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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference:	CHI/18UG/LDC/2013/0055
Property:	21 Morton Crescent, Exmouth, Devon EX8 1BG
Applicants:	Joyce Ogden and Charles Kibble
Representative:	Ms J Ogden
Respondent:	Vanessa Freeman
Representative:	Ms V Freeman
Type of Application:	Part 6 of The Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 – Rules 52 and 55- application for permission to appeal Application for costs under Rule 13 The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013
Tribunal Members:	Judge A Cresswell (Chairman) Mr E G Harrison FRICS
Date of Decision:	20 February 2014

DECISION

Application by the Respondent for Permission to Appeal

By application of 30 January 2014, the Respondent has sought permission to appeal, under Part 6 of The Tribunal Procedure (First Tier Tribunal) (Property Camber) Rules 2013 ("the Rules"), against the Determination of this Tribunal of 24 December 2013 ("the Determination").
The Tribunal does not give permission to the Respondent to appeal. The reasons for refusing permission follow:

1. The Tribunal first considered, under Rule 55 of the Rules, whether to review its decision. It determined not to review its decision because it was not satisfied that any of the grounds of appeal was likely to be successful for the reasons detailed within the Determination.

2. The Respondent raised issues in her application and its voluminous attachments which are, in essence, simply an attempt to reargue the factual matters considered at the hearing and which do not address the relevant legal issues. There are no new evidential matters which could not properly have been drawn to the Tribunal's attention at the hearing **(Ladd v Marshall** [1954] 1 WLR 1489).

3. The Tribunal appreciates that the Respondent is a litigant in person and is being advised by others, but she appears to have conflated Sections 20ZA and 27A of the Landlord and Tenant Act 1985 in her mind; whilst there was an application before the Tribunal under Section 20ZA, there was no application by either party under Section 27A.

4. The Respondent's application also contains numerous inaccuracies, which the Tribunal does not need to explore fully, given the decision reached not to grant permission to appeal, but, for the purpose of illustration only, gives 3 examples.

5. Instances are the Respondent's misreading of paragraph 2 of the Determination, which did not say that the disrepair of the building was irrelevant as she suggests, but rather: "*The Tribunal's consideration was somewhat complicated by the history, by the understanding of the parties of the relevant law and by the fact that there appears to be a state of complete disharmony between the parties. The determination does not dwell on those extraneous issues and ignores them* ***insofar as*** *they are irrelevant to its consideration of the discreet application.*" (emphasis added).

6. Also, the Respondent has attributed questions to Judge Cresswell about a buildings survey, which were asked of her by the other member of the Tribunal, and which were, in any event, relevant questions of a leaseholder who appeared to be suggesting that a person can purchase a leasehold property knowing that it has defects and in circumstances where the leaseholders are jointly responsible under their leases for the payment for the remedy of those defects and yet believe that it is possible to pass those costs on to the freeholder's successor in title. The question about a survey was, therefore, very relevant so as to understand what the Respondent knew about the defects when she purchased her interest and so as to better understand

why she was resisting the application. Put bluntly, the Respondent appeared to want any work to be done on her terms only and without cost to her, which was a far from attractive position for her to take, notwithstanding her historical relationship with the previous freeholder. There was not any real evidence to support the Respondent's assertion of any relationship between the current and past freeholders.

7. By way of a final illustration of the inaccuracy of the Respondent's grounds, her application is peppered with the word "*emergency*", yet that word does not once appear in the Determination. The parties were advised in advance of the hearing of the relevant legal question the Tribunal was required to answer.

8. The Respondent challenges the accuracy of the Applicants' evidence about the dates of major storms, but the dates were not a material averment. The Tribunal was aware that there had been storms, but their date was immaterial to its decision.

9. The Respondent's baseless suggestion that the contractor had deliberately caused damage to the roof was not only unsupported by any evidence whatsoever, but was directly contradicted by the Respondent's own concession that she knew the roof was in need of repair when she purchased her leasehold interest.

10. The Respondent should also be aware that the Determination is the joint determination of the Tribunal which is signed by the Judicial office holder only.

11. The issues raised by the Respondent, whilst clearly of personal importance, are not of general public importance such as to justify the cost of an appeal hearing where there is no realistic prospect of the appeal being successful.

12. The Tribunal does not accept that there is a reasonable prospect that the Upper Tribunal will find that the Tribunal has wrongly interpreted or applied the relevant law (**Fairhold Mercury Limited v HQ (Block 1) Action Management Company Limited** (2013) UKUT 0487 (LC)) or that the Determination is fairly open to challenge.

13. The Tribunal concluded that the Respondent ought not to be given permission to appeal to the Upper Tribunal.

14. In accordance with section 11 of the Tribunals, Courts and Enforcement Act 2007 and Rule 21 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010 the Applicant/Respondent may make a further application for permission to appeal to the Upper Tribunal (Lands Chamber. Such application must be made in writing and received by the Upper Tribunal (Lands Chamber) no later than 14 days after the date on which the First-tier Tribunal sent notice of this refusal to the party applying for permission.

A Cresswell (Judge)

Costs

Rule 13 The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the 2013 Rules").

(1) The Tribunal may make an order in respect of costs only—
(a) under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;
(b) if a person has acted unreasonably in bringing, defending or conducting proceedings in—
(i) an agricultural land and drainage case,
(ii) a residential property case, or
(iii) a leasehold case; or
(c) in a land registration case.
(2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.
(3) The Tribunal may make an order under this rule on an application or on its own initiative.
(4) A person making an application for an order for costs—
(a) must, unless the application is made orally at a hearing, send or deliver an application to the Tribunal and to the person against whom the order is sought to be made; and
(b) may send or deliver together with the application a schedule of the costs claimed in sufficient detail to allow summary assessment of such costs by the Tribunal.
(5) An application for an order for costs may be made at any time during the proceedings but must be made within 28 days after the date on which the Tribunal sends—
(a) a decision notice recording the decision which finally disposes of all issues in the proceedings; or
(b) notice of consent to a withdrawal under rule 22 (withdrawal) which ends the proceedings.
(6) The Tribunal may not make an order for costs against a person (the "paying person") without first giving that person an opportunity to make representations.
(7) The amount of costs to be paid under an order under this rule may be determined by—
(a) summary assessment by the Tribunal;
(b) agreement of a specified sum by the paying person and the person entitled to receive the costs (the "receiving person");
(c) detailed assessment of the whole or a specified part of the costs (including the costs of the assessment) incurred by the receiving person by the Tribunal or, if it so directs, on an application to a county court; and such assessment is to be on the standard basis or, if specified in the costs order, on the indemnity basis.
(8) The Civil Procedure Rules 1998(**a**), section 74 (interest on judgment debts,

etc) of the County Courts Act 1984(b) and the County Court (Interest on Judgment Debts) Order 1991(c) shall apply, with necessary modifications, to a detailed assessment carried out under paragraph (7)(c) as if the proceedings in the Tribunal had been proceedings in a court to which the Civil Procedure Rules 1998 apply.
(9) The Tribunal may order an amount to be paid on account before the costs or expenses are assessed.

1. The Tribunal received an application of 13 January 2014 by the Applicants for costs under Rule 13(1) (b) (iii) of the 2013 Rules on the basis that the Respondent had acted unreasonably, and sought reimbursement by the Respondent of the fees paid by the Applicants. The Applicants seek an order that the Respondent should pay their Tribunal fees. They claim £190 for the application fee and £190 for the hearing fee, which the administration confirms were the fees paid. They seek payment of their travel costs to Exeter and for the attendance of the builder at the hearing.

2. The Respondent contested the application for costs in a written response received on 30 January 2014 on the basis that she said they were contrived and fraudulent. She disputed that the Applicants had travelled to the area specifically for the hearing. She disputed that the sums claimed for Tribunal fees are correct, but, as the Tribunal has recorded above, the Applicants have accurately stated the fees paid.

3. Costs are generally understood to be legal costs, not the expenses of attendance at a hearing, so that the travel and builder's expenses are not recoverable under the provision of the 2013 Rules relied upon.

4. The Tribunal finds that there was no reason why the Applicants could not have completed the statutory consultation requirements, notwithstanding the Respondent's lack of cooperation. It was because they did not complete those requirements and, presumably, because they wish to claim more than £250 from the Respondent for the works completed that they decided to make the Section 20ZA application.

5. This is not an uncomplicated area of law.

6. The Tribunal reminds itself that this jurisdiction is generally a "no costs" jurisdiction.

7. The Tribunal has had regard to the word *"unreasonably"* in Rule 13(1)(b). That test is whether the behaviour permits of reasonable explanation: HH Judge Huskinson in **Halliard Property Company Limited and Belmont Hall and Elm Court RTM Company Limited LRX/130/2007 LRA/85/2008.** The Tribunal in considering Rule 13(1) (b) would be required to follow a two-stage approach. First to find whether the Respondent acted unreasonably and then, if it so found, to exercise its discretion whether to order costs having regard to all of the circumstances.

8. In such circumstances as detailed above, the Tribunal finds that it could not find that the Respondent has acted unreasonably.

9. Whilst the test to be applied under Rule 13(2) requires no analysis of whether a person has acted unreasonably, when all that is recorded above is weighed in the balance, the Tribunal finds that it would not be appropriate to order the Respondent to reimburse the Applicants with the fees paid by them.

10. The Tribunal, accordingly, refuses the application for costs.

A Cresswell (Judge)

APPEAL

1. A person wishing to appeal this costs 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.

2. 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.

3. 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.

4. 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.