



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

**Case Reference** : **LON/OOBK/LRM/2015/0024**

**Property** : **Spire House, Lancaster Gate,  
London W2 3NP**

**Applicant** : **Spire House RTM Company  
Limited**

**Representative** : **Foot Anstey LLP Solicitors**

**Respondent** : **Eastern Pyramid Corporation SA**

**Representative** : **Watson Farley and Williams LLP  
solicitors**

**Type of Application** : **Application in relation to costs to  
be paid by the RTM Company under  
s88(4) of the Commonhold and  
Leasehold Reform Act 2002 (the  
Act)**

**Tribunal Member** : **Tribunal Judge Dutton**

**Date of Decision** : **5<sup>th</sup> April 2016**

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**DECISION**

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**The Tribunal determines that the for the reasons set out below the total sum payable by the RTM Company to the Eastern Pyramid Corporation SA is £12,660.24 in respect of the costs under the provisions of s88(4) of the Act**

## **BACKGROUND**

1. By a decision dated 21<sup>st</sup> October 2015, I determined that the Applicant, Spire House RTM Company Limited, did not have the right to acquire the management of the premises Spire House, Lancaster Gate, London W2 3NP. The decision was not appealed and as a consequence of my findings the Respondent landlord Eastern Pyramid Corporation SA (EPC) has, through its solicitors Watson Farley and Williams LLP (WFW), made application for costs under the provisions of s88(4) of the Act.
2. Directions were issued on 1<sup>st</sup> February 2016, with minor extensions in time. The matter came before me for determination on the papers on 30<sup>th</sup> March 2016.
3. In a bundle lodged by WFW I had copies of the original decision, the application, directions and variations thereto and the parties submissions on costs, with attachments. In addition I was supplied with copies of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 (the Rules) and a copy of section 88 of the Act.
4. I have read these papers and taken into account the contents in reaching my decision which is recorded below. I do not consider it necessary to set out in this section all that was said in the submissions to me.

**THE LAW** is set out below (see paragraph 10)

## **FINDINGS**

5. I should first address the issue raised by the Applicants solicitors, now Foot Anstey (FA), as to the EPC's entitlement to seek costs. This point is raised in a document headed 'Response to Applicants Schedule of costs' (the Response) and responded to by WFW on 23<sup>rd</sup> March 2016.
6. This appears to conflate the application before me with an application under rule 13 of the Rules. The time limit for claim under the Rules is as set out at 13(5). However, that is not relevant to this application. This is a claim for costs provided for by statute not as a result of the unreasonableness of a party in proceedings before the Tribunal. There is no time limit for bringing a claim under the Act for costs under s88(4). Indeed, in the case of *Triplerose Limited [2016]UKUT 77 (LC)* attached to the Respondent's response, the time involved in that matter was over 2 years (see paragraph 26 of the decision of the Deputy President). Accordingly I prefer the submissions made by WFW on this point and do not allow an application to dismiss.

7. I now turn the substantive claim for costs under the Act. I have been provided with a somewhat scant schedule of costs said to be served in accordance with the directions order of 1<sup>st</sup> February 2016. This records that Mr Penn, a Grade A solicitor, qualified in 1981 charges out at £600 per hour and had spent some 15.7 hours on the case. Sam Prentki, qualified in 2009 and is Grade B and spent some 5 hours on the case at £450 per hour and finally Alice Bushell who qualified in 2014 and would be Grade C and spent some 36 minutes at £340 per hour, assuming the hourly rate is broken down into 6 minute units, which is the norm. As is put forward by FA this contrasts with the Guideline Rates, which have been applicable since 2010.
8. Criticism of this schedule is made by FA. It is a criticism, which in part I agree with. It is said that the schedule lacks details to enable a proper challenge, further that the hourly rates are excessive, that the invoices provided do not give sufficient breakdown of the costs and that there is little information on Counsel's fees. In the summary to the Response FA requests that the hourly rates in the Guidelines should apply and that there is insufficient information contained in the Schedule and supporting documents to enable a proper challenge and that in those circumstances the Application for costs should be dismissed.
9. In the response on behalf of EPC it is said that the schedule of costs complies with the directions. For my part I would have expected a schedule giving full details of the costs that are to be assessed by reference to hourly rates, details of fee earners/ case workers, time spent by each by reference to the task in question, hourly rates applied and disbursements. The schedule would identify and explain any unusual or complex features of the case. This latter element has in part been dealt with in the response document. In addition WFW said that the RTM company had instructed city solicitors, originally Macfarlanes LLP and lately FA and it was therefore appropriate for EPC to do likewise. The guideline rates are just that and that a view needs to be taken on the costs as a whole. The parties have been given ample opportunity to provide further information had they so wished.
10. The Act says as follows  
*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 a leasehold valuation 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 a leasehold valuation tribunal.*

12. I bear in mind that EPC are entitled to costs under the Act. My responsibility is to assess what those should be. The first element challenged by FA is the hourly rate. The present guidelines indicate that a Grade A fee earner in London 1 would charge £409 per hour, a Grade B £296 and Grade C £226. The fees of WFE are approximately 50% higher than the Guide. I appreciate that the Guidelines relate to 2010 figures although the Master of Rolls did not change them following review in 2014. Whilst I accept that this is a somewhat specialised area of law, although no more so I would venture to suggest than enfranchisement work, the hourly rates sought are high. In my experience of dealing with costs under sections 33 and 60 of the Leasehold Reform, Housing and Urban Development Act 1993, the levels sought in this case are considerably above the fee levels of experienced and substantial firms practising under that Act. The provisions for costs payable under the 1993 Act, although limited by the sections, do include similar wording to that contained at s88(2) of the Act. In the absence of the client's retainer letter and any signed statement or fee invoice I need to consider whether the costs are "reasonable" within the terms of the Act. Doing the best I can on the information available I can see no reason not to apply the London 1 Grade allowances and to therefore apply the rates of £409 to the work undertaken by Mr Penn, £296 to the work of Mr Prentki and £226 to the time spent by Ms Bushell.
- 13 The next question is the time spent. It is difficult to assess this on the information given. However, WFW makes a good point at 4.3 of its Response dated 23<sup>rd</sup> March 2016. FA does not suggest that x hours were spent on the case on behalf of the Applicant as opposed to the time claimed by WFW. Are 21.3 hours too long? This was not a straight forward objection to the right to manage as is set out in Mr Upton's skeleton prepared for the hearing in October. However, there has been quite some reliance on Counsel, as set out in his fee note. On the basis of the invoices and fee notes and my knowledge of the case I would reduce the time. I find that a total of something in the region of 16 hours would be reasonable I will split this reduction between Mr Penn and Mr Prentki and reduce the time spent by Mr Penn from 15.7 to say

13 hours. Mr Prentki's time would be reduced to 3 hours. The time spent by Ms Bushell is minimal and I would allow that at £135.60

14. As to Counsel's fees I understand that Mr Upton is 2004 call and I would not consider that an hourly rate of £200 is excessive. His fee note in the sum of £2,250 plus VAT is included and does not seem to be challenged. The challenge rests with the brief fee for the hearing, for which a fee note was attached to the Response from WFW. This would include the preparation of the skeleton argument and the half day hearing. I am not told the fee of Miss Reed, which might have been a helpful guide. In the circumstances I find that the fees of Mr Upton are reasonable and payable.
15. There does not appear to be a challenge to the disbursements. Accordingly taking these assessments into account I find that the following fees and disbursements are due and payable under the provisions of section 88(4) of the Act
  - For Mr Penn 13 hours at £409 per hour = £5,317.00
  - For Mr Prentki 3 hours at £296 per hour = £888.00
  - For Ms Bushell 0.6 hours at £226 per hour = £135.60
  - VAT on the solicitors costs of £6,340.60 = £1,268.12
  - Counsels fees of £2,700 and £2,100 inclusive of VAT totalling £4,800
  - Disbursements in the sum of £251.52
16. **I find that the total sum payable by the RTM Company is £12,660.24**

Andrew Dutton  
Tribunal Judge Dutton

5<sup>th</sup> April 2016