



FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference : CHI/43UC/LRM/2016/0013

Property : Church Gate, 1A Church Road, Epsom,
Surrey KT17 4AB

Applicant : Church Gate RTM Company Limited

Representative :

Respondent : Assethold Limited

Representative : Scott Cohen Solicitors

Type of Application : Costs following Application in relation to
the denial of the Right to Manage

Tribunal Member(s) : Judge D. Agnew

Date of Decision : 9th February 2017

DECISION

Background

1. By a Notice dated 12th July 2016 the Applicant served upon the Respondent a claim to acquire the right to manage the property known as Church Gate, 1A Church Road, Epsom, Surrey KT17 4AB ("the Property") under section 78 of the Commonhold and Leasehold Reform Act 2002 ("the Act").
2. On 12th August 2016 the Respondent served a counter-notice claiming that the Applicant was not entitled to acquire the right to manage the Property.
3. On 3rd October 2016 the Applicant made an application to the Tribunal to determine whether the Applicant did have the right to acquire the right to manage the Property. Directions were issued requiring the Respondent to serve a statement of case by 1st November 2016.
4. On 8th November 2016 the solicitors acting for the Respondent wrote to the Tribunal to say that they had written to the Applicant's representative to withdraw the Respondent's counter-notice.
5. The Tribunal then wrote to the Applicant's representative asking whether, in those circumstances, it was willing to withdraw its application. In response the Applicant's representative said they had no objection to the application being withdrawn but wished to claim reimbursement of the application fee of £100 and their costs of preparation of the Application Form in the sum of £22.80. The Tribunal proceeded to strike out the application but to issue directions for a written determination of the application for costs. The parties did submit their written representations with regard to costs.

The Applicant's case

6. The Applicant asserts that the Respondent having immediately withdrawn its counter-notice after receipt of the Applicant's application to the Tribunal suggests that it was aware when issuing the counter-notice that it had no grounds for success and that this was unreasonable behaviour which led to the Applicant incurring unnecessary costs. An order for costs would therefore be "appropriate" they say.

The Respondent's case

7. The Respondent submits that it should not be required to reimburse the application fee because the Applicant failed to give prior notice to the Respondent that it was about to issue proceedings. If they had, it would have given the Respondent the opportunity to consider the

position prior to the issue of proceedings and to avoid the costs of the application.

8. With regard to the remainder of the claim for costs the Respondent cites the case of *Willow Court Management Company (1985) Limited v Alexander and others [2016] UKUT 0290 (LC)* as authority for what will and will not amount to unreasonableness which justifies the making of an order for costs under Rule 13 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 (“the Rules”). The Respondent says that this case demonstrates that it is not enough that the Respondent, upon consideration, chose to withdraw its counter-notice. Conduct cannot be described as unreasonable simply because it leads to an unsuccessful result. The Tribunal should note that the Respondent acted promptly in withdrawing the counter-notice once it was aware of the proceedings.

The relevant law

9. By Rule 13(2) of the Rules “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.”
10. By Rule 13(1) of the Rules “A Tribunal may make an order in respect of costs only –
 - (a) [not relevant]
 - (b) if a person has acted unreasonably in bringing, defending or conducting proceedings in –
 - (ii) a residential property case.”

The Tribunal’s decision

11. This case involves a claim for reimbursement of an application fee under Rule 13(2) and a claim for costs under Rule 13(1) of the Rules. The former is in the sum of £100 and the latter for £22.80 for preparation of the Application Form.
12. With regard to the reimbursement of the application fee there is no requirement that the Respondent must have acted unreasonably in order for an order to be made. The matter is within the general discretion of the Tribunal. Generally the test that the Tribunal would apply is whether it is just and equitable for an order to be made.
13. The Applicant says that the withdrawal of the counter-notice so swiftly after the proceedings were served on the Respondent “suggests” that the Respondent knew all along that their counter-notice had no prospect of success. The Tribunal considers that this is speculation and is not necessarily the case. It may be, for example, that the Respondent did consider that it had a proper argument to object to the acquisition of the right to manage but that, when it saw that the Applicant was serious in pursuing the matter by the issue of proceedings, it re-

assessed the situation and in particular the costs involved in the matter proceeding to a hearing and decided that it would cut its losses by withdrawing straight away. Again this is speculation because the Respondent does not explain its thought processes when taking the action it did. If that is what happened it is not, in the Tribunal's view, an unreasonable stance to take. It is, however, a risky one because by the time it decided to withdraw the counter-notice the Applicant had already incurred the issue fee.

14. In my judgment, if a party adopts such a risky strategy it is just and equitable that it should reimburse the issue fee to the Applicant. It should have taken into account that on receipt of the counter-notice the Applicant would need to issue proceedings in order to protect its position. It was not incumbent upon the Applicant to forewarn the Respondent before issuing the application. This is not the same situation as where a party issues court proceedings before sending a letter before action. That is what the Claim Notice is, in effect. But it is more than that. It is the start of a statutory procedure with strict time limits. Any Respondent receiving such a Claim Notice, particularly one that is represented by solicitors, as here, should expect that the next step would be for the Applicant to issue its application to the Tribunal.
15. The Respondent says that it was deprived of the opportunity of considering its position before the issue of the proceedings. The Respondent should have considered its position before serving the counter-notice. The counter-notice was given on behalf of the Respondent by solicitors and so the Respondent had the benefit of legal advice at that stage.
16. In all the circumstances the Tribunal is satisfied that it is just and equitable to order the Respondent to reimburse the Applicant with the issue fee of £100 which shall be payable within 28 days of the date hereof.
17. Turning now to the balance of the claim of £22.80 this is said to be for "preparation of the Application Form". This part of the claim must come within Rule 13(1) of the Rules, if it is to succeed. No further details as to how this small claim has been quantified. The Applicant's representative does not appear to be a firm of solicitors. No time taken to complete the application form has been given, or the charging rate that has been applied.
18. As the Respondents rightly say, the test of unreasonableness is explained in the Willow Court case referred to in paragraph 8 above. The amount being claimed is a small amount of money and a detailed explanation of the Willow Court decision in these reasons would be disproportionate to the amount involved. Suffice it to say that this Tribunal is normally a cost-free forum for the resolution of disputes within its jurisdiction. The bar as to what constitutes unreasonable conduct is a high one as explained in the Willow Court case. Simply because a party is unsuccessful does not mean necessarily that they

have acted unreasonably in bringing or defending the case. As found by the Tribunal in paragraph 13 above the Tribunal does not take the view that the Respondent's conduct was unreasonable, in the Willow Court sense of the word, albeit that it may have been risky. Accordingly, the Tribunal makes no order with regard to the claim for costs of £22.30.

Conclusion

19. The Tribunal hereby orders the Respondent to reimburse the Applicant the issue fee of £100 within 28 days hereof and makes no further order for costs.

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.