



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

**Case Reference** : **LON/00BB/LSC/2020/0094**

**Property** : **Flats 1, 8, 9, 10 and 14 Onyx Mews,  
London E15 4HU**

**Applicants** : **Mr J Khan (Flat 1), Ms S Mohahmood  
(Flat 8), Dr S Mohamed (Flat 9), Ms Y  
Mohamed (Flat 10) and Mrs M Shah  
(Flat 14)**

**Respondent** : **The Quadrangle RTM Company Limited**

**Type of Application** : **Supplemental cost application following  
service charge application**

**Tribunal Members** : **Judge P Korn  
Mr A Lewicki FRICS MBEng**

**Date of Decision** : **11<sup>th</sup> January 2021**

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**SUPPLEMENTAL DECISION ON COSTS**

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## **Decision of the tribunal**

The tribunal refuses the cost application.

## **The background**

1. This application is supplemental to an application (the “**Main Application**”) made by the Applicants for a determination as to the reasonableness/payability of certain service charges.
2. The Respondent has now made a cost application pursuant to paragraph 13(1) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (“**the Tribunal Rules**”).

## **Respondent’s written submissions**

3. In its submissions, the Respondent states that its cost application under Rule 13(1)(b) of the Tribunal Rules is on the basis that the Applicants have “*acted unreasonably in bringing ... or conducting proceedings*”. In particular, it states that the lead Applicant and representative, Mrs Shah, has in these proceedings acted in a vexatious manner which has only served to escalate costs unnecessarily and may in part be seen as an attempt to harass the Respondent. The Respondent submits that Mrs Shah has repeatedly failed to comply with the tribunal’s directions order made on 19<sup>th</sup> May 2020, deliberately sought to obstruct the Respondent by refusing to provide a Scott Schedule in an editable format as well as making repeated requests for documentation that was both unnecessary and irrelevant. She also attempted to raise new issues at a very late stage of the proceedings without permission of the tribunal. There was an exhaustive list of correspondence issued by Mrs Shah which failed to advance the case and which instead obstructed the proceedings.
4. As to specific details, on 22<sup>nd</sup> May 2020 Mrs Shah complained that there were three inaccuracies in the directions order but she was not correct and the Procedural Judge replied criticising her three points. Then on 1<sup>st</sup> June 2020 Mrs Shah wrote to the tribunal about costs but failed to copy in the Respondent. Mrs Shah also not only failed to serve a Scott Schedule in an editable format in breach of the directions order but, when the Respondent requested her to supply an editable version, she adamantly refused to do so. She then finally did send the Scott Schedule in an editable format but made changes to it by including the 2021 budget without the permission of the tribunal or explicitly bringing it to the attention of the Respondent.
5. In addition, despite it being agreed at the directions hearing that invoices were not in dispute Mrs Shah requested about 1,200 copy invoices as well as information on the commercial units and copies of leases. She also wrote to the tribunal requesting an extension and then asking for more directions regarding disclosure and then for a further extension and then again contesting the tribunal’s refusal to grant an extension and then again requesting copy invoices.

Then, after the Respondent submitted its witness statements, the Applicants amended their reply in a way which the Respondent characterises as an attempt to mislead the Respondent as Mrs Shah had said that she merely wanted to correct spelling mistakes but the amended version contained many alterations/revisions. Mrs Shah also repeatedly requested disclosure of irrelevant documentation and challenged the structure of the hearing bundle.

6. The Respondent also notes that, in its own decision on the Main Application, the tribunal describes the Applicants' approach to the dispute as disproportionate, and the Respondent quotes from that decision.
7. As to the costs incurred by the Respondent, the Respondent instructed J B Leitch Limited to draft a reply to the Applicants' statement of case and Scott Schedule and to give advice on witness statements. These costs total £7,320, and copies of the relevant invoices are attached to the Respondent's written submissions. Costs were also incurred by Paul Jepps of Fortus (previously Haines Watts) in the sum of £2,040 for drafting Mr Jepps' witness statement, providing professional advice in respect of the accounts and attending the hearing. Costs incurred by the managing agents, Rendall and Rittner, total £4,392.00, and this was for the drafting of their witness statement and supplying invoices to the Applicants as well as attending the hearing.
8. In conclusion the Respondent submits that due to Mrs Shah's conduct in connection with these proceedings the Respondent should be entitled to its costs from the Applicant(s). Whilst the Respondent's understanding is that it can claim back legal costs through the service charge, it considers that it would be unfair for all leaseholders to be penalised because of the actions of the Applicants through Mrs Shah, particularly when the conclusions in the tribunal's determination were 95% in line with the answers previously provided to Mrs Shah by the Respondent prior to the Main Application. Mrs Shah refused to accept any of these answers and instead chose to proceed with legal action.

### **Applicants' written submissions**

9. In his submissions, Counsel for the Applicants notes that the Applicants were not legally represented in connection with the Main Application. He goes on to argue that the defects in the Applicants' presentation of their case could fairly be attributed to their lack of legal assistance and concurrent unfamiliarity with the legal process. Although the Supreme Court ruled in *Barton v Wright Hassall LLP [2018] UKSC 12* that no special indulgence was to be given to litigants in person, the Court in that case was concerned with the application of the Civil Procedure Rules rather than a lack of understanding of legal concepts such as relevance and proportionality in litigation.
10. Taking paragraphs 102 and 103 of the tribunal's ruling as a whole, he submits that the Applicants, despite any defects in their approach to the litigation, did succeed in part, as did the Respondent. He argues that it is implicit from the findings in paragraphs 102 and 103 together that the appropriate order is for

the costs of this matter to lie where they fall and that there should be no order as to costs. This submission is reinforced by the approach to wasted costs orders taken by the Court of Appeal in *Ridehalgh v Horsefield* [1994] EWCA Civ 40, [1994] Ch 205, and he submits that this approach should inform the tribunal's approach to the question of costs alleged to have been incurred by the unreasonable conduct of a party.

11. Counsel also notes that valuable guidance on the application of Rule 13(1) can be found in *Willow Court Management v Alexander* [2016] UKUT 290, in particular paragraphs 24 and the paragraphs that immediately follow it. In paragraph 25 of the decision in *Willow Court* the Upper Tribunal states as follows: “... for a lay person to be unfamiliar with the substantive law or with tribunal procedure, to fail properly to appreciate the strengths or weaknesses of their own or their opponent's case, to lack skill in presentation, or to perform poorly in the tribunal room, should not be treated as unreasonable.” He submits that this observation sums up the deficiencies noted in the Applicants' presentation of their case.
12. In addition, Counsel for the Applicants takes issue with the Respondent's apparent view that the tribunal should take a broad-brush approach to the cost application. On the contrary, he argues, the approach under the Civil Procedure Rules is that an applicant for wasted costs must identify both the specific conduct causative of the wasted costs and the amount said to have been wasted: see *Nwoko v OYO State Government of Nigeria* [2014] EWHC 4538 (QB). In his submission, the Respondent has failed to put its case with sufficient particularity in this instance.
13. In conclusion, the Applicants submit that the tribunal should not make a costs order against them.

### **The tribunal's analysis**

14. Although there is much reference in the Respondent's submissions to Mrs Shah being the Applicants' representative (albeit not a legally qualified one), this is not an application for a wasted costs order under Rule 13(1)(a) of the Tribunal Rules and section 29(4) of the Tribunals, Courts and Enforcement Act 2007. Instead, it is an application under Rule 13(1)(b) of the Tribunal Rules.
15. The relevant part of Rule 13(1)(b) of the Tribunal Rules states as follows: “*The Tribunal may make an order in respect of costs ... if a person has acted unreasonably in bringing, defending or conducting proceedings in ... a residential property case, or ... a leasehold case*”.
16. In its decision in *Willow Court Management (1985) Ltd v Alexander* (2016) UKUT 0290 (LC) the Upper Tribunal has given some guidance on the application of Rule 13(1)(b). The first thing to note is that the Upper Tribunal in *Willow Court* establishes a three-stage test: (a) has the party acted unreasonably, (b) should an order for costs be made and (c) if so, what should

the order be. It follows that in order to make a cost award under Rule 13(1)(b) the tribunal must first reach a finding that the party concerned has acted unreasonably.

17. As to what is meant by acting “unreasonably”, the Upper Tribunal in *Willow Court* followed the approach set out in *Ridehalgh v Horsfield* [1994] EWCA Civ 40, [1994] Ch 205 and stated that “*unreasonable conduct includes conduct which is vexatious, and designed to harass the other side rather than advance the resolution of the case. It is not enough that the conduct leads in the event to an unsuccessful outcome*”.
18. In *Ridehalgh*, Sir Thomas Bingham MR described the acid test of unreasonable conduct in the context of a cost application as being whether the conduct permits of a reasonable explanation. One principle which emerges from both *Ridehalgh* and *Willow Court* is that costs are not to be routinely awarded pursuant to a provision such as Rule 13(1)(b) of the Tribunal Rules merely because there is some evidence of imperfect conduct at some stage of the proceedings. Sir Thomas Bingham also said that conduct could not be described as unreasonable simply because it led to an unsuccessful result. The Upper Tribunal in *Willow Court* added that tribunals should also not be over-zealous in detecting unreasonable conduct after the event.
19. As noted by Counsel for the Applicants, the Upper Tribunal in *Willow Court* also drew a distinction between litigants in person and professional advocates, stating that “*for a professional advocate to be unprepared may be unreasonable (or worse) but for a lay person to be unfamiliar with the substantive law or with tribunal procedure, to fail properly to appreciate the strengths or weaknesses of their own or their opponent’s case, to lack skill in presentation, or to perform poorly in the tribunal room, should not be treated as unreasonable*”. The Upper Tribunal then went on to state that “*these [tribunal] cases are often fraught and emotional; typically those who find themselves before the FTT are inexperienced in formal dispute resolution; professional assistance is often available only at disproportionate expense*”.
20. It is clear, therefore, from the decision in *Willow Court*, that in making a decision as to whether a party has acted unreasonably for the purposes of Rule 13(1)(b) a relevant factor is whether the party concerned was legally represented. This certainly does not mean that a cost award should never be made against an unrepresented party; rather, the point is that the conduct of an unrepresented party needs to be placed in its proper context, including what standard or skill could be expected of someone who is proceeding without the benefit of professional advice.
21. We do not know to what extent Mrs Shah’s approach to this case had the active approval of the other Applicants, but we accept that there have been aspects of Mrs Shah’s conduct which – had she been a professional advocate and/or adviser – would have constituted acting unreasonably for the purposes of Rule 13(1)(b). As noted in our decision on the Main Application, her whole approach to the dispute was disproportionate. She produced voluminous documentation

and disputed a large number of issues without having any triviality threshold. Many of the challenges were misconceived and more of the tribunal's time and the Respondent's time was used up than is reasonable for a case of this nature.

22. The Respondent's characterisation of Mrs Shah's conduct is that it constituted, in part, an attempt to harass the Respondent, was deliberately obstructive and included an attempt to mislead the Respondent. The Respondent also states that Mrs Shah requested a large number of invoices despite it being agreed at directions stage that invoices were not in dispute.
23. We do not accept the Respondent's characterisation of Mrs Shah's conduct. We do accept that Mrs Shah did not fully comply with directions, that she was less helpful than she should have been when asked for an editable Scott Schedule and that she caused the tribunal significantly more work than was warranted by the issues and the value of many of the points at stake. We also consider that she should generally have taken a less combative and more pragmatic approach to these proceedings and not made such time-consuming demands of the Respondent – a 'right to manage' company run by unpaid directors in their spare time. However, despite her misguided approach to the litigation process, we consider – on balance – that Mrs Shah sincerely believed (a) that she was in the right, (b) that the Respondent's lay representatives and professional support team were withholding information from her, and (c) that her chosen approach was an acceptable and possibly even a necessary way to obtain the information needed to support her case.
24. Specifically as regards the inclusion of the 2020/21 year as part of the application, the Applicants were in the end allowed by the tribunal (in its letter of 23<sup>rd</sup> June 2020) to include this. As for the complaint about Mrs Shah asking for copies of 1,200 invoices, it was only fairly late on in the proceedings (10<sup>th</sup> August 2020) that the tribunal made a ruling on this point. Even then, what Judge Martynski said was merely that the Respondent's request for "*the tribunal to consider concentrating on the principle of allocation rather than an in-depth analysis of the 1,200 invoices might be the way forward ... [subject to] Mrs Shah's comments*". As regards the Respondent's reference to the tribunal criticising three points made by Mrs Shah, this criticism was relatively mild.
25. As per *Willow Court*, we accept that Mrs Shah as a lay representative and advocate was not acting unreasonably if her shortcomings were attributable to the fact that she was "*unfamiliar with the substantive law or with tribunal procedure*" and/or due to her "*[failing] properly to appreciate the strengths or weaknesses of [her] own or [her] opponent's case, [lacking] skill in presentation, or [performing] poorly in the tribunal room*". In addition, the Upper Tribunal's comment that cases are often fraught and emotional is particularly apt; there was clearly a lot of emotion and 'baggage' between the parties, and some leeway needs to be given to parties who are emotionally invested in the outcome and are not professionally represented to be able to make mistakes in how they approach litigation in what is mainly a 'no cost'

jurisdiction without having to worry that any mistakes will attract an award of penalty costs against them.

26. In addition, whilst this does not by itself demonstrate that the Applicants' conduct was reasonable, the Applicants were in fact successful on a number of items. And whilst it is perfectly proper for the Respondent to point out that in purely monetary terms it has not made a large amount of difference, the fact remains that in relation to the service charge items in question the Respondent was not – and possibly suspected that it was not – following the terms of the Applicants' leases. This is not to suggest that the Respondent behaved badly – we consider that it was trying in good faith to take a pragmatic and proportionate approach – but rather to make the point that the Applicants had some legitimate concerns about the terms of the leases not being correctly applied.
27. We therefore do not accept that the Respondent has demonstrated that the Applicants have acted unreasonably for the purposes of Rule 13(1)(b) of the Tribunal Rules. As the application has failed to pass the first stage of the test set out in *Willow Court*, it follows that it is unnecessary to go on to consider stages two and three. Accordingly, the Respondent's cost application is refused.
28. We do, though, wish to re-emphasise a point made above, namely that if Mrs Shah had been a legal representative we would have concluded that she had acted unreasonably for the purposes of Rule 13(1)(b). Mrs Shah is therefore now on notice that her approach was far from ideal and that if she is involved in a similar case in the future the tribunal may expect her to have learnt some lessons from this case.

**Name:** Judge P. Korn

**Date:** 11<sup>th</sup> January 2021

### **RIGHTS OF APPEAL**

- A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.
- B. The application for permission to appeal must arrive at the regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
- C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide

whether to allow the application for permission to appeal to proceed despite not being within the time limit.

- D. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.