[2017] UKFTT 837 (TC)

TC06232

Appeal number: TC/2016/05078

PROCEDURE – COSTS – standard category case – withdrawal of appeal before hearing – application for costs by HMRC – whether appellant had acted unreasonably in defending or conducting proceedings by withdrawing the appeal – application for costs by appellant – whether HMRC had acted unreasonably in defending or conducting proceedings by making application for costs - rule 10(1)(b) Tribunal Procedure (First-tier Tribunal)(Tax Chamber) Rules 2009 – applications refused

FIRST-TIER TRIBUNAL
TAX CHAMBER

HOUSESIMPLE LIMITED **Appellant**

- and -

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE & CUSTOMS **Respondents**

TRIBUNAL: JUDGE ASHLEY GREENBANK

Sitting in public at Taylor House, 88 Rosebery Avenue, London on 16 October 2017

Carol Bun, of Birketts LLP, for the Appellant

Anastasia Nourescu, of HM Revenue and Customs Solicitor's Office, for the Respondents

DECISION

Introduction

1. This decision notice relates to two applications for costs.

(1) The first is an application by HM Revenue & Customs ("HMRC") for an order for its costs of and incidental to the appeal. This application was made by HMRC following the withdrawal by the appellant, Housesimple Limited ("Housesimple"), of its appeal in relation the main proceedings. The hearing was listed in order to address this application.

(2) The second is an application made by Housesimple for an order for its costs of and incidental to the application for costs made by HMRC. This second application was made in Housesimple's skeleton argument served for the hearing and again by Ms Bun during the hearing.

2. I was presented with bundle of documents for the hearing. The bundle included two witness statements of Mrs Joanne Morris, Finance Manager of Housesimple. Mrs Morris gave oral evidence and was cross-examined on her statements.

The Tribunal Rules

3. Section 29 of the Tribunals, Courts and Enforcement Act 2007 ("TCEA") provides that, subject to a Tribunal's rules, the "costs of and incidental to … proceedings in the First-tier Tribunal" shall be in the discretion of the Tribunal.

4. Rule 10 of the Tribunal Procedure (First-tier Tribunal)(Tax Chamber) Rules 2009 (the "Tribunal Rules") provides, so far as relevant.

> **10. Orders for costs**
>
> (1) The Tribunal may only make an order in respect of costs (or, in Scotland, expenses) -
>
> (a) …
>
> (b) if the Tribunal considers that a party or their representative has acted unreasonably in bringing, defending or conducting the proceedings;
>
> …
>
> (2) The Tribunal may make an order under paragraph (1) on an application or of its own initiative.
>
> (3) A person making an application for an order under paragraph (1) must –
>
> (a) send or deliver a written application to the Tribunal and to the person against whom it is proposed that the order be made; and
> (b) send or deliver with the application a schedule of the costs or expenses claimed in sufficient detail to allow the Tribunal to undertake a summary assessment of such costs or expenses if it decides to do so.

The relevant principles

5. Both of the applications in this case are made under rule 10(1)(b). The effect of this rule is that the Tribunal can only exercise its discretion to award costs if a party has acted unreasonably.

6. The case law surrounding the principles which the Tribunal should apply in deciding whether or not a party has acted unreasonably were recently summarized by Judge Brannan in *British-American Tobacco (Holdings) Limited v. HMRC* [2017] UKFTT 099 (TCC) ("*BAT*") at [5] to [14]. I agree with his summary. There would be little merit in my seeking to paraphrase it, so I have set it out in full below.

> "5. The principles to apply in deciding whether a party acted unreasonably were helpfully summarised by Judge Raghavan in *Market & Opinion Research International Ltd v Revenue & Customs* [2013] UKFTT 475 (TC) at [8]:
>
> > "(1) It was to be noted that the test in the Tribunal Rules that a party or representative had "acted unreasonably" required a lower threshold than the costs awarding power of the former Special Commissioners in Regulation 21 of the Special Commissioners (Jurisdiction and Procedure) Regulations 1994 which was confined to cases where a party had acted "wholly unreasonably". This was discussed in *Bulkliner Intermodal Ltd v HMRC* [2010] UKFTT 395 (TC) at [9].
> >
> > (2) It was suggested that acting unreasonably could take the form of a single piece of conduct. I was referred to [9] to [11] of the decision in *Bulkliner* by way of support for this proposition. In particular at [10] the decision highlights the actions that the Tribunal can find to be unreasonable may be related to any part of the proceedings
> >
> > > "…whether they are part of any continuous or prolonged pattern or occur from time to time".
> >
> > (3) The point is I think mentioned in the context of contrasting the Tribunal's rules in relation to acting unreasonably across the span of proceedings with the former Special Commissioners' costs power which was in relation to behaviour which was "in connection with the hearing in question". Having said that there would not appear to be any reason why the proposition that a single piece of conduct could amount to acting unreasonably. It will of course rather depend on what the conduct is.
> >
> > (4) Actions for the purpose of "acting unreasonably" also include omissions (*Thomas Holdings Limited v HMRC* [2011] UKFTT 656 (TC) at [39].)
> >
> > (5) A failure to undertake a rigorous review of assessments at the time of making the appeal to the tribunal can amount to unreasonable conduct (*Carvill v Frost (Inspector of Taxes)* [2005] STC (SCD) 208 and *Southwest Communications Group Ltd v HMRC* [2012] UKFTT 701 (TC)) at [45]).
> > (6) The test of whether a party has acted unreasonably does not preclude the possibility of there being a range of reasonable ways of acting rather than only one way of acting. (*Southwest Communications Group Ltd* at [39]).

(7) The focus should be on the standard of handling of the case rather than the quality of the original decision (*Thomas Maryam v HMRC* [2012] UKFTT 215(TC)).

(8) The fact that a contention has failed before the Tribunal does not mean it was unreasonable to raise it. In *Leslie Wallis v HMRC* [2013] UKFTT 81(TC) Judge Hellier stated at [27]:

> "It seems to us that it cannot be that any wrong assertion by a party to an appeal is automatically unreasonable…before making a wrong assertion constitutes unreasonable conduct in an appeal that party must generally persist in it in the face of an unbeatable argument that he is wrong…"

(9) As cautioned by Judge Brannan in *Eastenders Cash and Carry Plc v HMRC* [2012] UKFTT 219 (TC) at [91] Rule 10(1)(b) should not become a "backdoor" method of costs shifting."

6 This summary was approved by the Upper Tribunal in that case, [2015] UKUT 12 (TC) at [23]. The Upper Tribunal added:

> "We would add only what this Tribunal (Judge Bishopp) said in *Catanã v Revenue and Customs Commissioners* [2012] STC 2138 , at [14] concerning the phrase "bringing, defending or conducting the proceedings" in rule 10(1)(b) :
>
> > 'It is, quite plainly, an inclusive phrase designed to capture cases in which an appellant has unreasonably brought an appeal which he should know could not succeed, a respondent has unreasonably resisted an obviously meritorious appeal, or either party has acted unreasonably in the course of the proceedings, for example by persistently failing to comply with the rules or directions to the prejudice of the other side.'"

7 The Upper Tribunal went on to describe the test as follows at [49]:

> "It would not, we think, be helpful for us to attempt to provide a compendious test of reasonableness for this purpose. The application of an objective test of that nature is familiar to tribunals, particularly in the Tax Chamber. It involves a value judgment which will depend upon the particular facts and circumstances of each case. It requires the tribunal to consider what a reasonable person in the position of the party concerned would reasonably have done, or not done. That is an imprecise standard, but it is the standard set by the statutory framework under which the tribunal operates. It would not be right for this Tribunal to seek to apply any more precise test or to attempt to provide a judicial gloss on the plain words of the FTT Rules."

8 The Upper Tribunal in *Market & Opinion Research* at [55] and [56] also made it clear that the attributes of the party concerned should be taken into account:

> "55. There is one point we should make in this respect. In his skeleton argument, Mr Bremner submitted that if it were suggested that HMRC should be subjected to some higher standard than other litigants, then HMRC would submit

that such a suggestion was wrong. There was, it was argued, no justification for subjecting different litigants to different standards.

56. To the extent this argument is concerned with the application of a test of reasonableness, and not some different or higher standard, we agree. However, the test of reasonableness must be applied to the particular circumstances of a case, which will include the abilities and experience of the party in question. The reasonableness or otherwise of a party's actions fall to be tested by reference to a reasonable person in the circumstances of the party in question. There is a single standard, but its application, and the result of applying the necessary value judgment, will depend on the circumstances."

9 I should note two important limitations on the Tribunal's powers under section 29 TCEA and rule 10(1)(b) , although I consider that neither limitation is relevant in this case. The power to award costs is limited to costs "of and incidental" to the proceedings, rather than costs in respect of other matters, such as a prior investigation by HMRC: *Catanã v HMRC* [2012] STC 2138 at [7]. In this case this issue does not arise since it is clear that the costs claimed relate to the period after the notice of appeal was filed.

10 Secondly, the power to award costs under rule 10(1)(b) relates to unreasonable conduct in bringing, defending or conducting proceedings. As explained in *Catanã* at [8] and [9], whilst conduct or actions prior to commencement of an appeal might inform actions taken during the proceedings, unreasonable behaviour prior to commencement of proceedings cannot be relied upon to claim costs under rule 10(1)(b). In the present case the conduct of which BAT complains took place after proceedings had been commenced so this second limitation does not apply.

11 Finally, I should also refer to two additional decisions of this Tribunal. First, in *Roden and Roden v HMRC* [2013] UKFTT 523 (TC) Judge Mosedale, having observed that the Tribunal in *Leslie Wallis* was of the opinion that a party would not be acting unreasonably when pursuing a case without merit unless he ought to have known his case was without merit, stated at [15]:

12 "…The Tribunal should not be too quick to characterise pursuing what is found to be an unsuccessful case is unreasonable behaviour: the Tribunal rules provide for a no-costs regime in virtually all tax cases (and the exception for complex cases does not apply in this case). So if in this case HMRC's view had no reasonable prospect of success, HMRC would have been acting unreasonably if they ought to have known this but not otherwise. In considering whether HMRC ought to have known whether the case had a reasonable prospects of success, I consider that I should consider HMRC as a whole and not just the individual officer presenting the case."

13 I respectfully agree with Judge Mosedale's comments.

14 Secondly, in *John Scofield v Revenue & Customs* [2012] UKFTT 673 (TC) I noted that:

"… Rule 10(1)(b) must also be read in the light of the overriding objective (Rule 2(1)) of the Rules which is "to enable the Tribunal to deal with cases fairly and justly." In particular, Rule 2 (4) provides that:

"Parties must
(a) help the Tribunal to further the overriding objective; and

(b) co-operate with the Tribunal generally.""

Background

7. The first application relates to the conduct of an appeal made by Housesimple against a decision of HMRC on 28 April 2016 that certain supplies made by Housesimple did not fall within the exemption for intermediary services in item 5 Group 5 Schedule 9 to the Value Added Tax Act 1994 ("VATA").

8. The decision was upheld on review. HMRC notified Housesimple of the outcome of review on 5 September 2016.

9. Housesimple appealed to the Tribunal by Notice of Appeal dated 23 September 2016. The appeal was allocated to the "Standard" category.

10. Housesimple submitted amended grounds of appeal on 9 November 2016.

11. HMRC issued its statement of case on 23 December 2016.

12. On 13 January 2017, the Tribunal issued case management directions to the parties. The parties complied with the directions: both parties filed their lists of documents and Housesimple served its hearing bundle.

13. On 25 April 2017, the Tribunal listed the appeal for hearing on 8 June 2017.

14. On 23 May 2017, Birketts LLP, solicitors for Housesimple, wrote to the Tribunal to withdraw the appeal.

The applications

HMRC's application

15. On 5 June 2017, HMRC made an application to the Tribunal for an order for costs against Housesimple under rule 10 of the Tribunal Rules on the grounds that the appellant had acted unreasonably in bringing defending or conducting the proceedings within rule 10(1)(b) of the Tribunal Rules.

16. HMRC claimed an amount of £10,815.20 in respect of costs. A schedule of costs was included with the application.

17. HMRC gave the following reasons for its application:

(1) The withdrawal was made eight months after the Notice of Appeal was served, two days before the parties were due to serve skeleton arguments, and eleven working days before the hearing. It was unreasonable for the appellant

to withdraw its appeal at such a late stage in the proceedings without giving reasons for the withdrawal.

(2) The appellant could have made an application to stay the proceedings if it wished to reconsider its position. The appellant acted unreasonably in not making an application to postpone the hearing.

(3) HMRC had incurred costs in preparing for the appeal and instructing counsel to represent HMRC at the hearing.

18. Birketts LLP ("Birketts"), solicitors to Housesimple, raised objections to the application for costs in emails dated 6 June 2017 and 20 June 2017. Those objections extended to both the principle of a costs order being made and to the quantum of costs claimed by HMRC.

19. In a letter to the Tribunal dated 23 June 2017, HMRC accepted some of objections raised by Birketts to the quantum of costs claimed in the application and submitted to the Tribunal a revised schedule of costs in support of the application. The total amount of costs claimed in that revised schedule was £9,286.40.

20. In the course of exchange of skeleton arguments in preparation for the hearing, HMRC submitted a further revised schedule of costs dated 9 October 2017. The total amount claimed in this final schedule was £8,796.40.

Housesimple's application

21. In her skeleton argument for the hearing, Ms Bun made an application on behalf of Housesimple for costs of and incidental to the hearing of the application for costs made by HMRC. This application was repeated at the hearing.

22. Ms Bun submitted a schedule of costs in support of this application at the hearing. The amount of costs claimed was £1,350.

Mrs Morris's evidence

23. Mrs Morris gave evidence of the circumstances surrounding the withdrawal of the appeal by Housesimple. She was an honest and reliable witness.

24. I took the following points from Mrs Morris's evidence.

(1) The appellant believed that it had a reasonable case in relation to the appeal. It had not been advised that it was unlikely to succeed.

(2) Mrs Morris instructed Birketts to withdraw the appeal just before the exchange of skeleton arguments. Mrs Morris gave these instructions on behalf of Housesimple because the pressure of work on the finance team of the appellant meant that the appellant had insufficient resource to devote to the proper conduct of the appeal.

(3) Housesimple had a finance team of four people. Its financial year ended on 31 March 2017. The team was dealing with an audit process for the first time as, in prior years, the company had been too small to be obliged to file audited accounts. There was additional pressure on the finance team because the company had been seeking to raise additional finance. The audit had to be completed before the funds could be raised. The new investors were also requiring additional due diligence work over and above the audit work before they would invest. The new finance was required in order to expand the company's business into providing mortgage broking services directly to clients.

(4) All of these events coincided with the preparation of the appeal towards the end of April and during May 2017.

(5) Given the significant pressures on the finance team, the decision was taken not to proceed with the appeal. In arriving at that decision, the company had taken into account the fact that it had already paid the VAT that was under dispute.

(6) The decision was taken on a commercial basis having weighed the relevant costs and benefits of doing so. It had been decided that the highest priority for the company was to secure the new investment and against that background the company should devote its resources to raising the finance and not proceed with the appeal before the Tribunal.

(7) Although the company was aware that an application could be made to the Tribunal to postpone any hearing, the company had been advised that any such application was unlikely to succeed.

The parties' submissions

HMRC's application

25. Ms Nourescu made the following submissions on behalf of HMRC:

(1) HMRC accepted that Housesimple's appeal was not without merit. It was not vexatious. Until the withdrawal of the appeal, the appellant had complied with all of the directions of the Tribunal.

(2) That having been said, it was possible for a single act or omission to amount to unreasonable conduct. The appellant's late withdrawal of the appeal without giving reasons amounted to unreasonable conduct. It was also unreasonable that the appellant had not made an application to postpone the hearing. The effect of the appellant's unreasonable conduct was that HMRC had borne additional costs in instructing counsel and preparing for the hearing.

(3) She referred to the decision of the Upper Tribunal in *Tarafdar v. HMRC* [2014] UKUT 0362 ("*Tarafdar*") and the three stage test set out in that case pursuant to which the Tribunal should consider: (i) the reasons for the withdrawal, (ii) whether, having regard to those reasons, the party could have withdrawn at an earlier stage, and (iii) whether it was reasonable for that party not to have withdrawn at an earlier stage.

(4) The appellant's reasons for the withdrawal were not compelling. It should have been aware of all of the matters that placed undue pressure on its financial team in advance of the listing of the hearing. It could and should have taken these into account in providing its "dates to avoid" for a hearing when it provided those dates on 8 March 2017.

(5) The appellant could have taken a course of action which did not involve withdrawing the appeal. It could have requested a postponement of the hearing or applied to rely on a witness statement from a different witness.

26. Ms Bun made the following submissions on behalf of the appellant.

(1) The appellant's conduct had been exemplary throughout the conduct of the proceedings. It had met all the deadlines set by the Tribunal Rules or imposed by the Tribunal's directions.

(2) The underlying claim was not vexatious. HMRC agreed that it was a valid claim.

(3) There was no prejudice to HMRC from the withdrawal of the claim. Housesimple had accounted for the VAT and so HMRC was not out of pocket whilst the appeal was being conducted.

(4) Housesimple's reasons for withdrawing the appeal were compelling. It had been met by a "perfect storm" of three urgent business related events, which all occurred at the same time. These events had not been anticipated by the appellant when it gave its "dates to avoid" to the Tribunal. The coincidence of these events forced the appellant to divert its limited resources to other matters with the result that it did not have the time or the resources to pursue the appeal.

(5) Applying the tests in the *Tarafdar* case, the reasons given by the appellant were bona fide commercial reasons; Housesimple could not have withdrawn at an earlier stage; even if it could in theory have withdrawn at an earlier stage, it was not unreasonable for it not to have done so. Housesimple was forced by the coincidence of certain events to take a commercial business decision to withdraw the appeal.

(6) In deciding whether or not it was unreasonable for the appellant not to have withdrawn its appeal at an earlier stage, the test of reasonableness had to be applied by reference to the circumstances of the case and the abilities and experience of the party in question (*Market & Opinion Research International*

Limited v HMRC [2015] UKUT 0012 ("*MORI*") at [56]). This appellant did not and could not have anticipated the events that led to the withdrawal.

(7) The condition in rule 10(1)(b) is a threshold condition. It is only if the Tribunal considers that the appellant acted unreasonably that the Tribunal should consider the exercise of its discretion to award costs (*MORI* at [15]).

(8) If the Tribunal regarded the appellant's conduct as unreasonable, any costs awarded should be limited to costs specifically referable to the unreasonable conduct and should not include all of the alleged costs incurred by HMRC from the time at which the appellant first notified its appeal in September 2016.

(9) HMRC's claim for costs should be limited to its reasonable and proportionate costs on the standard basis.

(10) In exercising its discretion, the Tribunal should take into account the errors made in HMRC's costs schedule (which had since been corrected) and should have regard to the fact that if the appellant had continued its appeal to the Tribunal, HMRC would inevitably have ended up in a worse position. It would have incurred further costs, which would not have been recoverable even if it had succeeded.

Housesimple's application

27. Ms Bun argued that HMRC had made a wholly unreasonable and vindictive application for costs. That application should be regarded as unreasonable conduct with rule 10(1)(b) with the result that HMRC should bear the appellant's costs of the application hearing.

28. Ms Nourescu simply reiterated that HMRC's claim for costs was a valid claim for all the reasons that she had given in relation to it.

Discussion

29. I have decided to reject both applications. I have set out my reasons below.

HMRC's application

30. In the context of HMRC's application, I was referred by both parties to the decision of the Upper Tribunal (Judge Berner and Judge Powell) in *Tarafdar* in which the Upper Tribunal set out the process which a tribunal should adopt in cases of unreasonable conduct involving a withdrawal by one party. At paragraph [34] of its decision, the Upper Tribunal said:

> "….In our view, a tribunal faced with an application for costs on the basis of unreasonable conduct where a party has withdrawn from the appeal should pose itself the following questions:

(1) What was the reason for the withdrawal of that party from the appeal?

(2) Having regard to that reason, could that party have withdrawn at an earlier stage in the proceedings?

(3) Was it unreasonable for that party not to have withdrawn at an earlier stage?"

31. I have adopted that approach.

32. As regards question (1), I accept Mrs Morris's evidence that the reason for the appellant's withdrawal was a combination of events – the need for an audit, the requirement of new investors for the audit and additional due diligence to be completed to their satisfaction before an investment would be made, and the commercial imperative to secure that investment in order to open up new lines of business. These issues placed undue strain on the finance team at the appellant. The appellant decided that it was unable to commit sufficient resources to the appeal and on that basis instructed its solicitors to withdraw the appeal.

33. As regards question (2), it would, as Ms Nourescu points out, have been possible for the appellant to withdraw at an earlier stage if it had anticipated the strain that would be placed on its limited resources by the forthcoming fund raising exercise (which, of course, it did not).

34. As regards question (3) I have set out above (at [6]) Judge Brannan's summary from his decision in the *BAT* case of the principles derived from the case law that are to be applied by the Tribunal in deciding whether or not a party has acted unreasonably. I have taken into account those principles in considering whether or not the conduct of Housesimple should be regarded as "unreasonable" in this case. In my view it cannot.

(1) HMRC accepted that the appellant's claim was not vexatious. It had the right to pursue that claim unless and until it considered, acting reasonably, that it was not in its interests to do so.

(2) Housesimple also had the right to withdraw under the Tribunal Rules. The Tribunal Rules do not specify that it was required to give reasons. Provided Housesimple was acting reasonably, it is entitled to exercise that right without a penalty in terms of costs.

(3) I accept that a single act or omission may amount to unreasonable conduct and that the Tribunal Rules require a lower threshold than under the previous regime (see the decision of Judge Raghavan in the First-tier Tribunal in *Market & Opinion Research International Ltd v Revenue & Customs* [2013] UKFTT 475 (TC) at [8] in which he compares the reference to acting "unreasonably" in rule 10(1)(b) with the reference to acting "wholly unreasonably" in the regulations governing the procedure before the Special Commissioners). However, the concept of reasonableness requires the Tribunal to consider what a reasonable person in the position of the party concerned would reasonably have done or not done. That is an imprecise standard (see the decision of the Upper Tribunal in *MORI* at [49]). There is a range of actions that will fall

within the bounds of reasonableness. The Tribunal does not need to determine the action that, in its view, the relevant party should have taken in the circumstances. It simply has to decide whether the action taken by that party falls within that range.

(4) In determining that range, I agree with the statements of Judge Mosedale in *Roden and Roden v HMRC* [2013] UKFTT 523 (TC) (at [15]) that the Tribunal should not be quick to characterize actions as "unreasonable behaviour". Judge Mosedale's comments were made in the context a party pursuing a case which had no reasonable prospects of success. However, in my view, they are of wider application. It cannot be the case that the effect of rule 10(1)(b) is to turn what, with the exception of cases falling within the Complex category, is intended for the most part to be a no-cost regime into a cost-shifting one.

(5) I accept Mrs Morris's evidence that the appellant had not appreciated the demands that would be placed on the finance team until it was involved in the audit and due diligence process. In particular, the appellant had not appreciated the level of resource that would be required at the time at which it gave "dates to avoid" to the Tribunal in March 2017.

(5) While it may have been possible, in theory, for appellant to have anticipated the demands that would be placed on its finance team, the test of reasonableness has to be determined in all of the circumstances of the case by reference to the position of the particular taxpayer. This will include the abilities and experience of the taxpayer in question (see the decision of the Upper Tribunal in *MORI* at [55] to [56]). This was a relatively small business with limited experience in raising new investment. It is understandable that Housesimple did not anticipate these issues in March 2017. It was not unreasonable for the appellant not to withdraw its appeal at that stage.

(6) As Ms Nourescu pointed out, when it did realize the pressures that would be put on its finance team, Housesimple could have made an application to the Tribunal to postpone the hearing. Having taken advice, it decided not to do so. That was a decision which was within the bounds of reasonable conduct. The appellant was faced with a situation in which it did not feel able to commit time and resource to the appeal at that time. It had certain choices: one of which was to withdraw the appeal and accept HMRC's arguments in relation to the VAT treatment, but not incur any further costs in relation to it; another of which was to make an application to postpone, which if it had been accepted, would have kept alive Housesimple's prospects of succeeding in its arguments in relation to the VAT treatment, but would have involved further costs for the appellant (and HMRC). Housesimple made a choice. It did so for good business reasons. It not make it capriciously. It may not be the choice that some others would have made, but that does not make it unreasonable.

35. As I have decided that the appellant's conduct was not unreasonable, it is not necessary for me to consider the arguments surrounding the quantum of HMRC's claim.

Housesimple's application

36. I turn now to the appellant's claim.

37. I have decided to reject this application as well.

38. As I have mentioned above, there is a range of reasonable behaviour and the Tribunal should not be quick to characterize behaviour as unreasonable for the purposes of rule 10(1)(b).

39. Ms Bun sought to characterize HMRC's decision to make this application as vindictive. She did not present any evidence in support of that assertion other than the fact that the application was made and that the schedules of costs that were initially submitted by HMRC contained certain errors. Ms Nourescu apologized in the hearing for some of the errors in the earlier schedules. I have no reason not to believe that they were mistakes, honestly made.

40. HMRC made its application because the appeal was withdrawn at a very late stage. At the time, no reasons had been given by the appellant for its withdrawal of the appeal. I have accepted that the appellant's reasons for the withdrawal of its appeal were reasonable. But it does not follow that because HMRC's claim was unsuccessful that its application must be regarded as unreasonable.

Decision

41. I reject the applications.

Rights of appeal

42. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

ASHLEY GREENBANK
TRIBUNAL JUDGE

RELEASE DATE: 22 November 2017