



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

Case reference : **LON/00AR/LCP/2020/0004P**

Property : **York House, 48-50 Western Road,
Romford, Essex RM1 3LP**

Applicant : **The Executors of the Late Allan Reece**

Representative : **None**

Respondent : **50 York House RTM Co Limited**

Representative : **R J Sandler of PDC Law**

Type of application : **Application to decide the cost to be paid
by a RTM company under Section 88(4)
of the Commonhold & Leasehold
Reform Act 2002**

Tribunal members : **Mr I B Holdsworth FRICS MCI Arb**

Venue : **Remote paper case**

Date of decision : **11 August 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers [PAPER REMOTE] which has been consented to by the parties. A face-to-face hearing was not held because it was not practical and all issues could be determined in a remote hearing on paper.

The documents referred to are contained in a single bundle prepared by the Applicant, the contents of which are read and noted.

Decision

1. The Tribunal determines that the Respondent is to pay the Applicant's costs under Section 88(4) of the Commonhold & Leasehold Reform Act 2002 in the following sums:
 - (i) Solicitors' fees of **£1,843.20** inclusive of vat and disbursements.
 - (ii) Management fees of Allan Reece Associates of **£700**.

Introduction

1. The Applicant seeks a determination pursuant to Section 88(4) of the Commonhold & Leasehold Reform Act 2002 (**'the Act'**) in respect of the costs incurred by the Applicant Landlord in relation to a Claim Notice F48YM422 dated 7 September 2020. This matter was transferred to First tier Tribunal for determination.
2. On 21 May 2021 the tribunal gave varied Directions and pursuant to those Directions the Applicant provided a bundle of documents. At pp.157-164 of this bundle the details of the following claimed costs are:
 - (i) Solicitor's fees £2,405 (inclusive of VAT and disbursements of £21)
 - (ii) Management fees for dealing with RTM application £1,400
3. The Applicant also seeks interest of £233.00. The calculation is shown at page 6 of the bundle.
4. The Respondent has refused to pay these fees; their agents made an offer of £1,500 in order to settle this matter on 9th July 2019. This offer was rejected by the Applicant.

The background

5. In August 2018 the freeholder of the premises, Mr Allan Reece deceased was advised of the intention to form a Right to Manage ('RTM') company at the property known as York House, 48-50 Western Road, Romford, Essex RM1 3LP (**"the property"**).
6. On 25 October 2018 the RTM served a Notice of Claim to acquire the Right to Manage pursuant to Section 79 of the Act in respect of the property.
7. Pursuant to the Act any objection to the Notice needed to be made by the freeholder through service of a counter notice on the RTM company before 7 December 2018.
8. No Counter Notice was served on the RTM company and consequentially on 10 March 2019 their RTM application was successful.

9. The Tribunal is told no communication was received from the freeholder until a request for information was served on 21 December 2018.
10. The freeholder responded on 18 April 2019 with a request for payment of fees and charges relating to the application.
11. Details of the charges sought is shown at pp.157-164 of the bundle.
12. The Respondent challenged the validity of the fee claim and the Applicant subsequently made an application to the County Court for payment of these costs. This was heard under Claim No F48YM422 on 7 September 2020 by District Judge Goodchild, sitting at County Court Romford.
13. The County Court judgement directed the claim be transferred to the First-tier Property Tribunal for the determination of costs. The County Court claim was struck off as it confirmed under the Act the correct forum for the determination of any fees payable arising from a Notice to establish a RTM company is the First-tier Tribunal.

The statutory provisions

14. Section 88(4) of the Act states:

- '(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 the 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 questions 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.'*

The principles

15. The Act confers rights on tenants of leasehold flats to acquire the Right to Manage their flats without the need to show any fault by their landlord. It is a matter of basic fairness, necessary to avoid the statute from becoming

penal, that the tenant exercising their statutory right should indemnify the landlord from costs incurred as a consequence of the RTM application. This would include costs arising from ensuring the claim is properly made and satisfies the formal steps required by the Act.

16. The purpose of the Act is to ensure all parties to the RTM are treated fairly. Section 88(2) provides a ceiling to costs, by reference to reasonable expectation of person paying the costs from their own pocket; the costs of work which would not have been incurred, or which would have been carried out more cheaply, if the landlord was personally liable to meet them are not reasonable costs which the Tenant is required to pay.
17. Section 88(2) is intended to provide protection to both landlords and tenants: landlords are not intended to be out of pocket when compelled to surrender the right to manage and tenants and it is not the intention of the Act to require the tenants to incur excessive charges.

The Tribunal's determination

18. The issue in dispute is the reasonableness and payability of the charges made by the Applicant freeholder.
19. The Applicant freeholder seeks reimbursement of the cost of his legal fees and the cost incurred by his company, Allan Reece Associates on the RTM application.
20. There are two invoices submitted for legal fees by Mullis & Peake LLP, the solicitors who acted on behalf of the Applicant.
21. The first invoice is dated 7 March 2019 entitled '*Work arising from the application for a RTM 25 October 2018*'. The fee charged was £1,517.40 inclusive of VAT.
22. The second invoice is for work carried out by Mullis & Peake LLP between 7 March 2019 to 23 May 2019 and dated 23 May 2019. This amounts to £927.60 inclusive of VAT.
23. A detailed schedule of the time expended on each element is submitted at pp.160-161 of the bundle.
24. Information on the work carried by the solicitors is presented through a Schedule with small font print. This font size makes the text difficult to read.
25. The Respondent has carried out a detailed analysis of this schedule and this is provided at pp.172-174 of the bundle.
26. It is the Respondent's contention that the sum which is reasonable and payable arising from the work undertaken in relation to the RTM application amounts to £621 plus VAT.
27. The Respondent complains that much of the detail provided in the schedule was insufficient to explain the purpose of the work. The Respondent claims

the time allocated to some of the tasks was excessive and was undertaken after the alleged billing date.

28. There is however no evidence in the bundle to support these assertions.
29. The tribunal has reviewed the schedule presented with the fee. The fee rate at £170 per hour is accepted. It reflects the typical charges by a solicitor with the necessary skills to undertake the complexity of the tasks required
30. The tribunal accepts that the Applicant is entitled to take advice from solicitors on this matter following the application, seeking assistance on the preparation and responsibility for a Section 93 Notice and assisting with responding to requests for information.
31. On review of the schedule the work undertaken by the solicitors revealed a lack of detail in the description of tasks. The tribunal is unable to allocate the time allocated to tasks referred to as “*unsolicited correspondence received*” and other ambiguous work descriptions. They cannot be certain all the time shown was expended on valid Section 93 matters.
32. A lack of evidence submitted by the parties prevents a determination on the validity of each individual item. The Tribunal allow 75% of the time charged as a summary judgement.
33. The Applicant has also submitted an invoice dated 14 May 2019 in the sum of £1,400. This is for fees due for dealing with the RTM application for two periods, namely:
 - 14 August 2018 – 26 March 2019
 - 27 March 2019 – 14 May 2019
34. At pp.163-164 of the bundle is a detailed listing of time expended and tasks undertaken. The hourly charge for Allan Reece was £140 per hour with a colleague referred to as 'MJ' charged at £100 per hour. The total chargeable time spent on this matter was 11:5 hours.
35. The tribunal is not advised of any managing agents having carried out a management role at York House and such charges would by reference to the statutory provisions be chargeable. It is noted the fee accounts were made payable by the Directors of the RTM, rather than Allan Reece Associates. The tribunal accepts that these costs were incurred by the Applicant in dealing with the RTM application.
36. Review of the schedule revealed time spent in liaising with the M&P and the solicitors. It is not reasonable for this time to be charged to the RTM. Such interaction would be expected of a prudent landlord.
37. The tribunal is not persuaded that all of the time shown in the schedule is fairly allocated to this matter.
38. Therefore, after careful review, the tribunal has reduced the allowable charges by 50%.

