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93 Act



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

Case Reference : **CHI/43UL/OAF/2012/0012**

Property : **27, Broad Ha'Penny, Wrecclesham,
Farnham, Surrey, GU10 4TF**

Applicant : **Mrs M Wilson**

Representative : **In person**

Respondent : **Freehold Managers (Nominees) Ltd**

Representative : **In person**

Type of Application : **Costs under Schedule 12 paragraph
10 of the Commonhold & Leasehold
Reform Act 2002**

Tribunal Members : **Judge I Mohabir
Mr N I Robinson FRICS**

Date of Decision : **6 December 2013**

DECISION

Introduction

1. This is an application made by the Applicant seeking a determination under Schedule 12 paragraph 10 of the Commonhold & Leasehold Reform Act 2002 (as amended) (“the Act”) that the Respondent pay a contribution limited to £500 for the costs incurred by her as a result of its “vexatious, obstructive and unreasonable behaviour” during her acquisition of her freehold.
2. The basis on which the Applicant has brought this application are set out in detail in her statement of case filed under cover of a letter dated 17 July 2013 and it is not intended to repeat those matters here as they are self-evident. Nevertheless, the Applicant’s case can be summarised as follows.
3. In April 2012, the Applicant applied to purchase the freehold interest of her premises known as 27, Broad Ha’Penny, Wrecclesham, Farnham, Surrey, GU10 4TF. She paid a fee of £120 to the Respondent for its valuation and administration costs. The Respondent proposed a purchase price of £10,000. The Applicant considered this to be vexatious because the Respondent had proposed lower figures in previous years.
4. The Applicant proposed a figure of £4,350. This was met with a counter proposal of £6,995 by the Respondent, which resulted in the Applicant proposing an increased offer of £5,156. This was rejected by the Respondent.
5. The Applicant then sought professional valuation advice from Kempton Carr, Chartered Surveyors, which she disclosed to the Respondent together with her calculations as to value. Despite repeated requests to do so by her, the Respondent failed to disclose its valuation evidence. Eventually, the Applicant applied to the Tribunal to determine the premium she should pay for the freehold interest of her property.

6. The Respondent instructed its own valuers, Plotnek & Associates, who contended for a value of £5,370. The Applicant made a renewed offer of £4,610, to which the Respondent did not reply. She argues that this amounted to unreasonable behaviour on its part and resulted in her having to incur further professional valuation fees of £450 to comply with the Tribunal's directions. She found this vexatious. Eventually, the valuers instructed by the parties agreed a valuation figure of £4,700.
7. The Applicant asserts that the Respondent's solicitors delayed in sending a draft Transfer and a bill for their client's costs, which omitted its valuation costs. Further correspondence then ensued between the respective firms of solicitors for the refund of the £120 initially paid by the Applicant for the Respondent's valuation and administration costs. This incurred further legal costs of £277 on her part. Furthermore, although by 2 May 2013 she was ready to complete the matter, it did not take place until 10 June 2013.
8. The Applicant states that as a result of the Respondent's conduct throughout, she incurred additional costs of £1,476.30. She submits that this conduct was "vexatious, obstructive and unreasonable behaviour" and she should be awarded costs of £500 permitted under the Act.
9. The Respondent has not served any evidence in reply in this matter as directed by the Tribunal on 24 July 2013.

Relevant Law

10. This is set out in the Appendix annexed hereto.

Decision

11. The Tribunal's determination took place on 22 October 2013 and was based solely on the documentary evidence before it. Although the costs claimed by the Applicant related to proceedings prior to the 1 July 2013, the application itself was made after this date and was determined by the Tribunal pursuant to Rule 13 of the Tribunal Procedure (First-Tier

Tribunal) (Property Chamber) Rules 2013. Under the transitional provisions, the Tribunal was obliged to apply the pre-existing law to proceedings commenced before 1 July 2013.

12. The Tribunal dismissed the Applicant's application for the following reasons. In the Tribunal's judgement, the complaints made by the Applicant about the Respondent's conduct simply reflect her dissatisfaction about what amounts to no more than commercial negotiation regarding the purchase of the freehold interest of her property.
13. The Tribunal, therefore, found that the Respondent's conduct does not satisfy the high test of what amounts to vexatious or unreasonable behaviour under schedule 12 paragraph 10 of the Act. The Applicant could simply have avoided much of the additional costs incurred by her by simply making an application to the Tribunal at an early stage.

Appeals

14. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office, which has been dealing with the case.
15. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
16. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

17. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Judge I Mohabir
6 December 2013

Appendix of relevant legislation

Schedule 12, paragraph 10

- (1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).
- (2) The circumstances are where—
 - (a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
 - (b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.
- (3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—
 - (a) £500, or
 - (b) such other amount as may be specified in procedure regulations.
- (4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.