

490



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

Case reference : **LON/00AY/LCP/2014/0008**

Property : **Brixton Hill Court, Brixton Hill,
London SW2 1 QX**

Applicant : **Springquote Limited**

Representative : **J B Leitch Solicitors**

Respondent : **Brixton Hill Court RTM Company**

Representative : **Comptons Solicitors**

Type of application : **Application for a determination of
Landlords costs payable by a Right
to Manage Company in relation to
Right to Manage**

Tribunal member(s) : **Judge Haria**

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

Date of decision : **09.02.2015**

DECISION

Decisions of the tribunal

The tribunal makes the determinations as set out under the various headings in this decision

The application

- 1) The Applicant seeks a determination pursuant to Section 88(4) of the Commonhold and Leasehold Reform Act 2002 (“the Act”) that the Respondent pays the Applicant’s costs incurred in connection with the Respondent’s Claim Notices dated 23 December 2013.

The Background

- 2) The Respondent acting via Comptons Solicitors LLP (“Comptons”), served two Claim Notices (“the Claim Notices”) upon the Applicant. The first Claim Notice related to Flats 1-88 Brixton Hill Court, Brixton Hill, London (“the First Claim Notice”) and the second Claim Notice related to Flats 89-142 Brixton Hill Court, Brixton Hill, London (“the Second Claim Notice”).
- 3) The Applicant on receipt of the Claim Notices instructed J B Leitch LLP (now known as J B Leitch Limited) (“JBL”) to advise in relation to the Claim Notices and if appropriate to serve counter notices in response.
- 4) On the 22 January 2014, JBL served Counter Notices on Comptons.
- 5) On the 31 January 2014 Comptons served a Notice of Withdrawal (“the Notice of Withdrawal”) upon the Applicant. The Applicant claims that the Notice of Withdrawal did not have the effect of withdrawing the Claim Notices and the Claim Notices were ultimately deemed withdrawn on 22 March 2014.
- 6) The Respondent served two further Claim Notices (“further Claim Notices”) on the Applicant each dated 4 February 2014 pursuant to section 80 of the Act giving notice that it intends to acquire the Right to Manage of Brixton Hill Court on 9 June 2014.
- 7) On the 6 March 2014 the Applicant served two counter- notices in relation to the further Claim Notices and disputed that the Respondent was entitled to acquire the Right to Manage (“the RTM”).
- 8) An application was made to the Tribunal in respect of the further Claim Notices and a case management conference (“CMC”) was held on the 21 May 2014 at which both parties were represented. Directions were issued setting the matter down for a hearing on the 7 & 8 August 2014. The application in relation to the further Claim Notices was listed under Case Number LON/00AY/LOA/2014/001.

- 9) On the 27 June 2014 the Applicant submitted an application to the Tribunal for a determination of the costs incurred by the Applicant in relation to the Claim Notices under Section 88(4) of the Act.
- 10) On the 1 July 2014 the Tribunal issued directions consolidating the application for costs with Case Number LON/00AY/LOA/2014/001. The application was listed for an oral hearing on the 7 & 8 August 2014.
- 11) At the hearing the parties indicated that a further application might be submitted in relation to costs of the application under Case Number LON/00AY/LOA/2014/001. The Tribunal considered it to be in the interests of justice to consolidate all the costs application relating to the Claim Notices.
- 12) The Tribunal did not receive any further application for costs in relation to the application under Case Number LON/00AY/LOA/2014/0001, and JBL confirmed in their letter of 4 December 2014 that they were without instructions from their client in relation to an application for costs.
- 13) On the 7 November 2014 the Tribunal issued further directions listing the costs application relating to the Claim Notices and set the application down for a hearing on the 16 January 2015.
- 14) Neither party requested a hearing so the application was determined on the papers.

Right to Manage History

- 15) It is helpful to set out the table produced in the directions issued on the 7 November 2014 showing the litigation between the parties in respect of the Respondent's RTM claim.

Date of claim	Case Number	Application	Date of Decision	Result	Judge
19 February 2013	LON/00AY/LRM/2013/013	S.84 RTM	25 September 2013	Right rejected	Daley
19 February 2013	LON/00AY/LCP/2013/015	S.88 Costs	25 March 2013	Costs awarded	Daley
14 October 2013				Claim withdrawn 23 December 2013	
14 October 2013	LON/00AY/LCP/2014/005	S88 Costs	28 May 2014	Costs awarded	Daley

23 December 2013				Claim withdrawn 31 January 2014	
23 December 2013	LON/00AY/LCP/2014/008	S88 Costs			
4 February 2014	LON/00AY/LOA/2014/001	S84 RTM	29 September 2014	Right acquired	Haria

The submissions

- 16) JBL claims that the notice of withdrawal served on the 31 January 2014 did not have the effect of withdrawing the Claim Notices and the Claim Notices were ultimately deemed withdrawn on 22 March 2014.
- 17) JBL claims that the fact that it had previously considered other claim notices served by the Respondent did not and could not have reduced the time required perusing and considering the Claim Notices.
- 18) JBL claims that a considerable amount of extra time was spent drafting the Counter Notices as a result of the late response from Comptons to queries raised in JBL's letters of the 2 and 8 January 2014.
- 19) JBL claims that due to the complicated nature of the RTM process it was necessary for them to advise the Applicant at length on the implications of the Claim Notices and the Counter Notices.
- 20) The statement of case produced by JBL gives a detailed explanation of work done and costs incurred and attaches two Costs Schedules as follows:
 - i) Annex 1- details the Applicant's costs of and occasioned by the Claim Notices in the period up to 22 March 2014 – totalling £6,089.40, ("Annex 1") and
 - ii) Annex 2 – details the Applicant's costs of and incidental to this application for costs totalling £748.80 ("Annex 2").
- 21) On the 21 August 2014, JBL produced an updated Annex 2 detailing the entirety of the Applicant's costs incurred in respect of this application totalling £2,328.10 ("updated Annex 2").
- 22) Comptons on behalf of the Respondent submitted a Statement in reply challenging the costs on the basis that the claim had already been substantially litigated and there is a relationship between the Applicant and its solicitors JBL and as such the Applicant's solicitor has considerable knowledge and expertise of the issues involved and this should have been reflected in the costs charged.

- 23) Comptons pointed out that the costs now claimed are double that determined as reasonable by the Tribunal under a previous application for costs under case number LON/00AY/LCP/2014/0005 at £3066.60.
- 24) Comptons submitted that the criticism made of them by JBL in relation to the delay in responding to their queries, is wholly unjustified. Comptons stated that the queries were raised on the 2 and 8 January 2014 and were responded to on 21 January, which was 9 working days after the last query. Comptons stated that given the highly litigious nature of the matter and the number of queries raised in two separate letters sent a week apart, it was not an unreasonable time in which to respond. In addition the Respondent's Solicitor had just returned from the Christmas and New Year break and had a backlog of work added to which there was some difficulty in obtaining instructions as many clients were away at that time of year.
- 25) The individual challenges made by the Respondent's solicitor to the costs claimed are set out in detail in the Respondent's statement in reply. The Applicant's claim is set out in Applicant's statement of case and their response to the Respondent's reply is set out in the Applicant's further comments on the case.

The Tribunal's decision and reasons

- 26) The Respondent has not denied liability for the Applicant's costs in relation to the Claim Notices but has challenged the reasonableness of the costs. The Tribunal is satisfied that the Respondent is liable for the Applicant's reasonable costs under the provisions of Section 89 of the Act as a consequence of the withdrawal or deemed to be withdrawal of the Claim Notices.
- 27) Section 88(1) of the Act provides that a RTM company (such as the Respondent) is liable for reasonable costs incurred by a person who is a landlord (such as the Applicant) in consequence of a claim notice given by the company in relation to the premises.
- 28) Section 88(2) provides that any costs incurred by the landlord 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. The Tribunal had this in mind in determining the costs. The parties have been engaged in a series of litigation as set out above.
- 29) Richard Owen ("RO") of JBL has acted for the Applicant throughout and as such during the course of the previous litigation RO must have gained significant knowledge of the particular issues involved in relation to the RTM in respect of the Property. The Applicant as the paying party would expect the costs of dealing with the Claim Notices to reflect this and be less

than if RO had no prior knowledge of the Applicant and the RTM in respect of the Property.

Costs of and occasioned by the Claim Notices in the period up to 22 March 2014- Annex 1

- 30) **Hourly rates:** Virtually all the work was undertaken RO, who is an experienced Solicitor admitted as a Solicitor of England and Wales on 15 September 2008 and, has at all material times, been a Grade B fee earner with an hourly charge out rate of £192.00 plus VAT and disbursements.
- 31) Matthew McConville, is a Grade D fee earner employed by JBL with an hourly charge out rate £118.00 plus VAT and disbursements. He spent 4.2 hours obtaining printing and storing the Land Registry office copy entries for each unit. A disbursement charge of £333.00 was incurred in relation to 111 office copy entries at £3.00 per office copy.
- 32) The Tribunal is persuaded by the points made at paragraph 21 of the Applicant's Further Comments, that RO's hourly rate compares very favourably with the guideline hourly rates of between £229 - £267 per hour plus VAT and disbursements for a Grade A fee earner with the knowledge and legal expertise such as the Solicitor acting for the Respondent, James Compton of Comptons. Accordingly, the Tribunal finds the hourly rate of £192 plus VAT and disbursements to be reasonable.
- 33) **Attendance on Applicant Letter out/emails/telephone:** JBL has claimed 2.2 hours at £192.00 per hour for attendances on the Applicant by letters out and email amounting to £422.40. In addition JBL has claimed 0.8 hours at £192.00 per hour for attendances on the Applicant by telephone amounting to £153.60.
- 34) The Applicant claims that the complicated nature of the right to manage process meant that it was necessary for JBL to advise the Applicant at length as regards the implications of the Claim Notices and the need to serve counter notices in response if the Respondent was not to acquire the RTM by default. JBL had to liaise with the Applicant to ensure that the persons named in the schedules to the Claim Notices were members of the Respondent.
- 35) The Respondent stated that since no evidence had been provided as to how 2.2 hours had been spent corresponding and 0.8 hours spent on the telephone, it was difficult for them to respond. The Respondent stated that in general terms there has been significant litigation regarding this building with all issues discussed extensively before hand and as a result no more than half an hour of work should be necessary in order to take instructions. The Respondent accepts no more than half an hour to take instructions and no more than 0.2 hours on the telephone.

- 36) The Tribunal agrees that insufficient detail has been provided by JBL as to the letters, emails and telephone attendance save for the time spent. The Tribunal considers that the costs should reflect RO's considerable experience having been involved in the previous litigation and prior knowledge of the issues. Accordingly, the Tribunal considers it reasonable to allow 1.2 hours for attendances on the Applicant by letters out and email and 0.6 hours for attendances on the Applicant by telephone.

Total time allowed 1.8 hours at £192 per hour = £345.60.

- 37) **Attendance on opponents letters out/emails/ telephone:** JBL has claimed 0.5 hours in relation to letter out/emails at £192.00 per hour amounting to £95.00. In relation to telephone attendance JBL has claimed 0.1 hours at £192.00 per hour amounting to £19.20. Both of these amounts are accepted by the Respondent. The Tribunal considers these charges to be reasonable.

Total time allowed 0.6 hours at £192 per hour = £115.20.

- 38) **Schedule of work done on documents:**

- i) The Applicant claimed a total of £5065.20 in respect of the works detailed on the schedule of works done as follows:

23.8 hours at £192 per hour = £4569.60

4.2 hours at £118 per hour = £ 495.60

28.0 Total hours = £ 5065.20

The Respondent accepted only 7.9 hours at £192 per hour = £1516.80 as reasonable. JBL has provided a breakdown of the work done as follows:

- ii) Obtaining and storing Land Registry Office Copy Entries relating to Flats 1-142: JBL claimed 4.2 hours at £118.00 per hour to obtain Land Registry Office copy entries relating to each leasehold unit. JBL claims the office copy entries were obtained in order to consider the Claim Notices. The Respondent challenged this and stated that it is an administrative task and should not be charged at an hourly rate and should be included in the firm's overheads. However, the Respondent confirmed that in the event that the Tribunal considered it reasonable to incur the cost then the time taken should be reduced by half to 2 hours. The Respondent stated that although in the first and second determination the Tribunal determined 3 hours to be sufficient, since this was the third time the task was undertaken the matter should have taken less time.

The Tribunal considers it prudent and necessary to obtain office copy entries to establish the identity of the leaseholders when considering the Claim Notices. The Tribunal considers that it is not reasonable to rely on office copy entries obtained on previous occasions in respect of earlier claim notices as there may have been some relevant changes in the title. Although the Tribunal accepts the task involved in obtaining, printing and storing office copies is largely administrative, the Tribunal considers that the process can be time consuming and unlikely to be much reduced simply because the task has been undertaken previously. The Tribunal considers a charge for 3 hours to be reasonable for dealing with 111 leasehold titles.

Total time allowed 3.0 hours at £118.00 per hour = £354.00

- iii) Perusal and consideration of Claim Notice relating to Flats 1-88:
The Applicant's solicitor RO claimed 3 hours for considering the First Claim Notice. In particular RO claimed it was necessary to check whether the form and content of the First Claim Notice accorded with that prescribed by Section 80 of the Act and Schedule 2 to the Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2010. He stated that it was necessary to check that the details of the 45 purported members referred to in the schedule to the Claim Notice (together with the details of the relevant leases) accorded with the Land Registry Office copy entries. The Respondent submitted the task should have taken no more than 0.6 hours, given that the Claim Notices were in substantially the same form as those served previously.

The Tribunal having seen the Claim Notice finds that it is reasonable to spend 2 hours considering and checking the Claim Notice given the need to check the details number of the 45 members referred to in the schedule to the Claim Notices and the need to check that the Claim Notice complied with the legislation.

Total time allowed 2.0 hours at £192 per hour = £384.00

- iv) Perusal and consideration of Claim Notice relating to Flats 89-142:
The work undertaken in respect of this Claim Notice was similar to that in respect of the First Claim Notice detailed at paragraph 40 except that in this case the Schedule contained a list of 27 member's details. The Tribunal applies the same reasoning as above and considers 1.5 hours of chargeable time to be reasonable.

Total time allowed 1.5 hours at £192 per hour = £288.00.

- v) Perusal and consideration of sample Notices of Invitation to Participate: JBL claimed 1.8 hours at £192 per hour = £345.60 was

spent perusing and inspecting the document. RO checked the Notices complied with the form and content prescribed by Section 78 of the act and Schedule 1 to the Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2010. In addition JBL claimed it was necessary to check that names on the Notices of Invitation to Participate against the register of members. The Respondent submitted that this should have taken no more than 0.5 hours. The Tribunal agrees that it should not have taken as long as 1.8 hours to consider the Notices of Invitation to Participate, but the Tribunal does not accept that it could be done in no more than 0.5 hours. The Tribunal accepts that the Notices of Invitation to Participate needed checking as stated by JBL and considers the appropriate time for checking of both Notices of Invitation to Participate is 1.2 hours.

Total time allowed 1.2 hours at £192 per hour = £230.40

- vi) Perusal and consideration of Register of Members: JBL claimed that RO spent 0.8 hours checking the register of members to ensure there was nobody on listed as a member of the RTM Company whose details had not been given in the schedules to either Claim Notice. The Respondent suggested this should have taken no more than 0.1 hours. The Tribunal having seen the Claim Notices and given the number of members does not accept that the Register of Members could be read and checked against the schedules to the Claim Notices in 0.1 hours. The Tribunal accepts the time claimed.

Total time allowed 0.8 hours at £192 per hour = £153.60

- vii) Counter Notice relating to Flats 1-88: JBL claimed a total of 7.2 hours at £192 per hour = £1,382.40 in respect of the work undertaken in preparing and serving the Counter Notices. It was necessary to prepare and serve the Counter Notices by no later than 25 January 2014 to avoid the Respondent acquiring the RTM by default. RO wrote to Comptons on the 2nd and 8th January. On the 19 January having had no response to the queries RO spent 3.3 hours drafting the Counter Notices in response to the First Claim Notice. JBL claimed that a further 3.9 hours was spent amending and redrafting the Counter Notices as a result of the late response to the queries. Although the reasons given by Comptons for the time taken to respond to the queries are understandable, the Tribunal accepts that the delay did result in extra costs being incurred. The Tribunal in the First Determination at item 11 of the Scott Schedule allowed 7 hours for drafting counter notices to each of the 5 claim notices. This equates to 1.4 hours per claim notice. In the Second Determination the Tribunal at paragraph 30 allowed a total of 7 hours for drafting counter notices in respect of two claim notices. The Tribunal having seen the Counter Notices agrees that they are lengthy and complicated. The Tribunal considers a total of 7.2 hours

to prepare and serve one Counter Notice to be excessive, and considers 4 hours to be adequate for the initial preparation of the Counter notice and a further 0.8 hours redrafting the Counter Notice due to the delayed response to the queries.

Total time allowed 4.8 hours at £192 per hour = £921.60

- viii) Counter Notice relating to Flats 89-142: JBL claimed a total of 5.5 hours at £192 per hour = £1,056.00. On the 20 January RO spent 2.4 hours drafting the Counter Notice in response to the Second Claim Notice. The queries were not responded to until the 21 January due to the Christmas and New Year break and the backlog of work. JBL claimed that RO spent a further 3.1 hours redrafting. The Tribunal applying the same reasoning as set out in the paragraph above allows 3.8 hours in total.

Total time allowed 3.8 hours at £192 per hour = £729.60

- ix) Perusal and consideration of purported Notice of Withdrawal dated 23 December 2013: JBL claimed 0.2 hours for time spent considering the Notice of Withdrawal served on the 31 January 2014. The Respondent claimed that since the Claim Notices ceased to have legal effect when they were withdrawn, the Respondent cannot be liable for any costs after this date. As detailed below the Tribunal agrees there is no liability for costs once the Claim Notices are withdrawn. In this case however, the Applicant claimed the Notice of Withdrawal was ineffective and the Claims Notices were not withdrawn until the deemed withdrawal on the 22 March 2014. This issue was not pursued by the Applicant in case number LON/00AY/LOA/2014/001. The wording of Section 89(2) of the Act is such that it excludes costs incurred after the withdrawal or deemed withdrawal of any claim notice. The Tribunal considers the Respondent's liability ceased on service of the Notice of withdrawal and so the costs incurred in considering the Notice of Withdrawal are not recoverable from the Respondent.
- x) Miscellaneous documents: JBL claimed 2.8 hours at £192 per hour = £537.60 in relation to dealing with incoming correspondence received from both Comptons and the Applicant. The Respondent stated that these costs should be disallowed as no evidence had been provided as to what this comprises. The attendances by letter out/emails and telephone on the Applicant, the opponents and others have already provided for in the costs dealt with above at paragraphs 29 to 36. Although JBL has not provided precise details of the incoming correspondence received from both Comptons and the Applicant, the Tribunal accepts that there will have been some such correspondence and allows the sum claimed.

Total time allowed 2.8 hours at £192 per hour = £537.60

Costs of this application – Annex 2 and Updated Annex 2

- 39) Section 88(3) of the Act basically provides that an RTM company is liable for any costs which the landlord incurs as a party to proceedings before a Tribunal only if the Tribunal dismisses the application that the RTM company is entitled to acquire the RTM. In relation to the Claim Notices, no such proceedings took place.
- 40) Section 89(2) of the Act provides that the liability of the RTM company under Section 88 of the Act for costs incurred by the landlord where a claim notice given by a RTM company is at any time withdrawn or deemed to be withdrawn is a liability for costs incurred by him down to that time.
- 41) The Respondent denied liability for these costs as they were incurred at a time when the Claim Notices ceased to have legal effect. The Respondent refers to paragraph 40 of the determination in case number LON/00AY/LCP/2014/005 in support. The Tribunal concurs with that determination that the wording of Section 89(2) of the Act is such that it excludes costs incurred after the withdrawal or deemed withdrawal of any claim notice. Accordingly, the Tribunal determines that the Applicant is not entitled to any costs in connection with the bringing of this application to the Tribunal for a determination of its costs being the costs detailed in Annex 2 and the updated Annex 2.

The Tribunal determines the total sum recoverable to be £4060.40 plus disbursements of £333.00.

Name: N Haria

Date: 09/02/2015

APPENDIX

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 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 a leasehold valuation 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 a leasehold valuation 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) 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).