



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

Case reference : **LON/00AG/LSC/2013/0768**

Property : **Queen Court, Queen Square,
London WC1N 3BA**

Applicant : **Queen Court RTM Company Ltd**

Representative : **Ms Gourlay of Counsel instructed
by the Applicant RTM Company**

Respondent : **West End District Properties
Limited**

Representative : **Stuart Armstrong of Counsel
instructed by Gisby Harrison
Solicitors**

Type of application : **Costs under Rule 13 Tribunal
Procedure (First-tier tribunal)
(Property Chamber) Rules 2013**

Tribunal members : **Judge S O'Sullivan**

**Date and venue of
hearing** : **10 Alfred Place, London WC1E 7LR**

Date of decision : **16 December 2015**

DECISION

Decisions of the tribunal

The tribunal declines to make any order pursuant to Rule 13(1) of the Tribunal Procedure (First tier Tribunal) (Property Chamber) Rules 2013.

The application

1. The Applicant has made an application for a determination of costs under Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. The Respondent made submissions in reply dated 25 November 2015. The application was considered by way of a paper determination on 16 December 2015. Neither of the parties requested an oral hearing.
2. The costs in issue are those said to be incurred in bringing an earlier application to the tribunal under case reference LON/00AG/LSC/2013/0768 (the “Substantive Application”). The costs being claimed by the Applicants total £20,050.

The background

3. In the Substantive Application the Applicant was a RTM Company which acquired the right to manage the property known as Queen Court, Queen Square, London WC1N 3BA. The proceedings arose out of a request made by the Applicant for the Respondent to account for some £79,000 of service charges recorded in the accounts as “freeholder debts”. In short after the sum was queried at a meeting shortly before the right to manage was acquired the Respondent provided invoices by way of account. At the hearing heard on 11 and 12 May 2015 some 18 out of a total of 24 invoices were conceded as not having been demanded and/or put through the service charge account. Of the remaining invoices the tribunal only one invoice was allowed in the sum of £13,571.25. No application for permission to appeal was made by either party in relation to the tribunal’s decision in the Substantive Application dated 30 July 2015.
4. The Applicant now seeks reimbursement of certain of the costs under the following four heads;
 - i) Jurisdictional costs
 - ii) Belated concession costs
 - iii) The Respondent’s withdrawal of the application for costs, and

- iv) The costs incurred in connection with the application.
5. The grounds for the application are set out in a lengthy statement which the tribunal does not intend to repeat. In summary however the grounds are as follows.
 6. Jurisdictional costs are claimed as it said that the Respondent changed its stance on jurisdiction on several occasions. It is said that it has changed its position in a remarkable 360 degree change and this in itself is unreasonable.
 7. It is said the Respondent acted unreasonably in making belated concessions on the day of the hearing when it had maintained and reaffirmed its position for three years. The Applicant says it had been encouraged to prepare a challenge on all invoices when 18 out of the 24 were immediately conceded at the beginning of the hearing.
 8. It is said that the Respondent acted unreasonably in making a costs application and then keeping this live for one year before its withdrawal at the hearing.
 9. The costs of making the costs application are also claimed if the Applicant succeeds with the application.

The Respondent's case

10. In response in a lengthy statement the Respondent says that essentially the Applicant must show that the Respondent has "acted unreasonably in bringing, defending or conducting proceedings". This is denied as it is said the entire application has been a waste of time as it was brought as a means of furthering the Applicant's claim in the civil court. It is maintained that the dispute is a civil one and should never have been brought.
11. It is also said that the tribunal's finding was crucial in that it found the majority of items before it were not service charges. This had formed the basis upon which the Respondent had argued the case should be struck out. It is also said that the tribunal's determination will not assist the parties in the civil action given that it was limited to considering whether the charges in issue were service charges.
12. As far as the jurisdictional costs are concerned the Respondent says that the fact that it changed its stance on jurisdiction does not render it unreasonable. It is also said that the issue of jurisdiction was raised by the tribunal itself on two separate occasions.

13. As far as the concessions made on the day of the hearing are concerned the Respondent says it faced difficulties in obtaining information and that appropriate concessions were made when relevant information was discovered. Further it is said that the issues raised by the Applicant have changed during the course of the proceedings.
14. In relation to the withdrawal of the costs application it is submitted the application is devoid of merit. The application for costs was withdrawn when the tribunal rejected its arguments on the preliminary issues and the Respondent says it was entirely reasonable to withdraw the application at that point.
15. As far as the costs incurred in making the application for costs are concerned it is admitted that if successful the Applicant would be entitled logically to at least some of the costs of making the application.
16. By a further letter dated 14 December 2015 the Respondent also says that the Applicant has failed to provide a breakdown of the RTM's claim of its costs and copies of the solicitors' invoices for fees. It is therefore said there is no evidence of the amounts said to have been incurred.
17. In conclusion the Respondent points to the fact that the tribunal is essentially a no costs jurisdiction.

The tribunal's decision

18. The tribunal declines to make any order pursuant to Rule 13(1) of the Tribunal Procedure (First tier Tribunal) (Property Chamber) Rules 2013 (the "Procedure Rules").

Reasons for the tribunal's decision

19. The tribunal's power to award costs is contained in Rule 13 (1)(b)(ii) of the Procedure Rules which states that;

"The Tribunal may make an order in respect of costs only-

(b) If a person has acted unreasonably in bringing, defending or conducting proceedings in-

(I) a residential property case ..."

20. The power to award costs pursuant to Rule 13 is discretionary and the wording of the provision makes it clear that the tribunal may only make such an order if a person's conduct of the proceedings is unreasonable rather than his behaviour generally.

21. In considering an application for costs under Rule 13(1)(b) it is helpful to have regard to the analysis of Sir Thomas Bingham MR (as he was then) in *Ridehalgh v Horsefield* [1994] 3 All ER 848 as to the meaning of unreasonable. In the context of a wasted costs order he said:

“Unreasonable” also means what it has been understood to mean in this context for at least half a century. The expression aptly describes conduct which is vexatious, designed to harass the other side rather than advance the resolution of the case, and it makes no difference that the conduct is the product of excessive zeal and no improper motive. But conduct cannot be described as unreasonable simply because it leads in the event to an unsuccessful result or because other more cautious legal representatives would have acted differently. The acid test is whether the conduct permits of a reasonable explanation. If so the course adopted may be regarded as optimistic and as reflecting on a practitioner’s judgment but it is not unreasonable.

22. The power to award costs pursuant to Rule 13 should only be made where a party has clearly acted unreasonably in bringing, defending or conducting the proceedings. This is because the tribunal is essentially a costs free jurisdiction where parties should not be deterred from bringing or defending proceedings for fear of having to pay substantial costs if unsuccessful. In addition there should be no expectation that a party will recover its costs if successful. The award of costs should therefore in our view be made where on an objective assessment a party has behaved so unreasonably that it is fair that the other party is compensated to some extent by having some or all of their legal costs paid.
23. The application was brought by the Applicant. It was a complex application and the tribunal itself clearly grappled with the issue of jurisdiction during the course of the case management before this case reached hearing. The tribunal has some sympathy for the view expressed by the Respondent that the tribunal was not the most appropriate forum for this dispute to be resolved and this is reflected in the tribunal’s decision and by the fact that the dispute between the parties continues in the County Court. The Applicant chose to bring proceedings in the tribunal and to some extent must accept responsibility for that decision.
24. Having considered the facts of this case overall I am satisfied that the Respondent’s conduct did not cross the threshold described by Sir Thomas Bingham MR and I am equally satisfied it would not be fair or just to make a costs order.

Name: S O’Sullivan

Date: 16 December 2015