



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

Case reference : **LON/00BG/LCP/2021/0017**

Property : **40 Bow Common Lane
Limehouse
London E3 4AX**

Applicant : **Assethold Limited**

Representative : **Scott Cohen Solicitors Limited**

Respondent : **40 Bow Common Lane (London RTM)
Company Limited**

Representative : **Not known**

Type of application : **Application for a determination of costs
payable by the Respondents pursuant to
s.88(4) of the Commonhold & Leasehold
Reform Act 2002**

Tribunal members : **Mr I B Holdsworth FRICS MCI Arb**

**Venue of paper
determination** : **Remote**

Date of decision : **10 April 2022**

DECISION

Decision

The Tribunal determines that the Respondent shall pay the Applicant costs in the sum of **£2,163.60 (inclusive of VAT)** pursuant to s.88(4) of the Commonhold & Leasehold Reform Act 2002.

The Tribunal determines that the Respondent shall reimburse the Applicant the cost of the application fee, namely £100.

Reasons for Decision

Introduction

- 1 The Applicant seeks a determination pursuant to s.88(4) of the Commonhold & Leasehold Reform Act 2002 ('the 2002 Act') in respect of costs payable by the Respondent. The Applicant seeks the reimbursement of the Tribunal application fee of £100.
- 2 Directions were given in respect of this application on 21 January 2022. Direction 2 required to the Respondent, within 21-days of receipt of the Applicant's Statement of Case and itemised schedule, to serve a Statement of Case in response, setting out each item in dispute and the reasons for such disputes. The Applicant served their Statement on the Respondent on 19 November 2021 but has received no substantive response from the Respondent's representative.
- 3 By a Claim Notice dated 11 November 2020, the Respondent claimed to acquire the right to manage the property on 20 March 2021. By Counter Notice the Applicant submitted that the Respondent was not entitled to acquire the right to manage the property, on the basis of four separate grounds. In the Counter Notice there were alleged breaches of s.8(6), 72(2), 79(6) and 80(2) of the 2002 Act.
- 4 A First Tier Tribunal Decision dated 26 August 2021 determined that the Respondents were entitled to acquire the right to manage the premises pursuant to s.84(5)(a) of the 2002 Act and the Respondent's right to acquire would become effective within three-months after the determination date.
- 5 At paragraph 14 of the First Tier Tribunal Decision, it states:

'In the light of the Tribunal's Decision there is no question of awarding any costs of the proceedings to the Respondent, because the application for the right to acquire has not been dismissed.'
- 6 This application refers solely to the s.88 costs. The Applicant has submitted a detailed schedule of costs, including invoices from the managing agent.

The Law

7 The relevant sections of the 2002 Act provide:

Section 88 Costs: general

- (1) *A RTM company is liable for reasonable costs incurred by a person who is a: -*
- (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.*

Section 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 s.88 for cost 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 s.89(2) of the Law of Property Act 1925 (c20) (foreclosure of leasehold mortgage).

Hearing

8 Neither party requested a hearing and we determined the matter on the papers. An inspection was not necessary.

Submissions

9 We had the Applicant's Statement of Case but no submission from the Respondent.

Deliberations

Costs

10 We have considered the Applicant's submission and documentary evidence. We are satisfied that on the basis of the documentary evidence, the Respondent is liable to pay the legal fees incurred. The hourly rate of £275 reflects the experience of a Grade A fee earner and the breakdown of activity carried out and evidence of such activity is accepted as reasonable.

11 We determine the legal fees of £1,584 inclusive of VAT are payable by the Respondent.

12 In relation to the fees of the managing agent, Eagerestates Limited, we note 4.83 hours were allocated to the tasks. A charge of £900 plus VAT was made for the time expended, which equates to any hourly charge of £186.33. This hourly rate is not confirmed in the invoice but inferred from invoice details provided at p.30 of the bundle.

13 We note that the annual charge for management of each of the individual properties is confirmed as £230 at page 49 of the bundle in the Fee Agreement. From the knowledge and experience of property management held by the tribunal it concludes annual management of property requires more than 1.25 hours per annum which would be the time expended if the hourly rate of £186 is adopted.

- 14 After deliberation of the submission and reference to their property management knowledge and expertise they determine a charge of £100 per hour is reasonable for the property advice provided.
- 15 The Tribunal determines the sum payable for the managing agent's fee is £579.60 inclusive of VAT.

Reimbursement of application fee

- 16 Rule 13(2) Tribunal Procedural (First Tier Tribunal) (Property Chamber) Rules states that a Tribunal may make an order requiring a party to reimburse any other party the whole or part of any amount fee paid by the other party which has not been remitted by the Lord Chancellor.
- 17 The Respondent had ample opportunity to respond to the Applicant on the matter of costs before this application was made and no substantive response from the Respondent was received. The Tribunal is told the only response was an e-mail included in the bundle, from the Respondent's representative, which comments on the excessive management fee. No other comments are provided by the Respondent. We find that it is fair and just that the application fee be reimbursed.
- 18 We determine that the Respondent shall reimburse the £100 application fee.

Appeal

- 19 If either party is dissatisfied with this Decision, they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28-days after these written reasons have been sent to the parties and must state the grounds on which they intend to rely in the appeal

Name: Ian B Holdsworth **Date:** 11 April 2022
Valuer Chairman