FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AW/LCP/2021/0001**
HMCTS code (paper, video, audio)	**:**	**P: Paper Determination**
Property	**:**	**18-20 Sloane Gardens London Sw1W 8DL**
Applicant	**:**	**18-20 Sloane Gardens Limited**
Representative	**:**	**Northover Litigation**
Respondent	**:**	**18-20 Sloane Gardens RTM Company Limited**
Representative	**:**	**Wallace LLP**
Type of application	**:**	**Application to decide the costs to be paid by an RTM company under s.88(4) of the Commonhold and Leasehold Reform Act 2002**
Tribunal members	**:**	**Judge N Hawkes** **Mr S F Mason BSc FRICS**
Venue of paper determination	**:**	**10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**13 July 2021**

DECISION

Decision of the Tribunal

The Tribunal determines the Respondent shall pay the Applicant costs in the sum of £2,535.10 (including VAT) pursuant to section 88(4) of the Commonhold and Leasehold Reform Act 2002.

The application

1. The Applicant seeks a determination pursuant to section 88(4) of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") in respect of the costs payable by the Respondent Right to Manage ("RTM") Company.

2. Directions were given in respect of this application on 19 April 2021 leading up to a paper determination which took place on 13 July 2021.

3. Section 88 of the 2002 Act provides:

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 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.

4. The Respondent acquired the right to manage 18-20 Sloane Gardens, London SW1W 8DL ("the Property") in January 2021. The Applicant is the headlessee of the Property and is therefore a landlord for the purposes of the 2002 Act.

5. The Respondent's Statement of Case, which has been prepared by Mr Simon Serota, Partner in Wallace LLP, includes the following submissions:

5. On the 18th October 2019 the Respondent's Notice claiming to acquire the right to manage the Premises was given to the Applicant. On the 18th November 2019 the Applicant's Solicitors served on the Respondent a Counter-Notice denying that the Respondent had been entitled on the relevant date to acquire the right to manage the premises. The Counter-Notice denied entitlement to acquire the right to manage "by reason of Section 78" of the Act. The covering letter serving the Counter-Notice stated by way of explanation that the Respondent had failed to provide proof of compliance with Section 78 of the Act as the qualifying tenants of five flats (being those owned by the Applicant and its shareholders) "were not validly served with the Notice Inviting Participation".

6. On the 19th November 2019 the Applicant served a further counternotice denying entitlement "by reason of Sections 78and 79" of the Act. The Applicant's Solicitors' covering letter of the 19th November 2019 explained that an additional point was being taken by the Applicant; namely that no copies of the Claim Notices had been served on the Qualifying Tenants of the five flats.

7. On the 19th November 2019 the Respondent's Solicitors wrote to the Applicant's Solicitors enclosing copies of the Notices Inviting Participation which had been sent by post to the qualifying tenants of the five flats stating that they had been correctly addressed and served in accordance with the provisions of Section 111 of the Act. The letter sought an explanation as to the basis upon which it was said the Notices Inviting Participation had not been "validly served".

8. No response was received to the Respondent's Solicitors' letter of the 19th November 2019. On the 21st November 2019 further Notices Inviting Participation were delivered by hand to the flats of the five qualifying tenants referred to in the Applicant's Solicitor's letter of the 18th November 2019. On the 5th December 2019 Notice was given to the Applicant that the Claim Notice dated the 18th October 2019 was withdrawn and on the 6th December 2019 a further Notice claiming to acquire the right to manage the Premises was served on the Applicant.

9. On the 6th December 2019 the Applicant served a Counter-Notice which again denied the Respondent had been entitled to acquire the right to manage "by reason of Sections 78 and 79" of the Act. The Applicant Solicitor's covering letter explained that the Qualifying Tenants of four flats had not been validly served with Notices Inviting Participation and copy Claim Notices.

10. On the 8th January 2020 the Respondent's Solicitors wrote to the Applicant's Solicitors referring to the fact that the Applicant's Solicitors had been supplied with copies of the letters to the qualifying tenants of the relevant flats enclosing Notices Inviting Participation and enclosing copies of the Claim Notices. The letter enquired if it was denied that the letters were delivered in the manner and time set out in previous correspondence and if so requesting an explanation as to why it was suggested they had not been validly served. No response was received to that letter.

11. Section 111(5) of the Act provides as follows:

'A company which is a RTM Company in relation to premises may give a notice under this Chapter to a person who is the qualifying tenant of a flat contained in the premises at the flat unless it has been notified by the qualifying tenant of a different address in England and Wales at which he wishes to be given any such notice.'

The terms of Section 111(5) are clear and unambiguous. A RTM Company can give any notice required by the Act to a qualifying tenant at the qualifying tenant's flat within the premises. The only circumstances in which a RTM Company cannot give notice to a qualifying tenant at his flat address is where the qualifying tenant has given notice to the RTM Company of a different address at which he wishes to be given a notice. No such notice had ever been given to the Respondent by any of the qualifying tenants of the flats identified in the Applicant's Solicitor's letter dated the 19th November 2019.

12. The Respondent applied to the Tribunal pursuant to Section 84(3) of the Act on the 8th January 2020 for a determination that it had been entitled on the relevant date to acquire the right to manage the premises. It was not until the Applicant served its Statement of Case on the 13th March 2020 that it became apparent the basis upon which it was said that Notices Inviting Participation and copy Claim Notices had not been "validly" served on certain qualifying tenants was the Applicant's assertion that the Respondent could not rely on the provisions of Section 111(5) in circumstances where the Applicant was aware the qualifying tenants did not live in their flats and in circumstances where it was said that although no notice had been

given to the Respondent of a different address Directors of the Respondent company were aware that they had other addresses. In due course the Tribunal determined the Application made under Section 84(3) in favour of the Respondent and both the First-tier Tribunal and the Upper Tribunal refused the Applicant permission to appeal.

13. The extent to which the costs claimed by the Applicant were reasonably incurred must be considered in the context of the Claimant having very quickly determined to deny entitlement on the basis it did. Having so determined to deny entitlement little work if any was necessary beyond the drafting and serving of the Counter-Notice in each case. This is particularly true in relation to the second claim. It is clear that the Applicant was intending to reject the claim on the grounds that service on the qualifying tenants at their flat addresses was in some way invalid. In those circumstances only a small proportion of the costs claimed by the Applicant can be said to have been reasonably incurred.

14. Without prejudice to the above submission the Respondents comments on individual items claimed are set out in the Schedule.

6. The Applicant's Reply, which has been prepared by Mr Justin Bates of Counsel, includes the following submissions:

1. This case concerns the quantification of costs under s.88, Commonhold and Leasehold Reform Act 2002. The Respondent RTM company acquired the RTM after contested proceedings in the Tribunal, so that the liability for costs is under s.88(1), 2002 Act and does not include the s.88(3) costs.

...

Liability for costs

5. The RTM company (and its 11 members) are liable for the "reasonable costs" which the Applicant incurred "in consequence of a claim notice" (s.88(1)). Costs are "reasonable" if, and only to the extent that, the costs would have reasonably been incurred if the Applicant was to pay those costs itself (s.88(2)). Costs which the Applicant incurred in proceedings before the FTT are not recoverable, because the Applicant did not win in the FTT (s.88(3))

"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,

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(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"

6. The effect of these provisions was summarised in Columbia House Properties (No.3) Ltd v Imperial Hall RTM Company Limited [2014] UKUT 0030 (LC), at [7]:

"The effect of this provision is to entitle a landlord, amongst others, to recover reasonable costs incurred in consequence of a notice of claim to acquire the right to manage subject to two qualifications. The first, contained in subsection (2), is that any costs incurred in respect of professional services will only be reasonable to the extent that the landlord could reasonably have been expected to incur them if he were personally liable for the costs. The second, contained in subsection (3), is that costs incurred as a party to any LVT proceedings can only be recovered if the claim to acquire the right to manage is unsuccessful. It follows that, subject to the ceiling imposed by subsection (2), a landlord whose right to manage his own property may be expropriated is entitled to investigate and deal with a claim to acquire the right to manage up to the point at which LVT proceedings are commenced, whether the claim is ultimately successful or not. However, thereafter, if the landlord chooses to contest the claim but in

the event is unsuccessful, he is not entitled to recover his costs of the LVT proceedings."

7. As the UT correctly noted, proceedings under the 2002 Act are expropriatory – the landlord is having his rights taken away from him – it is important therefore that he is entitled to recover his costs so as to ensure that the legislation does not become penal in nature.

What is said in the present case?

8. The Applicant has provided a schedule of costs. The Respondent has commented on the costs. The Applicant has then replied. Rather than repeat all those matters, the FTT is respectfully referred to that schedule.

9. When the FTT reads that schedule, however, it is invited to conclude that the objections put forward by the Respondent are, for the most part, manufactured complaints rather than substantive arguments which show that a particular charge is so far outside the range of what a reasonable landlord might chose to incur that it should be disallowed. There is, for example, no challenge to the hourly rate charged by the solicitor for the Applicant.

10. By far the most common challenge is that where two units of time have been allocated to a piece of work (i.e. 12 minutes), the correct approach is to allow only one unit (i.e. 6 minutes). That is:

(a) a level of nit-picking that is inconsistent with the broad-brush nature of the costs assessment required under s.88; and,

(b) fails to engage with the actual test under s.88 – the question is not "what does the RTM company think it is reasonable for it to pay", but whether the costs as charged to the landlord are ones that, if the landlord had to pay itself, it would not have chosen to incur. Once we get to the level of disputes about 6 minutes here and 6 minutes there, we have lost sight of that overarching and broad-brush test.

Conclusion

12. The costs should be allowed in full. A total of £2,546.10 (before VAT) in professional costs and £49.02 (before VAT) in disbursements is not an unreasonable sum for a landlord to incur – and an RTM company to pay – in dealing with two claim notices.

7. Save that we find that the time spent under item 22 should be reduced to 0.7 units, we accept that costs of investigating the merits of the two claims were reasonably incurred.

8. Where the Respondent contends for 6 minutes rather than 12 minutes, we note that the parties are not far apart. However, we have considered each such disputed item individually and have concluded that the time spent was reasonable.

9. Having considered the submissions set out above, and in the schedule completed by the parties, save as regards items 22, 13 to 16, 23 to 26 and 28 to 30, we accept the Applicant's submissions.

10. Items 13 to 16, 23 to 26 and 28 to 30 amount to 2 hours' work in total and primarily concern communications with the client. We find that a reasonable time to have spent on these items would be 1 hour in total.

11. The costs fall to be reduced by a total of 1.3 units (£575.64, including VAT) on account of these findings. Accordingly, the Tribunal determines that the total sum payable pursuant to section 88(4) of the 2002 Act in respect of reasonable costs incurred in consequence of the claim notices which form the subject matter of this application is £2,536.10, including VAT.

Name: Judge N Hawkes **Date:** 13 July 2021

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).