



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

Case reference : **LON/00AG/LCP/2022/0011**

**HMCTS code
(paper, video,
audio)** : **P: PAPERREMOTE**

Property : **159-167 Prince of Wales Road, London
NW5 3PY**

Applicant : **Assethold Limited**

Representative : **Scott Cohen Solicitors Limited**

Respondent : **159-167 Prince of Wales Road RTM
Company Limited**

Representative : **Unrepresented**

Type of application : **Determination of costs under section
88(4) of the Commonhold and
Leasehold Reform Act 2002**

**Tribunal
member(s)** : **Judge Jeremy Donegan**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **12 January 2023**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote determination on the papers which has not been objected to. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because was not practicable and all issues could be determined on paper. The documents that the Tribunal were referred to are in a bundle of 273 pages, the contents of which have been noted.

Decisions of the Tribunal

- A. No costs are payable by the respondent to the applicant under section 88(1) of the Commonhold and Leasehold Reform Act 2002 ('the 2002 Act').**
- B. The application for reimbursement of the Tribunal fee is refused.**

The background and procedural history

1. The application concerns a right to manage ('RTM') claim for 159-167 Prince of Wales Road, London NW5 3PY ('the Property'), which comprises several long leasehold flats. The respondent, 159-167 Prince of Wales RTM Company Limited ('the RTM Company'), is a right to manage company formed by the leaseholders of some of these flats.
2. The applicant, Assethold Limited ('Assethold') purchased the freehold of the Property from Millcastle Limited ('Millcastle') on 10 October 2019. It also purchased the headlease of the Property from Millcastle on 10 October 2019. Neither purchase has been registered at HM Land Registry.
3. Assethold is represented by Scott Cohen Solicitors Limited. The RTM Company was represented by Canonbury Management ('Canonbury') on the RTM claim but is now unrepresented.
4. The RTM Company served a claim notice on Assethold dated 10 June 2021, claiming RTM for the Property pursuant to s.79 of the 2002 Act. The notice was addressed to Assethold and Millcastle.
5. Assethold served a negative counter-notice dated 14 July 2021, pursuant to s.84, contending the notice of invitation to participate was not given to each person specified in s.78(1) and did not comply with s.79(3). It also alleged the claim notice was not given to each person specified at s.79(6) and not copied to each person specified at s.79(8).
6. The RTM Company submitted a Tribunal application dated 23 September 2021, seeking a determination it was entitled to RTM, pursuant to s.84(3) ('the RTM Application'). This named Assethold as the landlord at panel 3. The Tribunal issued directions on 21 September and the application was subsequently listed for a video hearing on 26 May 2022. On 25 May, the RTM Company filed and served notice of withdrawal. Judge Korn consented to the withdrawal on 26 May.
7. Assethold submitted a costs application on 30 September 2022, pursuant to s.88(4) ('the Costs Application'). The Tribunal issued

directions on 12 October 2022. These included provision for a paper determination, which neither party has objected to.

8. Assethold rely on two costs schedules dated 27 June 2022 claiming costs of £3,014.22 and £11,733, respectively. The first covers the initial assessment and response to the RTM claim and the second covers the RTM Application. The total sum claimed is £14,747.22, which includes solicitors' costs and disbursements, a fee for the managing agents, counsel's brief fee for the abortive hearing on 26 May 2022 and VAT.
9. The paper determination of the Costs Application took place on 11 January 2023. The applicant filed a 273-page bundle of documents in accordance with the directions and the Tribunal considered the various documents in that bundle when making its decision.
10. The relevant legal provisions are set out in the appendix to this decision.

The parties' submissions

11. The RTM Company relies on a lengthy statement of case and annexe dated 23 November 2022. They dispute Assethold's costs on three main grounds:
 - (a) Assethold has no standing to claim costs under s.88(1)(a) as it is not registered as the freeholder of the Property and neither transfer deed has been executed by them.
 - (b) Assethold has failed to discharge its burden to substantiate the costs claimed. In particular, the schedules do not give details of any unusual or complex features justifying the costs claimed, there is no discernible explanation of the times claimed, the supporting invoices are inadequate and/or defective and do not appear to satisfy the VAT Regulations.
 - (c) Quantum - the costs claimed are unreasonable, substantially exceed the sums allowed in other Tribunal cases involving Assethold (and those charged by Cannonbury) and are not supported by valid VAT invoices.
12. Assethold responded in a detailed statement of case, with two exhibits, dated 07 December 2022. This largely focuses on the alleged failure to substantiate its costs and the quantum challenges. Its brief response to the standing argument is recited below:
 - "a) *In response to paragraphs 5 – 13*
As noted by the Respondent, the Applicant purchased the Freehold of 159-167 Prince of Wales Road, London, NW5 3PY on 10 October 2019 and this has been stated in the Applicant's statement of case. A copy TR1 has been provided as evidence of the transfer and was a file copy of the final document which was

why the signature was absent. The applicant confirms that the application is still pending at the Land Registry.

- b) *The applicant would contend that it is clear that the Respondent was aware of the capacity of the Applicant in this matter having given the copy claim notice to the Applicant in this matter.*
 - c) *Further the Applicant would contend that the Respondent issued proceedings against the Application t (sic) under Section 84(3) of the 2002 Act and confirmed the capacity of the Applicant as Freeholder within the application form to the FTT in those proceedings and confirmed the Applicant was the Landlord to the FTT within the statement of case to the FTT (extract of the Applicant and statement of case enclosed as Exhibit 1). As such the Applicant would contend that the Respondent would now be estopped from denying liability for the Applicant's costs incurred in response to the Claim Notice and of the costs in these proceedings in due course on such grounds."*
13. Assethold contend its costs are reasonable and should be allowed in full. They also seek reimbursement of the £100 application fee paid on the Costs Application.

Discussion and findings

14. The starting point is to consider whether the Tribunal has standing to determine the Costs Application. This turns on whether Assethold was a landlord under a lease of the whole or part of the Property when the claim notice was served in June 2021 (s.79(6)(a)). The purchase of the freehold and headlease completed on 10 October 2019 but are yet to be registered.
15. There is no suggestion that Assethold is a person who can claim costs under s.79(6)(b) or (c).
16. The determination bundle includes copies of both transfer deeds. The freehold deed is dated 10 October 2021. The headlease deed is undated. Both deeds name Millcastle as the Transferor and Assethold as the Transferee. Both have been executed by Millbrook but not Assethold. Assethold say these are file copies only but have not disclosed any deeds executed by them. The margin notes for panel 12 on both deeds include the following instruction "*The transferor must execute this transfer as a deed using the space opposite. If there is more than one transferor, all must execute. Forms of execution are given in Schedule 9 to the Land Registration Rules 2003. If the transfer contains transferee's covenants or declarations or contains an application by the transferee (such as a restriction) it must also be executed by the transferee.*" Both deeds include covenants by Assethold, meaning it had to execute the deeds as transferee.

17. Over three years have passed since the purchase of the freehold and the headlease. Assethold have given no explanation for the delay in registering these transactions and have not disclosed the Land Registry applications or any requisitions. The determination bundle does not include official copies of the freehold or headlease title. Presumably both are still registered in Millcastle's name.
18. The transfer of the freehold and headlease to Assethold do not operate in law until they are registered by virtue of s.27(1) of the Land Registration Act 2002. A transfer is a disposition that must be completed by registration (s.27(2)). During the 'registration gap' (the period between completion and registration) Assethold only has equitable rights as against Millcastle.
19. Based on the documents in the determination bundle, the transfer deeds have not been validly executed as they have not been executed by Assethold. This may explain the delay in registration. In any event, Assethold is not the registered freeholder or head leaseholder and has no legal interest in the Property. It remains to be seen when registration will take place, if at all.
20. Assethold was not a landlord under a lease of the whole or any part of the Property when the claim notice was served, as it had no legal interest. This means the claim notice was not given to it under s.79(6)(1), it had no standing to serve a counter-notice and has no standing to claim costs under s.88.
21. The fact the RTM Company served the claim notice on Assethold and Millcastle, named Assethold as the landlord in the RTM application and referred to Assethold as their freeholder in their statement of case does not give rise to an estoppel. Assethold was not a landlord when the claim notice was served and still is not a landlord. This fact cannot be overridden by any misunderstanding of the law by the RTM Company or Cannonbury.
22. All of this means the RTM company is not liable to pay any costs to Assethold under s88(1) of the 2002 Act.
23. It is unnecessary for the Tribunal to go on and consider the other arguments advanced by the RTM Company, as to substantiation and quantum and it declines to do so.
24. Given the Costs Application has been unsuccessful, the application for reimbursement of the Tribunal fee is refused.

Name: Tribunal Judge Donegan **Date:** 11 January 2023

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 79 Notice of claim to acquire right

- (1) A claim to acquire the right to manage any premises is made by giving notice of the claim (referred to in this Chapter as a “claim notice”); and in this Chapter the “relevant date”, in relation to any claim to acquire the right to manage, means the date on which the notice is given.
- (2) The claim notice may not be given unless each person required to be given a notice of invitation to participate has been given such a notice at least 14 days before.
- (3) The claim notice must be given by a RTM company which complies with subsection (4) or (5).
- (4) If on the relevant date there are only two qualifying tenants of flats contained in the premises, both must be members of the RTM company.
- (5) In any other case, the membership of the RTM company must on the relevant date include a number of qualifying tenants of flats contained in the premises which is not less than one-half of the total number of flats so contained.
- (6) The claim notice must be given to each person who on the relevant date is –
 - (a) landlord under a lease of the whole or any part of the premises,
 - (b) party to such a lease otherwise than as landlord or tenant, or
 - (c) a manager appointed under Part 2 of the Landlord and Tenant Act 1987 (referred to in this Part as “the 1987 Act”) to act in relation to the premises or any premises containing or contained in the premises.
- (7) Subsection (6) does not require the claim notice to be given to a person who cannot be found or whose identity cannot be ascertained; but if this subsection means that the claim notice is not required to be given to anyone at all, section 85 applies.
- (8) A copy of the claim notice must be given to each person who on the relevant date is the qualifying tenant of a flat contained in the premises.
- (9) Where a manager has been appointed under Part 2 of the 1987 Act to act in relation to the premises, or any premises containing or contained in the premises, a copy of the claim notice must also be given to the tribunal or court by which he was appointed.

Section 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 specified provisions 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.

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 a landlord or tenant, or
 - (c) a manager appointed under Part 2 of the Landlord and Tenant Act 1987 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 a 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 any 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 an RTM company –
 - (a) is at any time withdrawn or deemed to be withdrawn by virtue of any provisions 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 section (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.

Section 112 Definitions

...

- (2) In this Chapter “lease” and “tenancy” have the same meaning and both expressions include (where the context permits) –
 - (a) a sub-lease or sub-tenancy, and
 - (b) an agreement for a lease or tenancy (or for a sub-lease or sub-tenancy),but do not include a tenancy or will or at sufferance.
- (3) The expressions “landlord” and “tenant” and references to letting, to the grant of a lease or to covenants or to terms of a lease, shall be construed accordingly.

...

The Land Registration Act 2002

Section 27 Dispositions required to be registered

- (1) If a disposition of a registered estate or registered charge is required to be completed by registration it does not operate at law until the relevant registration requirements are met.
- (2) In the case of a registered estate, the following are the dispositions which are required to be completed by registration –
 - (a) a transfer,

...

Section 74 Effective date of registration

An entry made in the register in pursuance of –

- (a) an application for registration of an unregistered legal estate, or
- (b) an application for registration in relation to a disposition required to be completed by registration,

has effect from the time of the making of the application.