



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

Case Reference : **MAN/30UN/LSC/2017/0095
MAN/30UN/LSC/2017/0003
MAN/30UN/LSC/2018/0032**

Property : **Flats 6, 8, and 16, Butlers Farm Court
Leyland, Lancashire PR25 1LF**

Applicant : **Southern Counties Property Management
Ltd,
Represented by Powell and Company**

Respondents : **Mrs C M Livesey
Mr G Wruk
Mr D Tipping**

**Type of
Application** : **Application for costs under Rule 13 Tribunal
Procedure (First-tier Tribunal) (Property
Chamber) Rules 2013**

Tribunal Members : **Mr J R Rimmer
Mr J Faulkner**

Date of order : **12 August 2019**

Order : **The Tribunal makes an order for costs in
favour of the Respondents collectively under
Rule 13 Tribunal Proceedings (First-tier
Tribunal) (Property Chamber) Rules 2013 in
an amount of £490.35, to be paid by the
Applicant.**

A. Application and background

- 1 The 3rd Respondent has made an application to the Tribunal to recover costs in this matter on behalf of himself and the two other Respondents in respect of the substantive proceedings before the Tribunal and determined on 8th March 2019.
- 2 A schedule of the costs in question has been provided by the Respondents and is to be found at page 36 onwards of the bundle of documents supplied by the parties to assist the Tribunal. The amount claimed by them is a combined total of £7093.00.
- 3 The claim is founded upon the provisions of Sub-paragraphs 1(a) and (b) of Rule 13, Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 which provides:
 - (1) The tribunal may make an order in respect of costs only
 - (a) Under section 29(4) of the Tribunals, Courts and Enforcement Act 2007 (wasted costs) and the costs incurred in applying for such costs:
 - (b) If a person has acted unreasonably, in bringing, defending, or conducting proceedings in-
 - (i)...
 - (ii)...
 - (iii) a leasehold case.
- 4 The 3rd Respondent sets out his case in a statement of some 8 pages in length and found in the bundle of documents at page 1.

B The submissions

- 5 There are a number of foundations upon which the respondents base their application and they may be set out as follows:
 - (1) The manner in which the Applicant commenced and then conducted initial proceedings in the County Court, essentially “targeting” the Respondents as leaseholders who were not owner occupiers, but had sub-let and thereafter had entered default judgements where possible , after previously seeking to remedy what he saw as a defect in the leases of the properties in relation to service charges.
 - (2) The whole basis of the Applicant’s case was false in any event, as was eventually determined by the Tribunal and which the Applicant had been aware of by his suggestion of varying the defective leases.
 - (3) The Applicant misled other leaseholders by suggesting that the Respondents were represented by a firm of solicitors when this was not the case.

- (4) The Applicant failed to comply with directions from the Tribunal as to what should be included within his case and within the bundle of documents for the use of the Tribunal; including material that should not have been and failing to take appropriate opportunity to agree enclosures with the Respondents.
 - (5) The Applicant was also evasive and misleading in information he provided to the Tribunal relating to the insurance of the building at Butlers Farm Court.
 - (6) The Applicant has conducted himself in a harassing, or vexatious, manner in the way he has communicated his views of Respondents to other leaseholders.
- 6 It is the Respondents' case that they were led to carry out considerably much more work than would have been the case had the Applicant conducted himself in a proper manner, and indeed may have had no case to consider had the Applicant acceded to the views of the Respondents that there was no entitlement to payment for services.
 - 7 In a statement on behalf of the Applicant, Mr Powell, of Powell and Co Property (Brighton) Limited denies that his company, in conducting the proceedings, acted in any way other than in good faith in seeking to provide and then recover payment for services provided to the development. Furthermore, although the Tribunal found in favour of the Respondents in respect of service charges, it also found in favour of the Applicant in respect of the payability of insurance premiums.
 - 8 The Tribunal has considered the observations made, both in relation to the overall manner in which the proceedings have been conducted and in relation to particular aspects that have arisen during its course.
 - 9 The Tribunal proceedings commenced as a result of a transfer from the County court by order of District Judge Anson dated 29th November 2017. The Tribunal notes within that the terms of reference used by the District Judge.
 - “ 1) The question whether the service charges claimed by the Claimant are payable by the defendant is referred to the First-tier Tribunal...
 - 4) On determination of the question the file shall be returned to the district judge to deal with any outstanding issues...including...costs and any other part of the claim not determined by the...Tribunal.
 - 10 The Tribunal believes that that is the correct way for the issues relating to costs incurred in the County Court, in relation to proceeding to recover the debt alleged to be owed, should be considered and it is not for the Tribunal to look at the way those proceedings relating to issue, judgement in default, enforcement and setting aside were conducted.

- 11 The Tribunal may therefore look then at the way in which tribunal proceedings were conducted by the Applicant, it being his conduct that is being called into question.
- 12 Here the Tribunal considers firstly the suggestion that the whole proceedings were based upon a false premise, that the Applicant was entitled to recover payment for the provision of services under the terms of the relevant leases. In the Respondents' view the Applicant was clearly wrong. In relation to the service charges the Tribunal agreed with them.
- 13 Was it unreasonable for the Applicant to run a case that was not a very good one, in relation to one of the aspects of his case? The Tribunal does not believe so. There was a clear issue to be determined as to entitlement under the lease, just as there was in relation to recovery of insurance premiums. They were both matters that required proper consideration.
- 14 Here the Tribunal is indebted to the Upper Tribunal for what it sees as clear and helpful guidance to be found in Willow Court Management Company (1985) Limited v Alexander etc. (LRX90/2015) ("Willow Court") which has dealt at length with the issue of costs in First-tier Property Tribunal proceedings.
- 15 In paragraphs 24 onwards in its decision the Upper Tribunal sets out its view as to what amounts to unreasonable behaviour, leading to wasted costs and referring at some length to the leading case on the issue of wasted costs, Ridehalgh v Horsefield [1994] Ch 203.
- 16 In paragraph 24, it is noted that (referring to the observations in Ridehalgh v Horsefield)
“.. An assessment of whether behaviour is unreasonable requires a value judgement on which views might differ but the standard of behaviour expected of parties in tribunal proceedings ought not to be set at an unrealistic level...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 to an unsuccessful outcome...Would a reasonable person in the position of the party have conducted themselves in the manner complained of?... Is there a reasonable explanation of the conduct complained of?”
- 17 This raises a number of questions for the Tribunal, set out below, which may be used, and in the Tribunal's view, in any combination, to judge the Applicant's behaviour in this case
 - (a) Is the Applicant's behaviour unreasonable in the context of behaviour that includes “conduct which is vexatious and designed to harass the other side”?

No: the words used by Sir Thomas Bingham MR would appear to contemplate behaviour the nature of which is considerably more reprehensible than that seen in this case. The Tribunal notes that the Respondent does make such allegations, which are revisited below, but does not consider that they relate in any way to the case as a whole.

- (b) Would a reasonable person in the position of the Applicant have conducted themselves in the manner complained of?

Again, in relation to the overall proceedings The Tribunal is not prepared to take a step so far as to conclude that every reasonable party would have acted differently to the Applicant and in a manner that would have been preferred (hoped for?) by the Respondents. If there is a rubicon where reasonableness crosses into unreasonableness this Tribunal does not consider that crossing to have occurred here.

- (c) Is there a reasonable explanation of the conduct complained of?

Yes: it is conceivable that the Applicant could have made out his case in large part in the absence of any response from the Respondents. Weak though some of the evidence was and acknowledging that in the context of this Tribunal proceedings are not only adversarial, but also inquisitorial, the Tribunal was required to make findings of fact and law on two major issues.

- 18 The Tribunal is also comforted by the fact that it operates in what is normally, for these proceedings, a “no costs” jurisdiction and it is proper to err on the side of caution when considering if parties have acted unreasonably to invoke the costs jurisdiction of Rule 13, as well as in considering whether or not to make an order in the event of a finding in relation to wasted costs.
- 19 Whilst the observations above have been limited to the general conduct of the whole proceedings the Respondents also draw particular attention to certain particular aspect of the case and it is proper for the tribunal to look at those individually.
- 20 It is suggested that the Applicant sought to mislead other leaseholders in relation to the Respondents being represented by solicitors. He may well have been wrong, but it is not clear that this is more than a mistake. The Tribunal notes that within the Respondents’ claim (relating to the case in the County Court) there is reference to solicitors’ costs being incurred. There is also a letter exhibited at page 27 of the bundle, dated 24th January 2019, to tribunal office from the Applicant. In paragraph 22 of their statement the Respondents suggest that this seeks to indicate that the solicitor in question acts in these tribunal proceedings. That is not the

- interpretation that the Tribunal put upon the relevant paragraph. The reference is to a separate application.
- 21 It is conceivable that by adding this issue to that of the Applicant allegedly defaming one, or more, of the Respondents in communications with other leaseholders the two actions could be considered as vexatious or harassing.
 - 22 On its own the issue of the manner in which communications have been conducted is not to be taken lightly, but the Tribunal has seen within the proceedings allegations passing the other way, in relation particularly to insurance. It is unfortunate that certain that views have been expressed in certain ways but the Tribunal does not regard them as vexatious, or harassing, in a way that has greatly affected the time and effort that has been spent in attending to the business of the Tribunal. Or any cost associated therewith.
 - 23 There remain two complaints of the Respondents' that to the Tribunal's mind carry, considerably more weight:
 - (a) Failure to comply with directions. These are specifically identified by the respondents at paragraph 28 onwards of their statement. The Tribunal is satisfied that had directions been complied with in a timely and correct manner work undertaken by the Respondents could have been avoided. The provision of clear statement of case, proper accounts, service charge demands and an agreed, paginated and indexed bundle would have been appropriate. The Applicant is not a party, via its managers, unfamiliar with the service charge landscape. They have considerable experience of landlord and tenant issues.
 - (b) What should have been a relatively simple matter, capable of speedy clarification by the Applicant, both before and after the substantive hearing and the further directions of the Tribunal, was made difficult by the way in which information was provided piecemeal by the Applicant.
 - 24 In respect of both of these aspects of the proceedings the tribunal is satisfied that the Applicant behaved in a way that was unreasonable, viewed from both the perspective not only of what would be expected of any reasonable party, but also what would be expected of this particular Applicant.
 - 25 The task of the Tribunal is then to try to seek to quantify the additional cost that were likely to have arisen from those issues, set apart from the other findings of the tribunal in relation to the other matters raised by the Respondents.
 - 26 Looking at the schedule provided by the Respondents at page 36 of the bundle, the Tribunal would assess that the additional costs incurred would represent approximately 10% of the time taken by the Respondents in

dealing generally with the proceedings, and this has been fairly reflected in the schedule for the greater time taken by Mr Tipping as the lead. The Tribunal discounts time spent in relation to the County Court for the reasons set out in paragraphs 9 and 10, above, and the additional solicitors' bill at page 38 of the bundle.

- 27 The Tribunal would not disagree with the hourly rates applied to the times in question and accepts that Mr tipping would divert some of his attention to the proceedings from other professional matters.
- 28 The Tribunal's arithmetic would therefore suggest that the total relevant costs in respect of the tribunal proceedings would be £4,903.50 and the tribunal therefore considers it appropriate to make an order in favour of the Respondents, collectively, in an amount of £490.35. representing their costs that have been unnecessarily incurred in these proceedings.

JUDGE J R RIMMER

© CROWN COPYRIGHT 2019

