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

Case Reference : CHI/19UJ/LBC/2014/0021

Property : 2 Regency Sands, 118 The Esplanade, Weymouth,
Dorset. DT4 7EH

Applicant : Esplanade Management No. 1 Limited

Representative : Mr W R Tanner

Respondent : Mr N H Sharp

Representative : Brown & Vautier Solicitors

Type of Applications: Breach of Covenant – Section 168 Commonhold
and Leasehold Reform Act 2002 – Costs on
withdrawal

Tribunal Members : Judge P.J. Barber

Date of Decision: 4th March 2015

DECISION

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Decision

- (1) The Tribunal makes no order in respect of costs.

Reasons

INTRODUCTION

1. The application made in this matter was dated 16th September 2014 and was made pursuant to Section 168(4) of the Commonhold and Leasehold Reform Act 2002 for an order that a breach of covenant has occurred.
2. Directions were issued in the matter on 23rd September 2014 requiring action variously by the parties. Further directions were issued on 1st December 2014 referring inter alia to (1) the Respondent's statement of case having raised a serious question as to jurisdiction and (2) that even if there is jurisdiction, the Applicant should have an opportunity to respond to the Respondent's case. The directions also referred to a question raised by the Respondent regarding alleged lack of authority by Mr Tanner to make the application in the first instance and issues of company law and procedure. Paragraph 11 of the directions further provided that the Tribunal was minded to strike out the application on the ground that it does not have jurisdiction, save that the Applicant company (acting through its directors) and Mr Tanner will be given the opportunity to make written representations as to such proposed strike out, by 22nd December 2014.
3. Further directions were issued on 13th January 2015; paragraph 1 of such directions provided that:

"1. At the request of the Applicant company and the Respondent not objecting, the Tribunal orders the withdrawal of the Applicant's application herein"

The directions included reference to the fact that the Respondent Mr Sharp, had made an application that an order for costs be made against Mr Tanner personally under Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. The Tribunal further directed that the Respondent's solicitors shall by 27th January 2015 set out fully the grounds upon which they say a costs order should be made and in particular whether the rules permit such an order to be made against an individual who is not himself a party to the proceedings, and with opportunity for Mr Tanner to serve any reply by 17th February 2015. Such directions further provided that the application for a costs order shall be determined on the basis of written representations and without an oral hearing unless either party objected within 28 days of receipt of the directions.

4. Neither party has objected to the application for a costs order being determined without an oral hearing.

THE WRITTEN SUBMISSIONS

5. The Tribunal has received a letter from the Respondent's solicitors Brown & Vautier dated 27th January 2015 containing written submissions as to costs. Such letter includes allegations that Mr Tanner has acted unreasonably in bringing the proceedings and including reference to a management board meeting of the Applicant company on 29th November 2014 at which it was, they said, resolved that Mr Tanner was removed as secretary of the company. The letter refers to the application having been an abuse of process, referring also to animosity between Mr Tanner and the Respondent, and otherwise and seeks an order for payment of

costs by Mr Tanner on the basis of detailed costs summaries as appended to their letter. In the alternative, the letter invites the Tribunal to exercise its case management powers by transferring the case to another court if more appropriate.

6. Mr Tanner filed a written submission in the Tribunal on the 17th February 2015, in which he provided detailed counter submissions including to the effect that he had been wrongly referred to as the Applicant and that at the time the application was made in September 2014, he was secretary to the Applicant company and applying in that capacity.

CONSIDERATION

7. The Tribunal finds that the written representations filed by the Respondent`s solicitors, fail fully to comply with the directions of 13th January 2015 in that they provide no clearly compelling or persuasive argument as to whether the rules permit a costs order to be made against an individual who is not himself a party to the proceedings. On the face of it Mr Tanner appears to have been the company secretary as at the date on which the application was made to the Tribunal; such application was completed by him to include details of the Applicant company as follows:-

"[Name] William Reginald Tanner [Address] Secretary, Esplanade Management No. 1 Limited, Reg. Office : 3 Regency Sands, 118 The Esplanade, Weymouth DT4 7EH"

Brown & Vautier accept in their written submission that Mr Tanner was only removed as secretary of the company by resolution of the board on 29th November 2014, and being a date after the date on which the application had been filed with the Tribunal. Brown & Vautier had also indicated in their letter to the Tribunal dated 9th January 2015 that their client Mr Sharp, had no objection to a withdrawal of the application.

8. Consideration of detailed issues pertaining to company law, including legality as to appointments of officers and issues of ostensible authority, are not within the jurisdiction of this Tribunal. Accordingly, and given that the original application was made by Mr Tanner with ostensible authority at the time as company secretary, on behalf of the company and the absence of clear argument being made by the Respondent regarding how the rules permit a costs order against an individual who is not a party to the proceedings, the Tribunal declines to make any order for costs in this matter.
9. In regard to the Respondent`s request for transfer of this matter to another court, the Tribunal has already ordered the withdrawal of the application and, having declined to make any costs order, it must be for the Respondent to pursue any separate remedy pursuant to company law or otherwise as it may think fit, as a separate issue.
10. We made our decisions accordingly.

Judge P J Barber

Appeals :

1. 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.

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.