



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

**Case Reference** : CAM/22UN/LCP/2022/0002  
**HMCTS Code** P:PAPERREMOTE

**Property** : St Marys House, 7 Church Walk,  
Colchester Co1 1NS

**Applicant** : Assethold Limited

**Representative** : Scott Cohen Solicitors

**Respondent** : 7 Church Walk RTM Company Limited

**Representative** : ODT Solicitors Limited

**Date of Application** : 24 June 2022

**Type of Application** : An application under Section 88(4) of  
the Commonhold and Leasehold  
Reform Act 2002 in respect of any  
question in relation to the amount of  
any costs payable by a RTM Company

**Tribunal member(s)** : Judge Wayte

**Date** : 20 September 2022

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**DECISION**

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**Covid-19 pandemic: description of hearing**

This has been a remote hearing on the papers which has not been 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 hearing on paper in accordance with the usual practice for determining costs claims. The documents that I was referred to are in a bundle of 123 pages, the contents of which I have noted. The order made is described below.

**The tribunal determines that £2,438.22 is payable in respect of the costs incurred by the applicant in consequence of the claim notice**

**given by the respondent in respect of the property and the unsuccessful FTT proceedings.**

### **Background**

1. This is an application for a determination of costs under section 88(4) of the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”) following the service of a claim notice in respect of the Right to Manage (RTM) set out in Chapter 1 of Part 2 of the 2002 Act. Under section 88(1) a RTM company is liable for the reasonable costs incurred by the landlord in consequence of a claim notice given by the company. Section 88(2) states that any such costs in respect of professional services provided by a third party are to be regarded as reasonable only to the extent that he is personally liable for them and they might reasonably be expected to have been incurred by him. The costs only extend to costs incurred in proceedings if the RTM application is dismissed.
2. Directions were given on 28 July 2022 proposing that the application be determined on the papers unless a hearing was requested. Orders were made for a schedule of costs to be produced by the applicant, together with copies of any other relevant documents including copies of invoices substantiating the claimed costs. The respondent replied to that schedule in accordance with the directions and the bundle was produced by the applicant, with their final response. No request for a hearing was made and I was satisfied that it was appropriate for the matter to be determined on the basis of that bundle.
3. The application in respect of the Right to Manage was dismissed by the tribunal on 8 April 2022, reference CAM/22UN/LRM/2021/0007. The respondent’s objection that the date specified in the claim notice for acquisition of the RTM was not at least three months after the date specified in section 80(6) of the 2002 Act was upheld. An application for an order for costs against the respondent under rule 13 was also dismissed. It follows that the respondent landlord was entitled to claim costs both in relation to the response to the claim notice and the FTT proceedings.

### **The applicant’s case**

4. The total costs claimed are £1,895.22 for responding to the claim notice and £2,271 for the costs incurred in the proceedings. Those costs include a claim for £500 and £600 respectively for Eagerstates Limited, the managing agents employed by the applicant, and VAT.
5. Scott Cohen’s costs are based on the hourly rate of £275 for Miss Scott, the principal of the firm. In her Schedule of Costs in respect of the claim notice she states that she spent 1.9 hours on letters and emails

and 2 hours on assessing the claim notice, supporting documentation and drafting the counter notice. The disbursement of £6.85 + VAT for postage was accepted by the respondent. The applicant provided a copy of Scott Cohen's invoice for £1,292.22 sent to the applicant c/o Eagerstates Limited dated 28 July 2022 and copies of the claim notice, counter notice and some of the documents for the RTM company.

6. Eagerstates Limited also provided a copy of their invoice to the applicant, although it was addressed c/o 7 Church Walk. Their "*agreed costs as per management agreement*" were said to be £450 plus VAT, although apparently that was an error and the invoice should have been for £500 + VAT. The agents claimed that they had spent some 4.75 hours notifying the freeholder and solicitor about the claim notice, providing the solicitor with information including a copy of the lease, instructing the accounts and management team to review the file and consulting and meeting the freeholder "*to advise of ramifications of RTM*".
7. The schedule for the FTT proceedings claimed 1.8 hours for correspondence and 2.9 hours perusing the application and directions, preparing the statement of case and bundle, considering the applicant's response and the FTT decision. The "Proforma Invoice" from Scott Cohen dated 8 August 2022, again sent c/o Eagerstates Limited, appears to include the £600 said to be due to Eagerstates, under the heading "professional services". No further information was provided as to how any amount due to Eagerstates costs was calculated, although the applicant's response to the respondent's submissions stated that it was a fixed fee for assistance with FTT proceedings. The applicant's bundle included a copy of the management agreement in respect of the property dated 17 November 2019.

### **The respondent's case**

8. In relation to the response to the claim notice, the respondent submitted that reasonable costs were £825 for the solicitor and £100 for the managing agent, plus VAT. The disbursement of £6.85 + VAT was agreed.
9. The hourly rate of £275 was accepted for Lorraine Scott but they submitted that a more junior member of staff could have carried out more of the work and/or that the time was excessive. They submitted 3 hours was reasonable. As to Eagerstates, £100 was proposed as it would appear that there was duplication with the solicitor and much of the time related to the practicalities of the RTM handover which in view of the negative counter-notice did not arise.
10. As to the costs incurred in relation to the proceedings, again it was submitted that a more junior member of staff could have carried out some of the work and/or the time claimed was excessive. 3.5 hours or

£962.50 was proposed as a reasonable amount. The respondent submitted that nothing was payable in respect of Eagerstates Limited. No invoice was provided for their fees and no explanation provided for their role, if any, in the proceedings.

### **The tribunal's decision**

11. As stated above, the entitlement is to reasonable costs and therefore the landlord may suffer a loss if the costs incurred are not considered to be reasonable by the tribunal. Clearly, the landlord has a choice as to their solicitors and agents and market forces should ensure that such fees are reduced to a reasonable level if the costs are not upheld on a routine basis.
12. I agree that Miss Scott's hourly rate is a reasonable amount for an experienced practitioner. However, with experience should go efficiency and I agree with the respondent that the time taken in respect of both the response to the claim notice and in the proceedings is excessive, given the routine nature of the objection. In the circumstances I determine that a reasonable amount for dealing with the claim notice is 3 hours at £275 or £825. I consider that the respondent's objections have equal force in respect of the proceedings and that a more junior member of staff could at least have dealt with the routine correspondence. In those circumstances I determine that a reasonable amount for the proceedings is 4 hours at £275 or £1,100. The disbursement of £6.85 is agreed. This makes a total of £2,318.22 including VAT in respect of Scott Cohen's costs.
13. As to Eagerstates Limited, I accept that reasonable management fees may form part of a claim under section 88(1) but they require an explanation as to the work actually done, supported by evidence, in order for the tribunal to assess what reasonable amount is due. The invoice provided in relation to dealing with the claim notice details unnecessary and excessive work, for example "*scanning a copy of lease*" and advance preparation for "*RTM takeover*" where the RTM was contested. None of those costs are reasonable in the circumstances of this case. As set out above, no separate invoice was provided in relation to any work allegedly carried out by Eagerstates in relation to the proceedings. Inexplicably, Scott Cohen have added their "fixed fee" to their own invoice. Appendix 3 of the Management Agreement provides for a minimum of £100 + VAT in respect of services to the client in respect of the RTM plus £150 + VAT per hour for any court appearance. Eagerstates took no part in the proceedings, which were determined on the papers. In the circumstances I agree with the respondent that £100 + VAT or £120 is all that is payable in this case.
14. In the circumstances the reasonable costs are £2,438.22, including VAT and disbursements.

**Name:** Judge Wayte

**Date:** 20 September 2022

### **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).