



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

**Case reference** : LON/00BJ/LCP/2016/0008

**Property** : Main Building, Albion Riverside, 8  
Hester Road, London SW11 4AR

**Applicants** : (1) Albion Residential Ltd  
(2) Albion Riverside Commercial  
Ltd  
(3) Albion Properties Ltd

**Representative** : Mr Fleming, legal counsel, of  
Hutchinson Property Group (UK)  
Limited

**Respondents** : The former directors of Albion  
Riverside Residents RTM Company  
Limited being: -

(1) Mr & Mrs Bernadout (Flat D21)  
(2) Mr & Mrs Bickerton (Flat 71)  
(3) Mr Pinto (Flat D86)  
(4) Mr Patterson (no longer  
resides in Albion Riverside)  
(5) Hartwell Property Estate Inc  
owner of Flats B2 and B3 by Mr  
& Mrs Leland (Flat B2) who  
have an interest in the owner  
company  
(6) Mr and Mrs Todd (Flat B65)

**Representative** : In Person

**Type of application** : Application as to the costs to be  
paid by an RTM company under  
section 88(4) Commonhold and  
Leasehold Reform Act 2002

**Tribunal members** : (1) Judge Amran Vance  
(2) Mr I B Holdsworth MSc FRICS

**Date of determination and venue** : **9 November 2016 at 10 Alfred Place, London WC1E 7LR**

**Date of interim decision** : **22 November 2016**

**Date of final decision** : **25 March 2017**

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## **FINAL DECISION**

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### **Summary of the tribunal's decisions**

1. The tribunal determines that the statutory costs payable by the respondents is the sum of **£30,685.20**.

### **Background**

2. This is an application under section 88(4) of the Commonhold and Leasehold Reform Act 2002 ("the Act") in respect of Main Building, Albion Riverside, 8 Hester Road, London SW11 4AR ("the Building").
3. The application is for the determination of the reasonable costs payable by the respondents under section 88(1) of the Act following a reversal by the Upper Tribunal (Lands Chamber) in a decision dated 14 January 2014 of a decision by the Leasehold Valuation Tribunal dated 28 November 2012 that Albion Riverside Residents RTM Company Limited ("the RTM Company") was entitled to acquire the right to manage the Building.
4. On 21 February 2014, the Upper Tribunal issued an Addendum to its decision in respect of costs. It determined that the RTM Company was liable to pay the applicants' reasonable costs incurred before both the Upper Tribunal and before the LVT "as costs incurred in consequence of a claim notice given by the company" for the purposes of section 88(1) of the Act. It also determined that any question as to the reasonableness of those costs should be determined by this tribunal.
5. On 3 May 2016 and 13 June 2016 Mr Fleming wrote to Mr Todd, Mr Bernadout, Mr Bickerton, Mr Pinto and Mr Leland, as former directors of the RTM Company seeking proposals for payment of costs in the sum of £51,827.40 (which included the sum of £15,297 determined by the LVT on 21 January 2013 to be payable by the RTM Company in respect of costs due in relation to the relevant claim notices).

6. By letter dated 28 July 2015 Mr Fleming, legal counsel, of Hutchinson Property Group (UK) Limited, the applicants' representative, notified the tribunal that as agreement on the amount of costs payable had not been reached he was applying for a determination by the tribunal. He pointed out that the matter was complicated by the fact that the RTM Company has been dissolved but that, in his view, the members remained liable for these costs pursuant to section 89(3) of the Act. The RTM Company was dissolved on 11 August 2015 following an application made by its directors.
7. A case management hearing took place on 6 September 2016, attended by Mr Fleming. There was no attendance on behalf of the RTM Company. We note that notification of the case management hearing was sent to the address held on the tribunal's records as being the contact address of the RTM Company, B2 Albion Riverside, being the address of Mr Leland, one of the former directors of the RTM Company. Mr Leland subsequently responded to the tribunal stating that the RTM Company was no longer in existence.
8. Directions were made by the tribunal on the same day in which the tribunal indicated that it would determine the application on the papers unless either party requested a hearing. The directions also required the respondents to provide a statement of case and any legal submissions to the applicants by 4 October 2016. That direction was not complied with.
9. Mr Leland subsequently requested an oral hearing which took place before us on 9 November 2016.
10. The tribunal issued an interim decision on 22 November 2016. On the same day, it issued directions that required:
  - (a) the respondents to notify Mr Fleming, the applicants' representative, of the last address known to them of the approximately 100 former members of the RTM Company;
  - (b) Mr Fleming to notify the approximately 100 former members of the RTM Company of this application and the tribunal's interim decision dated 22 November 2016 using the list of addresses supplied by the respondents in accordance with the direction above unless he or the applicants' managing agent were aware that a former member had changed address in which case notification is to be sent to that address. The notification was to include a copy of the application; a copy of the directions made by the tribunal and a copy of the tribunal's interim decision;
  - (c) Mr Fleming to provide the tribunal with a list of the names and addresses of the members that he had notified in accordance with the previous direction above.
  - (d) any of the approximately 100 former members of the RTM Company who wish to be joined as respondents to this application

and who wished to make representations in respect of the tribunal's interim order to provide signed written confirmation to the tribunal and to Mr Fleming that this was their intention. We directed that such confirmation must be received by the tribunal and Mr Fleming by no later than Friday 13 January 2017.

- (e) Mr Fleming to provide any of the former members who had provided written confirmation that they wished to be joined as respondents to this application and to make representations with copies of the following documents that that were before the tribunal at the hearing on 9 November 2016:
    - (i) the schedule of costs and the disbursement vouchers;
    - (ii) the decision of the LVT dated 28 November 2012;
    - (iii) the decisions of the Upper Tribunal (Lands Chamber) dated 14 January 2014 and 21 February 2014; and
    - (iv) the report of Ms Deborah Lazarus.
  - (f) that any of the former 100 members who applied to be joined as a respondent was to forward any written representations and legal submissions they wished to make in respect of the tribunal's interim decision to the tribunal and to Mr Fleming to be received on or before Friday 17 February 2017. Any of the existing respondents who wished to make written representations must also do so by the same date; and
  - (g) the applicant was accorded the opportunity to file and serve a statement of case in reply to any representations received and in response to the tribunal's interim decision.
11. Mr Todd wrote to the tribunal on 10 November 2016 confirming that he had delivered a register of members to Mr Fleming
  12. On 9 December 2016, the tribunal amended its interim decision under Rule 50 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 to correct accidental omissions in its decision.
  13. On 15 December 2016, Mr Fleming provided the tribunal with a list of the members of the RTM Company that he had contacted in accordance with our directions of 22 November.
  14. On 31 January 2017, the tribunal wrote to the parties stating, amongst other matters, that if none of the former 100 members of the RTM Company had applied to be joined as a respondent to this application the tribunal intended issuing its final determination on the papers and without a further hearing.
  15. On 20 February 2017, Mr Fleming informed the tribunal by email that none of the former members of the RTM Company had notified him that

they wished to be joined as respondents to this application or to make representations in respect of our interim decision. Nor have any of the former members notified the tribunal that they wished to do so. The tribunal has therefore decided to make final its interim decision, the contents of which are set out below.

16. The tribunal has received an email from dated from Mr George Staple, one of the former members of the RTM Company dated 9 March 2017. The points raised in that email are addressed in the final section of this decision under the subheading 'Concluding Remarks', which section did not form part of our interim decision.

### **The statutory provisions**

17. Section 88 of the Act provides:

- (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 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.

18. Section 88 of the Act provides:

- (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).

### **The Hearing**

19. Mr Fleming attended on behalf of the applicants. Also in attendance was Mr David Todd and Mrs Todd (Flat B65), Mr Bernadout (Flat D21) and Mr Leland (Flat B2). Mr Todd spoke on behalf of the respondents present.
20. On the day before the hearing Mr Todd sent the tribunal some written submissions in response to the application in which he proposed that the application be struck out because of the applicants delay in pursuing it. He also stated that if the tribunal was minded to assess the costs payable that the applicant be required to notify all members of the RTM Company within 7 days of the assessment.
21. Mr Todd did not send these written submissions to Mr Fleming who did not see them until after the start of the hearing. Having been allowed time to read the submissions Mr Fleming did not object to the respondents being allowed to rely upon them but asked the tribunal to give due consideration to the fact that they had been submitted late. A without prejudice letter attached to the submissions was excluded as the tribunal did not consider it relevant to its determination.
22. At the start of the hearing the tribunal indicated that subject to the parties' representations its provisional view was that there was no merit

in the strike out application or in the proposal made previously by the respondents that the application be stayed pending notification of the application to all 100 or so members of the former RTM Company.

23. However, it agreed that given that section 88 (3) imposes joint and several liability on each person who is or has been a member of the RTM company that it was appropriate for all the former members to be able to make representations in respect of this application before the tribunal's decision is issued. As such, the tribunal proposed proceeding with the hearing and making an interim decision which should then be notified to all the former members with an invitation to make representations before the decision was made final.
24. Having heard the tribunal's preliminary views the respondents withdrew their strike out application. None of the parties present had any objection to the tribunal's proposal to issue an interim decision.
25. The costs sought by the applicants are as follows:

<b>Date of Invoice</b>	<b>Description</b>	<b>Amount</b>	<b>VAT</b>	<b>Total</b>
10.10.12	Solicitors Costs for advice, preparation and attendance at a pre-trial review before the LVT	£1,710	£342	£2,052
24.12.12	Counsel's fee for settling skeleton argument and attendance at LVT hearing	£3,000	£600	£3,600
14.01.13	Tribunal appeal fee	£250	-	£250
18.07.13	Expert report of Ms Deborah Lazarus	£6,312	£1,262.40	£7,574.40
23.01.14	Counsel's fee for opinion, drafting application for permission to appeal, notice of appeal, statement of case, reply, letter, advice skeleton argument,	£14,850	£2,970	£17,820

	submissions in reply, attendance at Upper Tribunal hearing and settling costs submissions			
07.02.14	Fee for Ms Deborah Lazarus – review and attendance at Upper Tribunal hearing	£3,945	£789	£4,734
22.02.14	Upper Tribunal hearing fee	£500	-	£500
<b>TOTAL</b>		<b>£30,567</b>	<b>£5,963.40</b>	<b>£36,530.40</b>

26. Mr Todd raised no objections to the amounts sought in respect of: solicitor's costs; counsel's fee for settling skeleton argument and attendance at LVT hearing; the two tribunal fees.
27. As for Ms Lazarus's fees, Mr Todd contended that her report was largely a restatement of two earlier engineering scheme design reports prepared by her firm, Ove Arup & Partners Limited ("Arup"), in March 2000 and December 2001 and that the amount of time charged in preparing her report (24 hours) was excessive. He also challenged her hourly rate of £263 per hour as being too high. As to her 7 February 2014 invoice, he considered the charges to be excessive. The invoice appears to constitute 6 hours of review prior to attendance at the Upper Tribunal hearing and a full day, charged at £2,367 for attendance at the hearing. Mr Todd queried why so much time was spent in reviewing documents and suggested that a fee for 6 hours' attendance at the hearing was a reasonable amount.
28. In response, Mr Fleming argued that Ms Lazarus's hourly rate was reasonable for an associate director in a major engineering firm and that whilst the March 2000 and December 2001 reports were prepared by Arup, Ms Lazarus was not involved with the preparation of either reports and nor was she involved in the construction of the Building. As such, he considered it reasonable for her to spend time appraising herself of the earlier reports following which she carried out her own inspection of the Building before writing her own report. Mr Fleming accompanied her for part of this inspection.
29. Counsel's fee note of 23 January 2014 concerned fees incurred by Mr Anthony Radevsky. Mr Todd did not object to the £8,500 brief fee for

representation at the Upper Tribunal hearing but considered the other fees charged to be excessive. He stated that the respondents counsel had charged a total of £7,000 plus VAT for all work carried out including conferences and a skeleton argument. Mr Fleming contended that the fees claimed were reasonable.

### **The tribunal's determination and reasons**

30. The tribunal reminds itself that under section 88 (2) of the Act any costs incurred in respect of professional services are to be regarded as reasonable only to the extent that those costs might reasonably be expected to have been incurred by the receiving party if the circumstances had been such that he was personally liable for all such costs.
31. The tribunal does not accept the assertion, supported by no other evidence, that Ms Lazarus's hourly rates are excessive. She is a senior engineer in a major engineering firm based in central London and in the tribunal's, experience the hourly rate charged are reasonable. However, it is at the upper end of what we consider would be reasonable and her expertise should be reflected in the speed at which she was able to draft her report and to prepare for the tribunal hearing.
32. In our view both her invoices are excessive. We do not consider that it is reasonable to have spent a total of 24 hours in preparation of what is quite a short report of which there are about 11 pages of substance aside from the contents page and appendices. Her conclusions in that report amount to about 50 lines of text. On the available evidence, we consider the following to be reasonable: four hours in reviewing documents prior to preparation of her report; three hours for the inspection including travel from Central London; and five hours for preparation of her report. We consider 12 hours in total to be reasonable for the first invoice.
33. As to Ms Lazarus's second invoice we consider a review of her report in preparation for the hearing should have taken no more than two hours and we consider no more than eight hours for a full day at the Upper Tribunal, including travel to be reasonable.
34. Turning to Mr Radevsky fee note of 23 January 2014 no challenge was made to his hourly rate of £400 plus VAT and we consider it to be reasonable given that he is an experienced counsel and a specialist in this area of work. In our view this experience is appropriately reflected in the time spent on this case as shown in the breakdown in his fee note. The 3 hours and 45 minutes spent drafting an opinion seems to us to be clearly reasonable as is the 90 minutes spent drafting an application for permission to appeal and the 2 hours spent drafting a

notice of appeal and statement of case. We also consider the 3 hours and 45 minutes spent drafting a reply, letter and advising by email to be reasonable. As conceded by Mr Todd the three days' brief fee of 7-8 hours per day is reasonable. So too, in our view, is the 2 hours and 30 minutes spent settling submissions in reply and the 40 minutes subsequently spent settling costs submissions. In our view given the complexity of this case a less experienced counsel is likely to have spent considerably more time dealing with the above than spent by Mr Radevsky.

35. The only items of Mr Radevsky's fee note that we consider to be unreasonable on the evidence before us is the 90 minutes spent on 10 May 2013 and the 30 minutes spent on 31 May 2013, both spent on advising by email. Mr Fleming was unable to clarify why this additional advice was needed at this stage. In the absence of an explanation we consider a total of 60 minutes for both these items to be reasonable.
36. The tribunal therefore determines that the statutory costs payable by the respondents under s.88(1) of the Act are as follows:

<b>Date of Invoice</b>	<b>Description</b>	<b>Amount</b>	<b>VAT</b>	<b>Total</b>
10.10.12	Solicitors Costs	£1,710	£342	£2,052
24.12.12	Counsel's fee	£3,000	£600	£3,600
14.01.13	Tribunal appeal fee	£250	-	£250
18.07.13	Expert report of Ms Deborah Lazarus	£3,156	£631.20	£3,787.20
23.01.14	Counsel's fee	£14,450	£2,890	£17,340
07.02.14	Fee for Ms Deborah Lazarus	£2,630	£526	£3156
22.02.14	Upper Tribunal hearing fee	£500	-	£500
<b>TOTAL</b>		<b>£25,696</b>	<b>£4,989.20</b>	<b>£30,685.20</b>

## Concluding Remarks

37. In an email to the tribunal dated 9 March 2017 Mr George Staple informed the tribunal that Mr Fleming had notified him and his wife, by letter dated 8 December 2016, of the tribunal's interim decision and that he had joint and several liability for the costs incurred by the applicant. Mr Staple asserts that the list of former Members of the RTM Company provided by the respondents to Mr Fleming should not have included his name or that of his wife because they had withdrawn from membership of the RTM Company by notice dated 23 June 2012, six days before the RTM Company served its Notice of Claim dated 29 June 2012. As such, he considers that neither he nor his wife have any liability for the costs in issue.
38. We have considered Mr Staple's email. However, the tribunal's jurisdiction in this application is to determine the amount of costs payable by the respondents as former members of the RTM Company. We do not have jurisdiction regarding enforcement of the costs that have been determined and it is not our function to determine whether Mr Staple and his wife were or were not members of the RTM Company at the relevant time. We directed that notice of the application be sent to all former members of the RTM Company so that each of them had the option of applying to be joined as a respondent and to make representations concerning the amount of costs payable given that in addition to the named respondents the other members also had a potential liability to pay the costs determined. Mr Staple has not applied to be joined as a respondent and we cannot consider therefore consider his representations when reaching our decision.
39. We note however that the combined effect of sections 89(3) and 89(4) of the Act is that each person who is, or has been a member of the RTM company, is also liable for the costs incurred where a claim ceases (jointly and severally with the RTM company and each other person who is so liable) unless: (a) their 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. As such, we direct that the applicant should send a copy of this decision to all the 100 former members of the RTM Company except for those members that Mr Fleming indicated in his email of 20 February he tried to contact unsuccessfully and for whom he has no alternative address. He may, if he wishes, send a copy of the decision by email to any of the former members with whom he has been in email communication unless the member has indicated to the contrary.

**Name:** Judge Amran Vance

**Date:** 25 March 2017

## **APPENDIX 1 - 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.