



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

Case Reference : **CHI/21UD/LRM/2020/0005 & 0006 & 0007 & 0008
Paper Remote**

Property : **Southview Court, 530b-528d Old
London Road Hastings East Sussex TN35
5BN**

Applicant : **SE Estates and Agency Management Ltd
(Head Lessor)**

Representative : **Bonallack & Bishop
Ltd**

Respondent : **The Leeds Southview Court RTM Co Ltd**

Representative : **Mr G Okines of Arko Property
Management**

Type of Application : **Determination in relation to the denial
of a Right to Manage and the landlords'
costs of dealing therewith**

Tribunal Members : **Judge F J Silverman MA LLM**

Date of Determination : **Paper Determination
08 November 2021**

DECISION AND ORDER

The Tribunal allows the Applicant the sum of £5,300.10 including VAT in respect of its costs under s89 Commonhold and Leasehold Reform Act 2002. The sum allowed is payable in full by the Respondent.

This has been a remote hearing on paper which has been consented to by the parties. The form of remote hearing was P:REMOTE. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents which the Tribunal was referred to are contained in electronic bundles the contents of which are referred to below. The orders made in these proceedings are described above.

REASONS

- 1 This Decision forms a part of the continuing litigation between the parties relating to applications made by the Respondent to exercise a right to manage the property comprising various flats at Southview Court Old London Road Hastings East Sussex TN35 5BN (the property) of which the members of the Respondent RTM are the tenants and long leaseholders and the Applicant is the immediate landlord and reversioner.
- 2 As such, it deals exclusively with an application for costs made by the Applicant in relation to the Respondent's failed applications made on 20 March 2020. Costs relating to a later failed application were the subject of the Tribunal's decision dated 22 June 2021 in respect of which permission to appeal was refused on 27 August 2021. Directions relating to the present application were issued by the Tribunal on 15 September 2021.
- 3 No new evidence supporting the Applicant's current claim was supplied with their application and is assumed both by the Tribunal and the Respondent that the Applicant is seeking to rely on the documents which were provided in support of the previous costs application. The Respondent filed a statement of objections on 6 October 2021 which makes detailed reference to the documents supplied in the earlier case and points out that any costs incurred after 24 June 2021 when the March applications which were the subject of this application were

withdrawn are not claimable in this present costs application. They also make the point, with which the Tribunal agrees, that the presentation of their costs by the Applicant is muddled and sometimes duplicated between the March failed application proceedings and the later proceedings which also failed. It is not easy to separate and reconcile the work belonging to the two sets of proceedings.

4 Given that the Applicant has filed no separate bundle of documents with this application the Tribunal has relied on its knowledge of the previous proceedings and the bundle of documents previously supplied and has made a summary assessment of the costs based on that information.

5 The costs issues before the Tribunal were firstly whether the Applicant was entitled to costs at all and secondly, if so, whether the costs demanded were reasonable.

6 The Applicant avers that the March 2020 costs totalling £7,065.61 including VAT were correctly incurred against the Respondent named in this application. The items in the current schedule under discussion are similar but not identical to those which were claimed and rejected in the previous costs application.

7 The Applicant's schedule of costs for the March application shows that work done by Ms Slater, a grade B employee in the Respondent's solicitors' firm, was charged at £245 per hour and that her Grade D assistant Mr Holmes was charging an hourly rate of £150 (in both cases plus VAT). The Tribunal considers these rates to be reasonable and representative for those grades of employee working in a similar provincial firm.

8 The Applicant's schedule includes a courier fee of £721.21 for service of documents to which the Respondent objects saying that the postal service should have been used instead. The documents in question were served during a period when postal services were not running normally or smoothly owing to the pandemic and use of a courier to ensure prompt and proper service was justified in these circumstances. The amount of the fee is however extortionate and the Tribunal allows only £331.80 which is an identical sum to that which was substantiated and allowed in paragraph 7 of the previous costs decision.

9 Counsel's fees for the March application are stated to be £700 (inc VAT £840) which appear to the Tribunal to be reasonable and are payable in full by the Respondents.

10 The Applicant's solicitors' fees amount to £4,587 plus VAT. The Tribunal notes that the majority of the work was claimed to have been carried out by the most expensive fee earner and it is questionable why so many hours of work were necessary to defend the Applicant's position. The Tribunal reduces this sum by 25% and thus allows £3,440.25 plus VAT giving a total of £4,128.30.

11 The total allowed under this application is therefore £5,300.10. including VAT. This sum is payable in full by the Applicant.

12 **The Law**

Commonhold and Leasehold Reform Act 2002

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 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).

Judge F J Silverman as Chairman

Date 08 November 2021

Note:

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.