member : **Judge Pittaway**

Date of decision : **11 November 2022**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers which has been not objected to by the parties. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents before the tribunal were in a bundle provided by the Applicant of 83 pages.

Decision of the tribunal

Having considered the documents provided, the Tribunal determines that the amount of costs payable by the Respondent is

- £8,700 plus VAT in respect of the Applicant's legal fees
- with disbursements of £241.60 (not £244.60) plus VAT.

The reasons for the Tribunal's decision are set out below.

Background

- (1) The Applicant seeks an order under section 88(4) of the Commonhold and Leasehold Reform Act 2002 (the "**2002 Act**") as to the amount of costs payable by a RTM Company. The costs claim arises out of notice served by the Respondent on 2 March 2022 that it was entitled to acquire the right to manage Flats 1-18 Admiral Square, London SW10 0UU ('the **Property**'). The Applicant served a counter notice on 31 March 2022 stating that the Respondent was not entitled to acquire the Property. No application was made to the Tribunal to determine whether the Respondent was entitled to acquire the right to manage the Property.
- (2) The application was accompanied by a detailed statement of case exhibiting relevant documents and the Applicant's costs statement.
- (3) By Directions dated 23 August 2022 the Respondent was directed to provide the Applicant by 20 September 2023 (the year stated clearly being a typographical error), a statement of case and any legal submissions, details of comparative cost estimates or accounts upon which reliance was placed and copies of any other documents relied on.
- (4) The Directions provided for the Applicant to provide a statement in response by 4 October 2022, and to provide a bundle of documents to the Tribunal and the Respondent by 18 October 2022.
- (5) The Directions also stated that the tribunal considered that the application could be decided on the basis of written submissions from the parties using the document bundle provided unless any party requested an oral hearing. No such request was received.
- (6) The relevant law is set out in the Appendix to this decision.

The parties' cases

1. The Applicant provided a Statement of Costs dated 18 July 2022 which identified the charge out rates of Mr Ross (Grade A) at £400 per hour.

The Statement then set out the costs as follows

	Hours	Amount	
Attendances on Applicant			
Letters out/ emails	1.4	£560	
Telephone	0.3	£120	
Attendances on opponent			
Letters out/ e mails	0.30	£120	
Attendances on others			
Letters out/ emails	1.45	£580	
Telephone	0.10	£40	
Site Inspection	3.20	£1,280	
Work done on documents			
Reviewing claim and background notice	1.5		
Drafting instructions to counsel	0.5		
Research re 2002 Act	0.5		
Reviewing building plans	0.3		
Reviewing sample lease	0.3		
Reviewing docs received from RTM co	2.5		
Reviewing title documents	0.2		

Reviewing Albion Riverside judgement	0.6		
Reviewing/amending counter-notice		£2,800	
TOTAL			£5,500
Counsel's fees			£3,200
Disbursements			
Process server's fees		£175	
HMLR		£58.50	
Travel		£8.10	£244.60
TOTAL			£8,944.60
VAT			
On solicitor's and counsel's fees		£1,740	
On other expenses		£48.92	£1,788.92
TOTAL			£10,733.52

2. In its Statement of Case the Respondent acknowledged that it had been naïve to serve the notice without taking legal advice. It submitted that it was common knowledge among solicitors that the Tribunal would reject claims where properties were not self-contained.

The Respondent accepted that the Applicant had the right to recover costs in a failed RTM application but submitted that the costs claimed were an unreasonable charge for writing two letters, referring to the counter-notice served on it on 31 March 2022 and a letter of 16 June 2022 in which the applicant's solicitors claimed costs of £10,733.52. It commented that it considered that the Applicant's service charges were unreasonable.

The Respondent submitted that it had obtained two 'quotes' from solicitors for evaluating the merits of its RTM application. These were enclosed in the documents before the Tribunal. That from Fosters LLP

being £2,500 plus VAT and that from J B Leitch saying that the costs should not exceed £2,00 plus VAT.

3. In its Statement of Response the Applicant submitted that it was not obvious that the Property did not qualify under the legislation, challenging why in such circumstances the Respondent would have sought to serve its notice of claim.

The Applicant submitted that the Respondent's statement of case did not comply with the Directions as it did not identify agreed elements of the costs nor those disputed, with reasons. The Applicant submitted that the Respondent had not challenged any particular element of the costs set out in its Statement of Costs.

As for the two 'quotes' the Applicant submitted that these were for acting for an RTM company, not a person serving a counter-notice, that it was unclear on what basis the firms had been asked to quote and neither commented on the Applicant's Statement of Costs. The hourly rates for a partner or associate quoted by Forsters LLP were higher than the hourly rate of the Applicant's solicitor.

Reasons for the Tribunal's decision.

4. It is unfortunate that the Respondent did not seek legal advice before serving the Notice of Claim. It has to accept the consequences of not having done so. It may consider that the Applicant's solicitor should have known that the application was ill-founded but it has provided no evidence to substantiate this, save to comment that the inapplicability of the legislation to non self-contained buildings was known to solicitors.
5. The Respondent has challenged the Applicant's costs on the basis that £10,733.52 is an unreasonable amount of time to spend on writing two letters to it. The Tribunal finds that the work undertaken by the Applicant's solicitors involved far more than writing two letters, as set out in the summary of its costs set out above.
6. The Respondent has not provided any evidence to substantiate its submission that the Applicant's costs are unreasonable. The Tribunal finds that the alternate 'quotes' obtained by the Respondent are in fact estimates (and stated to be so) and that, as submitted by the Applicant, they are not for the work required to be undertaken by the solicitor on whom a claim notice is served.

The Tribunal finds that the Respondent has not challenged the hourly rate set out by the Applicant (which is less than that set out in one of the Respondent's estimates), nor the length of time spent by the Applicant's solicitor on the identified elements of the work it had undertaken. The Tribunal also finds that the Respondent has not challenged the reference of the matter to counsel, nor the amount of Counsel's fees. These are all matters which might have been challenged but the Respondent has not done so.

7. In the circumstances the Tribunal finds the legal costs incurred by the Applicant to be reasonable.
8. The Tribunal notes that the total of the disbursements claimed by the Applicant is £241.60 and not £244.60 as stated in its Statement of Costs.

Name: Judge Pittaway

Date: 11 November 2022

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).

Appendix

The Law

Commonhold and Leasehold Reform Act 2002

84 Counter-notices

(1) A person who is given a claim notice by a RTM company under section 79(6) may give a notice (referred to in this Chapter as a “counter-notice”) to the company no later than the date specified in the claim notice under section 80(6).

(2) A counter-notice is a notice containing a statement either—

(a) admitting that the RTM company was on the relevant date entitled to acquire the right to manage the premises specified in the claim notice, or

(b) alleging that, by reason of a specified provision of this Chapter, the RTM company was on that date not so entitled,

and containing such other particulars (if any) as may be required to be contained in counter-notices, and complying with such requirements (if any) about the form of counter-notices, as may be prescribed by regulations made by the appropriate national authority.

(3) Where the RTM company has been given one or more counter-notices containing a statement such as is mentioned in subsection (2)(b), the company may apply to the appropriate tribunal for a determination that it was on the relevant date entitled to acquire the right to manage the premises.

(4) An application under subsection (3) must be made not later than the end of the period of two months beginning with the day on which the counter-notice (or, where more than one, the last of the counter-notices) was given.

(5) Where the RTM company has been given one or more counter-notices containing a statement such as is mentioned in subsection (2)(b), the RTM company does not acquire the right to manage the premises unless—

(a) on an application under subsection (3) it is finally determined that the company was on the relevant date entitled to acquire the right to manage the premises, or

(b) the person by whom the counter-notice was given agrees, or the persons by whom the counter-notices were given agree, in writing that the company was so entitled.

(6) If on an application under subsection (3) it is finally determined that the company was not on the relevant date entitled to acquire the right to manage the premises, the claim notice ceases to have effect.

(7) A determination on an application under subsection (3) becomes final—

(a) if not appealed against, at the end of the period for bringing an appeal, or

(b) if appealed against, at the time when the appeal (or any further appeal) is disposed of.

(8) An appeal is disposed of—

(a) if it is determined and the period for bringing any further appeal has ended, or

(b) if it is abandoned or otherwise ceases to have effect.

87 Deemed withdrawal

(1) If a RTM company has been given one or more counter-notices containing a statement such as is mentioned in subsection (2)(b) of section 84 but either—

(a) no application for a determination under subsection (3) of that section is made within the period specified in subsection (4) of that section, or

(b) such an application is so made but is subsequently withdrawn,

the claim notice is deemed to be withdrawn.

(2) The withdrawal shall be taken to occur—

(a) if paragraph (a) of subsection (1) applies, at the end of the period specified in that paragraph, and

(b) if paragraph (b) of that subsection applies, on the date of the withdrawal of the application.

(3) Subsection (1) does not apply if the person by whom the counter-notice was given has, or the persons by whom the counter-notices were given have, (before the time when the withdrawal would be taken to occur) agreed in writing that the RTM company was on the relevant date entitled to acquire the right to manage the premises.

(4) The claim notice is deemed to be withdrawn if—

(a) a winding-up order . . . is made, or a resolution for voluntary winding-up is passed, with respect to the RTM company, or the RTM company enters administration,

(b) a receiver or a manager of the RTM company's undertaking is duly appointed, or possession is taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property of the RTM company comprised in or subject to the charge,

(c) a voluntary arrangement proposed in the case of the RTM company for the purposes of Part 1 of the Insolvency Act 1986 (c. 45) is approved under that Part of that Act, or

(d) the RTM company's name is struck off the register under section 1000, 1001 or 1003 of the Companies Act 2006

88 Costs: general

(1) An 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

89 Costs where claim ceases

(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) a 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).