



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

Case reference : **LON/00AM/LCP/2021/0005**

**HMCTS code
(paper, video,
audio)** : **P: PAPERREMOTE**

Property : **1-6 Batemans Row, London EC2A 3HH**

Applicant : **Kedai Limited**

Representative : **Shakespeare Martineau LLP**

Respondent : **Batemans Row RTM Company Limited**

Representative : **Sterling Estates Management**

Type of application : **Application to decide the costs to be
paid by an RTM company under section
88(4) of the Commonhold and
Leasehold Reform Act 2002**

**Tribunal
member(s)** : **Judge Daley
Mr Richard Waterhouse FRICS**

**Venue and
Date of paper
determination** : **Heard remotely 10 Alfred Place,
London WC1E 7LR on 6 October 2021**

Date of decision : **03 November 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers which has been not objected to by the parties. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because all issues could be determined in a remote

on paper. The documents that the Tribunal were referred to are in an electronic bundle of 342 pages, the contents of which have been noted.

Decision

1. The Tribunal has determined that the cost to be paid by the Respondent in accordance with Section 88 (4) of the Commonhold and Leasehold Reform Act 2002, is £14,000 (Fourteen thousand) The total sum inclusive of VAT is £16.800.00.

Background

2. The background is as set out in the Respondent's statement of case and legal submissions. In brief, the Applicant is the landlord and freehold owner of the premises known as 1-6 Batemans Row, London EC2A 3HH ("the Premises"). The Respondent is an RTM Company set up with the purpose of acquiring the right to manage the Premises pursuant to the Commonhold and Leasehold Reform Act 2002 ("the Act").
3. On 9 June 2020 the RTM Company served claim notices pursuant to section 79 of the Act. The Respondents served two notices, in identical forms save that one of the notices claimed appurtenant property. On 6 July 2020 the Landlord's solicitor served a counter notice challenging the right to acquire the right to manage the premises.
4. The Respondent issued an application on 27 July 2020.
5. On 8 March 2021, the Respondent notified the tribunal of its intention to withdraw the claim notice and the application. The Tribunal made an order dismissing the application on 1 April 2021.
6. On 27 April 2021, the Applicant issued an application in accordance with Section 88(4) of the Act. The total costs claimed by the Applicant were in the sum of £45,130.00 inclusive of VAT.
7. Directions were given by the Tribunal on 16 June 2021, those directions were subsequently varied on 26 August 2021, to provide additional time for the steps set out in the Direction to be taken.

Description of the premises

8. The description of the property is as set out in the report of Mr Charles Seifert dated 1 February 2021. Batemans Row is situated between Shoreditch High Street and Curtain Road. The building comprises 7 floors, and was constructed over 20 years ago. It comprises a basement, ground and 6 upper floors. The premises is a warehouse style building. There is a carriage forecourt providing 5 car parking spaces with a ramp to the basement which provides an additional 10 car parking spaces.
9. The building is a mixed, use, building, there are three commercial units on the ground floor, one unit is occupied as a gym, which is a commercial undertaking, the Gym also occupies the basement where there are

changing areas and a swimming pool. The residential part of the building comprises both live/work and residential units.

The Applicant's case and the Respondent's reply

- 10.** The Applicant's case is set out in their Supplemental Submissions in Respect of Costs. The Applicant states that as the Respondent served two notices of claim in alternative formats and on a number of other group companies of the applicant, the Applicant had to serve counter notices and that as a result 6 counter notices were served.
- 11.** The Respondent stated that they served two claims, which were identical save that one included the Appurtenant property, and the other did not, and that the notices of claim served on the companies, were in identical formats, to the A and B notice of claim, and that the reason for serving on the companies, was that this was to ensure any claim of these companies was taken into account. The Respondent stated that further any additional work would be minimal as two companies were landlord of the commercial parties of the premises, and that apart from the different names, all of the counter notices were identical.
- 12.** The Applicant requested proof that the Notices inviting participation and the claim notice had been properly served on all of the qualifying tenants. The Applicant complains that as a result of the Respondent serving only one proforma rather than the full set "the Applicant had no option but to undertake its own analysis." Which meant increase costs.
- 13.** The Respondent stated that although sample notice was sent this included a copy of the bulk certificate of posting which was a reasonable and proportionate step to take. The Respondent also queried what additional analysis had been undertaken by the Applicant.
- 14.** In their submissions, the Applicant set out that the validity of the claim notices was disputed, as the Applicant's claim was that the building did not qualify as there was more than 25 % commercial use. However, the Applicant submitted that due to the complexity of the building it was necessary to apply to an expert who would be responsible for preparing the report and there were a number of points for him to consider, and it was necessary for him to rely upon the expertise of the surveyor who was involved in the construction of the building.
- 15.** The Applicant submitted that due to the Coronavirus pandemic the expert was unable to visit the premises and that as a result of having to rely on the plans this required a significant number of hours of work and correspondence between the two professionals.
- 16.** The Applicant further submitted that a significant proportion of the costs were incurred due to the Respondent unreasonably being unwilling to withdraw its claim.
- 17.** The Respondent submitted that the cost of the expert's report at £14,400 was unreasonable as Mr Seifert did not carry out an inspection of the property. The Respondent also disputed the complexity of the building and that as a result of having the plans all the expert had to do was consider the plans. Further the complexity was due to legal issues. The Respondent's role was to calculate the percentages which were non-residential based on the figures he was provided with. The Respondent

stated that the 31 hours claimed for the report cannot be justified. “When one looks at the information provided to Mr Seifert the content of the final report this cannot be justified.” The Respondent also noted that the charges for Formation in the sum of £1,250.00 could not be justified in conjunction with Mr Seifert’s role.

18. The Applicant’s in their respond to the submissions of the RTM also deal with Counsel’s fees, stating that leading counsel fees were proper and proportionate, given the subject matter of the claim. Counsel Ms Bretherton (a QC) fee rate was £500.00 per hour and her charges were based on 14 hours plus VAT. The submissions in the reply are considered further in the Tribunal’s decision and reasons.

The Tribunal Decision and reasons

19. The Tribunal considered the submissions of both parties, it reminded itself of the law, that the cost incurred had to be assessed “if the circumstances had been such that he was personally liable for all such costs.” The Tribunal considers that such a party should be considered as having a reasonable but not excessive budget for legal costs, and that such a party would where possible would take steps to reduce, costs and ensure that the work being undertaken was proportionate, that is only what was necessary to deal with the claim and appropriately discounted. The Tribunal has applied these assessments to the cost, it has also stood back and used its knowledge and experience to consider whether the costs, are reasonable and proportionate, and whether a paying party might take steps to further reduce the costs.
20. The Tribunal in its decision has noted that in paragraph 61 of the landlord’s reply the Applicant has asked the Tribunal to exceptionally exercise its discretion to award costs for the assessment process pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) on the grounds that the RTM had approached this “in the spirit of a detailed assessment and that this approach was unreasonable”. The Tribunal consider that the submissions of the Respondent have been proportionate to the claim for cost made by the Applicant, and the Tribunal in its experience of such responses finds no reason to criticise the approach taken by the Respondent in setting out its objections to the cost.

The Solicitors Costs

21. The Tribunal accepted the Respondent’s submissions that the hourly rate is excessive. The Tribunal has borne in mind that the solicitors were located in Leicester and has accepted the hourly rates for solicitors within that area. It has applied hourly rates of £200.00 for the Grade A fee –earner and £ 177.00 for the grade B, it has considered that were the overall units were fractionally over a whole unit, a prudent paying client would ask for this to be reduced, and a solicitor would grant those reductions, given this were for example the letters out for the Grade B

Fee earner total 3.06 hours, the Tribunal has reduced this to 3 hours. In respect of the grade D fee earner the Tribunal was provided with no information concerning this fee earner, given this and the limited amount of work undertaken the Tribunal as assessed the fee earner as largely undertaking clerical/ admin work, we have allowed this at a charging rate of £60.00. The Tribunal noted no information was put forward concerning their level of qualification.

22. Where 1 or 2 units of work were undertaken, we have not allowed a separate charge for this.
23. The Tribunal has used the hours, set out by the Applicant, and has accordingly determined that the sum payable is £4593.00 is payable for the Solicitors fees by the Respondent. The Tribunal has allowed 1 hour for the attendance at the hearing.
24. The solicitors' costs also include a sum for perusal of the documents up to and including this application. For reasons that have been set out above, those costs have not been allowed. However, in dealing with the perusal of the documents and for work undertaken in relation to the claim notice. The Tribunal in considering this claim, has applied its knowledge and experience, and has determined that a paying client would expect a competent fee earner at grade A, to be able to undertake the work described in the schedule within 10 hours, the Tribunal has accordingly allowed 10 hours at the grade A fee earners rate in the total sum of £2000.00 in reaching this decision the Tribunal has considered the nature of the Applicant's objections and the involvement of experts such as counsel and Mr Seifert.

Counsel's fees

25. The Applicant chose to use a Queen's Counsel to settle the statement of claim and to advise, Counsel's fees were £500.00 per hour, with a fee rate of £7,000 plus VAT. The Tribunal noted that the Applicant chose to use senior counsel due to her expertise, accordingly the Tribunal would have expected that a senior counsel would need significantly less time. Or alternatively a senior junior with expertise of this area. The Tribunal has allowed 6 hours for counsel to draft at £500.00 per hour, producing a fee of £3000.00.

Expert's fees

26. The Applicant used an expert Mr Charles Seifert. The Applicant in their submissions stated that due to his inability to inspect the premises, Mr Seifert needed to take longer in carrying out this exercise. The Tribunal consider that as an expert, Mr Seifert was essentially required to calculate the percentage of the property which was non-residential all of the assumptions were available by looking at the plan, accordingly we consider that this should have taken less time. The Tribunal considers that a party who was paying would have expected the expert at £250.00 per hour, the Tribunal has allowed 14 hours for this at £250.00 per hour.

Accordingly, we have allowed £3500.00. In respect of formations cost of liaising and providing the plans, we have allowed £500.00.

Disbursements

27. The Applicant's claim £204.00 for Land Registry, the Tribunal has allowed this sum.
28. The Tribunal then stood back from its assessment, it noted that although this case has a degree of complexity due to the mixed commercial and residential nature, the issue, was the percentage of commercial, which is by its nature a routine issue. The Tribunal also considered that it had allowed the majority of time claimed and in doing so has given some weight to the complicating factors, as the sum claimed and allowed is outside the usual sum based on Tribunal's experience. The Tribunal found that the total sum of £14,051.00 was payable, the Tribunal considers that, a paying party would ask for a discount, and we have rounded the sum payable down to £14,000.
29. The Tribunal has used its knowledge and experience of similar claims to use this approach. As a paying party faced with such a this would ask for a discount. The Tribunal has applied this deduction. The sum payable for the fees plus VAT is £16,800.00.
30. The Tribunal has set out the deductions to the costs in the schedule in Appendix Two.

Right of Appeal

1. 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.
2. 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.
3. 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.
4. 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.

Appendix one

88Costs: 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 .

Signed: Judge Daley

Dated: 03 November 2021

Statement of Costs Schedule of cost allowed by Tribunal
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Letters Out	Time allowed By tribunal	Fee earner A	Fee earner B	Fee Earner D	Sum allowed by Tribunal
2.24	2.24	£720			£448.00
3.06	3.00		£589.00		£531.00
0.06				disallowed	
Telephone					
1.00		£300			£200
1.00			£190		£177
Attendances on opponents					
Letters out	0.24	120.00			£48.00
	1.00		£190.00		£177.00
Attendance on others					
Letter/out	4.42	£1410.00			£884.00
	3.24	£646.00	£437.00		£385.86
	0.18		28,50	disallowed	
Telephone	7.00	£2130.00			£ 1,400.00
	2.18		437.00		£385.86
	0.18		95.00		£10.80
Attendance at hearing	0.48	£240.00			£200.00
Total Solicit.cost					4846.72
Counsels Fees		£7000.00			£3000.00
Expert's fees		£12,000			£3500.00
Surveyor's fees		£1250.00			£500.00
Land Reg fee		£204.00			£204.00
Schedule of work on documents		£5399.00			£2000.00
TOTAL COST					