



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

Case Reference : **MAN/00CJ/LRM/2019/0007**

Property : **Bewick House, Bewick Street,
Newcastle upon Tyne NE1 5EF**

Applicant : **Bewick House (Newcastle) RTM
Company Limited**

Representative : **Adcocks Solicitors**

Respondents : **Ian Robert Baggett and Adriatic
Land 1(GR3) Limited**

Representative : **J B Leitch**

Type of Application : **Commonhold and Leasehold Reform Act
2002 – Section 88(4)**

Tribunal Members : **Laurence Bennett (Tribunal Judge)**

Date of Decision : **24 February 2020**

DECISION

Application

1. Mr Ian Robert Baggett and Adriatic Land 1(GR3) Limited apply for a determination of the costs payable by Bewick House (Newcastle) RTM Company Limited under Section 88(4) of the Commonhold and Leasehold Reform Act 2002 (the Act).
2. The Respondent is a Right to Manage Company formed to acquire the right to manage Bewick House, Bewick Street, Newcastle upon Tyne NE1 5EF (the Property).

Background

3. An application for an order under Section 84(3) of the Act was received by the Tribunal on 14 August 2019.
4. By letter dated 13 November 2019, from the Applicant's representative, the Applicants gave notice of withdrawal of the application.
5. On 21 November 2019, Judge Holbrook made directions for the determination of the application in respect of costs to be paid under Section 88(4) which provided for the Respondent's schedule of costs with justification, Applicant's comments and that the Tribunal would consider the application on the papers unless either party requested a hearing.
6. In compliance with directions, the Applicants provided a schedule of costs and comments on the history of the proceedings and conduct of the Applicants.
7. The Respondent's solicitors included in a letter dated 29 January 2020 "We are instructed that our client does not intend to file any objections/comments in respect of the landlords' costs schedules. We are asked to make it clear that our client considers the landlords costs to be excessive and much of the costs as between the freeholder and intermediate landlords appear to be duplication. Our clients consider this to be yet another example of elicit unreasonable sums from them."
8. The Applicants' solicitors letter dated 6 February 2020 gives further submissions in respect of the separate nature of the first and second Applicants, takes exception to the assertion in respect of the purpose of the application and analyses the relevance of the Respondent's financial resources to the issues. The Applicants ask the Tribunal to consider that the Respondent has failed to comply with directions and has not identified a sum considered unreasonable and that the Tribunal should therefore refrain from further assessment.
9. Neither party requested an oral hearing. The Tribunal determined the application on the papers on 24 February 2020.

The Law

10. The relevant sections of the Act provide:

11. S88 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 [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]

12. S89 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).

Respondent's case

13. The Applicants' case is that the Respondent did not support the assertion within its initial notice that the non-residential extent of the premises did not exceed 25% of the whole. The Respondent should have been aware of this in advance, not least from the Counter Notice.
14. The Applicants' schedule itemises costs identifying the fee earner, the description and additional narrative and units charged. The costs claimed total the sum of £2,067.24 inc VAT. Disbursement include HMLR £3, Architect's fees £3,300 inc VAT, Group Consultant fees for Mr Baggett £4,050 inc VAT and internal time spent by M.D. for Adriatic £302.87. A description of work is given in each case. The combined total claimed is £9,723.11.

Tribunal's Conclusions with Reasons

15. The background of withdrawal of the substantive claim is straightforward. Under Section 89(1)(a) of the Act the Respondent is liable for the Applicants' reasonable costs under Section 88(1)(a) of the Act.
16. The schedule of costs is detailed. We have not found items outside expected activity following receipt of a notice under the Act. They include routine administration and correspondence and appropriate advice leading to preparation and service of a counter notice.
17. The Respondent contends that there is duplication of work because of the activity on behalf of first and second Applicants. We have not found such duplication in the statement of solicitor's costs although it is clearly necessary for both parties to be informed of developments and prepare for a contested determination. In summary, we find these costs reasonable.
18. We have considered the items forming the professional disbursements.

Architect's fees

19. This appears required to research the extent of the commercial element of the building. It involved ascertaining existing plans and drawings and to redraw plans and calculate internal areas. We are surprised at this item as the owners should be aware of their building and these matters should have been to hand at the time of the notice. Any reasonable landlord should be aware of amendments, alterations and extent of their property, not least for insurance, rating and other essential management requirements. We consider this should easily have been clarified as an internal matter and would not have required instruction of an Architect. Further, as this work would have informed management of the building generally, it is not considered a consequence of the notice.

Group Consultant fees for Mr Baggett

20. The relevance of the Group Consultant is not clear. On the face of the schedule this appears a costing of internal administration. Such overhead matters should be taken into account in the day-to-day administration of Mr Baggett's

commercial affairs. We do not find this recoverable as a reasonable cost arising from the service of the notice.

MD internal

21. For similar reasons to 20, we do not find this recoverable as a reasonable cost arising from the service of the notice.

Summary

22. In reaching our decision we have borne in mind Section 88(2). We find the sums payable are £2,067.24 inc VAT and disbursements of £3.

Order

23. The costs determined payable by the Respondent to the Applicants are £2,067.24 inc VAT and disbursements of £3.

L J Bennett
Tribunal Judge
24 February 2020

Appeal

24. A party seeking permission to appeal this decision must make a written application to the Tribunal for permission to appeal. This application must be received by the Tribunal no later than 28 days after the date this decision is sent to the parties. Further information is contained within Part 6 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (S.I. 2013 No. 1169).