



**First-tier Tribunal  
Property chamber  
(Residential Property)**

<b>Case reference</b>	:	<b>CAM/26UC/LCP/2016/0004</b>
<b>Properties</b>	:	<b>2-136 Hughenden Road and 276-314 The Ridgeway, Marshalswick, St. Albans AL4 9QS</b>
<b>Applicant</b>	:	<b>Remise Investments Ltd.</b>
<b>Respondents</b>	:	<b>2-20 Hughenden Road RTM Co. Ltd. 22-44 Hughenden Road RTM Co. Ltd. 46-68 Hughenden Road RTM Co. Ltd. 70-84 Hughenden Road RTM Co. Ltd. 86-108 Huighenden Road RTM Co. Ltd. 110-136 Hughenden Road RTM Co. Ltd. 276-298 The Ridgeway RTM Co. Ltd. 300-314 The Ridgeway RTM Co. Ltd. Marshalswick Farm Estate (RTM Company) Ltd.</b>
<b>Date of Application</b>	:	<b>6<sup>th</sup> October 2016</b>
<b>Type of Application</b>	:	<b>To determine the costs payable on service of RTM claim notices and dismissal of application by the Tribunal (Section 88 of the Commonhold and Leasehold Reform Act 2002 (“the Act”))</b>
<b>Tribunal</b>	:	<b>Bruce Edgington (solicitor, chair) David Brown FRICS</b>

---

## DECISION

---

Crown Copyright ©

1. The reasonable costs of the Applicant in dealing with the matters set out in Section 88 of the Act are £4,173.31, plus VAT but subject to the consideration of whether VAT is recoverable by the Applicant from the revenue. If it is, no VAT is recoverable from the Respondent.

### Reasons

#### **Introduction**

2. The Respondents have served 9 Claim Notices claiming the right to manage various parts of the property. The claim was disputed and it seems to be agreed that this Tribunal dismissed the Claim Notices. The

Applicant's statement of case says that a copy of the dismissal order was annexed but it was not. The Respondent agrees that it is liable to pay the Applicant's costs arising from the service of such notices and in those proceedings because of the dismissal.

3. The said statement of case is dated 14<sup>th</sup> November 2016 and has been filed by the Applicant's solicitors claiming £3,600.00 profit costs for 201 units of work at £200 per hour plus VAT of £720 and disbursements of £63.31 to deal with the Claim Notice i.e. a total of £4,383.31. A separate claim is then made for £1,030.00 profit costs for 57 units of work in the Tribunal proceedings plus £206.00 VAT and disbursements of £900, being the tribunal fees incurred making a total of ££2,136.00. The Applicant claims counsel's fees of £2,250.00 plus VAT of £450.00 and consultant's fees of £4,320.00.
4. Further costs are claimed in respect of this application in the estimated sum of £300 plus VAT of £60.00. If there had been a hearing then an additional £1,500.00-plus VAT of £300.00 would have been claimed. As a result of a letter written to the Applicant's solicitors by the Tribunal on the 14<sup>th</sup> December 2016 (about which see more below), the Applicant has now withdrawn all costs relating to this application.
5. As a preliminary point, the mathematics involved seems to be somewhat lacking in accuracy. The total claim is said to be £13,527.31 whereas the actual total is £13,539.31 for the Claim Notices and earlier proceedings plus £2,160.00 for these proceedings. Further the claim for the Claim Notices etc. is for 258 units at £200 per hour. As far as the Tribunal can see, the rate is £17.95 per unit rather than £20 per unit which is what the Tribunal would have expected if the fee earner was claiming £200 per hour.
6. A directions order was issued on the 19<sup>th</sup> October 2016. The Tribunal said that it was content for the matter to be dealt with on a consideration of the papers to include the parties' submissions and it would do so on or after 8<sup>th</sup> December 2016 although this period was extended for reasons which will become clear. The parties were told that if they wanted an oral hearing, they could apply for one and it would be arranged. No such request was received.
7. The bundles for the Tribunal duly arrived and it was noted that the information supplied by the Applicant was lacking in giving any real explanation as to why surveyors were used to such a great extent. A letter was therefore written to the solicitors on the 14<sup>th</sup> December asking for such information. This will be referred to.

### **The Law**

8. Section 88(1) of the Act says that "*a RTM company is liable for reasonable costs incurred by a person who is....a landlord under a lease of the whole or part of any premises....in consequence of a claim notice given by the company in relation to the premises*"

9. Section 88(3) says that where an application to the LVT (now the First-tier Tribunal) for confirmation that the RTM company is entitled to manage a property is dismissed, the RTM company becomes liable to another party for its costs incurred in those LVT proceedings.
10. The method of assessment is on the basis of what is sometimes called the indemnity principle. In other words the costs payable are those which would be payable by the client "*if the circumstances had been such that he was personally liable for all such costs*". (Section 88(2) of the Act)

### **Discussion**

11. Despite being ordered to do so, the Applicant's solicitors have not given the qualification and experience of the fee earner. Having said that the person who prepared the statement of case is named as Ranjeet Johal and describes himself as a solicitor. The statement says that the fee earner was a grade C fee earner until 1<sup>st</sup> August 2016 "when he became a grade B fee earner, and who charged at an hourly rate of £200". Thus, as at 1<sup>st</sup> August 2016, such solicitor appears to have achieved 4 years post qualification experience.
12. The rates actually charged seem to be much more in line with Grade C rates. Right to manage is a specialised area of work even though it is only covered by relatively few sections of the Act. Judging by the time spent by this fee earner on some items and the reliance on counsel, these rates would seem to be appropriate and it is noted that no objection is raised to such rates.
13. The only other preliminary point to make is that the statement of costs is not as detailed as was ordered and it seems clear that the person who prepared the statement is not used to preparing statements of costs for detailed assessment in court proceedings. Thus, the Tribunal has had to take a broad brush approach to some of the objections because the descriptions of some items of work are cursory to say the least.
14. The Tribunal has, as requested, looked at this application and application CAM/26UC/LCP/2016/0005 ("the other case") at the same time. The cases will be determined separately but the reader should have both decisions available as one claim follows on from the other.
15. The **first point of dispute** is in 2 parts. Firstly it is said that as the work undertaken was only a few months after the work undertaken in the other case, it should not have been necessary to undertake further research. Secondly, there is no discount for dealing with 9 identical Claim Notices. The Applicant simply denies both challenges. The time spent on the Claim Notices appears to be research of 1½ hours plus 1 hour 54 minutes actually considering such Notices plus 2½ hours preparing a letter of advice and the counter notices i.e. nearly 6 hours for these items. The Tribunal agrees that this is excessive. The Notices are identical save for the name of the applicant, the lessees and the property etc. as are the counter notices.

16. It is accepted that individual solicitors will take different amounts of time for certain tasks. However, there are ranges of acceptability. In this case, a considerable amount of work was undertaken in the other case a few months before the circumstances giving rise to this one. The solicitor should have known that the sections in the Act dealing with this subject are small in number and are in one place in the Act. Clearly it was necessary to consider the last named Respondent to make sure that its Articles of Association had been changed appropriately. It was then necessary to make sure that the new companies were right to manage companies.
17. The first Claim Notice needed to be considered in detail but the others should have just involved checking the details in each case with information readily to hand as far as the Applicant is concerned. This total task, including writing a letter of advice, should not have taken more than 2/3 hours. The form of counter notice is set out in the regulations and the grounds of objection are all set out within a small part of the Act. Once the first counter notice had been prepared the remainder would have taken very little extra time each to prepare. The Respondents offer a total of £1,500 plus VAT i.e. between 8 and 9 hours for the whole job at £179.50 per hour which is the overall rate actually claimed. The Tribunal agrees with that.
18. The **second point of dispute** is for counsel and challenges an item of £500.00. In fact the response shows that such item on counsel's fee note was not included in the claim which makes the objection irrelevant.
19. The **third point of dispute** challenges the fee of a surveyor consultant i.e. £4,320.00 being 24 hours time spent at £180 per hour. This item has caused the Tribunal some concern, hence the letter written asking for further explanation. The reply from the Applicant's solicitors is dated 20<sup>th</sup> December and has been carefully considered. This letter conceded that counsel and solicitors dealt with the legal issues including the validity of the notices and compliance with the Act. It is then said that *"the managing agent's role was more practical – they carried out inspections of the subject property and also reviewed all of the notices inviting participation and supporting documents. This work was done by the managing agents at a lesser cost than it would have been for the applicant's solicitors and counsel to carry it out"*.
20. It is true that one of the issues in this whole case has been whether the building or buildings are self contained and this was a very live point following the case of **Triplerose Ltd. v 90 Broomfield Road RTM Co. Ltd.** [2015] EWCA Civ 282. As it is quite feasible that the Applicant would not have intimate knowledge about such things as vertical severance of each building, even though it owned them. It is, in the Tribunal's view, reasonable for the Applicant to instruct a surveyor to check these matters so as to avoid a possible unnecessary challenge. The claim for the inspection is 3.5 hours i.e. £630.00. No travel time appears to be claimed. However, the narrative on the invoice says that this item covered other matters rather than just the inspection.

21. Whether this is a reasonable amount of time to spend is not absolutely clear. However, it is significant that as far as the premises are concerned, the counter notices just say that they do not comply with section 72 of the Act without giving any particulars. The Upper Tribunal has said that if allegations are to be made, then they should be particularised i.e. they should not just put the RTM to proof. The only inference which can be drawn is that there was nothing specific about each of the 9 premises to show that they were not self contained which means that the inspection should not have been very long. Two hours will be allowed for the inspection and the writing of appropriate notes i.e. £360.00.
22. However, all other challenges were legal in nature and to pay the surveyor to check the Claim Notices and attend the conference with counsel is clearly unnecessary and unreasonable. It means that 3 people's expensive time is being charged i.e. a qualified solicitor, experienced counsel and a chartered surveyor for exactly the same thing i.e. to advise the Applicant about the validity of the notices and whether there were grounds for opposition. The explanation for the extra time claimed by the surveyor consultant - who is now referred to as the managing agent - is not accepted. The solicitors are being allowed 8 to 9 hours time and this should include the work allegedly undertaken by the managing agent apart from the inspection.

### **Conclusion**

23. The Tribunal concludes that £1,500.00 is a reasonable figure for the solicitors' fees plus counsel's fees of £2,250.00 (to which there is no challenge) and disbursements of £63.31. As far as surveying or managing agent services are concerned, the sum of £360.00 is reasonable. This makes a total of £4,173.31 subject to the VAT point below.
24. As has been said, the Tribunal has had to take a broad brush approach. It is clear that a conference with counsel was arranged. From the documents and representations submitted, this was not necessary. Without any specific matters to discuss concerning the self contained status of each building, the issues were straightforward and have been raised before this Tribunal on numerous occasions without even the assistance of counsel, let alone a conference.
25. The Tribunal has therefore taken the view that it will not interfere with counsel's fees but any attendance at a conference is not allowed. Further, the costs of the previous application under section 88(3) would not have been that great and are included within the assessment of between 8 and 9 hours omitting the attendance at and the cost of the conference.
26. VAT is only payable by the Respondent if the Applicant is not able to reclaim the VAT and no doubt this will be considered by the parties. The reason, of course, is that the legal and surveying services have been supplied to the Applicant even though the costs are being paid by the Respondent. VAT on these fees is recoverable by the Applicant if it is

registered for VAT purposes and it would therefore be unfair for the Respondent to have to pay this in those circumstances.

.....  
**Bruce Edgington**  
**Regional Judge**  
**16<sup>th</sup> January 2017**

### ANNEX - RIGHTS OF APPEAL

- i. 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.
- ii. 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.
- iii. 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.
- iv. 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.