



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

Case reference : **LON/OOAG/OLR/2020/0509
CVP REMOTE**

Property : **44a Sarre Road London NW2 3SL**

Applicant : **Philip Richard Morgan and Milly
Amelia Glynis Morgan**

Representative : **Ms Alexa Beale; Solicitor**

**Ms Brooke Lyne of
Counsel** : **Mr Giampiero Corrias**

John Scurry : **In person (non-attendance)**

Non-attendance : **Section 48 of the Leasehold
Reform, Housing and Urban
Development Act 1993 and for the
determination of the liability to pay
and reasonableness of service
charges (s.27A Landlord and
Tenant Act 1985) – Rule 13 Costs
application**

Tribunal members : **Judge Professor Robert M Abbey**

**Video Based Hearing
date** : **9 February 2021**

Date of Costs Decision : **23 March 2021**

COSTS DECISION

Application for costs

1. An application was made by the Applicant under Rule 13 of the Tribunal Rules in respect of the Applicant's costs. The Tribunal subsequently received a schedule of costs totalling £12612 This is the amount listed by the Applicant and consists of legal costs, Tribunal fees, disbursements and VAT. The details of the provisions of Rule 13 are set out in the appendix to these Directions and rights of appeal made available to parties to this dispute are set out in an Annex.
2. Before a costs decision can be made, the Tribunal needs to be satisfied that there has been unreasonableness. At a second stage it is essential for the Tribunal to consider whether, in the light of unreasonable conduct (if the Tribunal has found it to have been demonstrated), it ought to make an order for costs or not. It is only if it decides that it should make an order that a third stage is reached when the question is what the terms of that order should be.
3. The Applicant filed with the Tribunal the Applicant's written costs application dated 9 February 2021 and comments/observations thereon were requested of the Respondent but none were forthcoming.
4. It now falls to me to consider the costs application in the light of the written submissions before the Tribunal. I do this but in the context of the circumstances of the original decision.

DECISION

1. The Tribunal's powers to order a party to pay costs may only be exercised where a party has acted "unreasonably". Taking into account the guidance in that regard given by HH Judge Huskinson in *Halliard Property Company Limited v Belmont Hall & Elm Court RTM, City and Country Properties Limited v Brickman LRX/130/2007, LRA/85/2008*, (where he followed the definition of unreasonableness in *Ridehalgh v Horsefield* [1994] Ch 205 CA), the Tribunal was not satisfied that there had been unreasonable conduct so as to prompt a possible order for costs.
2. The Tribunal was also mindful of a recent decision in the case of *Willow Court Management Company (1985) Limited v Mrs Ratna Alexander* [2016] UKUT 0290 (LC) which is a detailed survey and review of the question of costs in a case of this type. At paragraph 24 of the decision the Upper Tribunal could see no reason to depart from the views expressed in *Ridehalgh*. Therefore following the views expressed in this recent case at a first stage the Tribunal needs to be satisfied that there has been unreasonableness.
3. At a second stage it is essential for the Tribunal to consider whether, in the light of any unreasonable conduct it has found to have been demonstrated, it ought to make an order for costs or not; it is only if it decides that it

should make an order that a third stage is reached when the question is what the terms of that order should be.

4. In *Ridehalgh* it was said that “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 not 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.
5. The *Willow Court* decision is of paramount importance in deciding what conduct might be unreasonable. I have mentioned the approach of the Upper Tribunal in this decision but I think it appropriate to quote the relevant section of the decision in full:-

“An assessment of whether behaviour is unreasonable requires a value judgment 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 in the event to an unsuccessful outcome. The test may be expressed in different ways. Would a reasonable person in the position of the party have conducted themselves in the manner complained of? Or Sir Thomas Bingham’s “acid test”: is there a reasonable explanation for the conduct complained of?”

6. , in *Laskar v Prescott Management Company Ltd* [2020] UKUT 241 (LC) the Upper Tribunal clarified the decision in *Willow Court* as follows:

*“in Willow Court the Tribunal suggested an approach to decision making in claims under rule 13(1)(b) which encouraged tribunals to work through a logical sequence of steps, it does not follow that a tribunal will be in error if it does not do so. **The only "test" is laid down by the rule itself, namely that the FTT may make an order if is satisfied that a person has acted unreasonably in bringing, defending or conducting proceedings.** The rule requires that there must first have been unreasonable conduct before the discretion to make an order for costs is engaged, and that the relevant tribunal must then exercise that discretion. Whether the discretion has been properly exercised, and adequately explained, is to be determined on an appeal by asking whether everything has been taken into account which ought to have been, and nothing which ought not, and whether the tribunal has explained its reasons and dealt with the main issues in such a way that its conclusion can be understood, rather than by considering whether the Willow Court*

framework has been adhered to. That framework is an aid, not a straightjacket.” [emphasis added]

7. It seems to Tribunal that therefore the bar to unreasonableness is set quite high in that what amounts to unreasonableness must be quite significant and of serious consequence. This being so the Tribunal must now consider the conduct of the parties in this dispute given the nature of the judicial guidance outlined above.
8. The Applicant maintains that the Respondent was unreasonable in the conduct of the dispute by failing to comply with the Tribunal Directions and by failing to engage with the proceedings at all including failing to attend the hearing. Consequently, the Applicant invited the Tribunal to make a finding of unreasonableness on the part of the Respondent. The Applicant says that the Respondent was unreasonable for the reasons mentioned above In particular the Applicant reminded the Tribunal that the Respondent failed to attend the oral hearing in February 2021.
9. The tribunal issued directions on 15 October 2020, which required, amongst other things, the Respondent to provide to the Applicants (a) a draft lease by 12 November 2020; and (b) a list of terms remaining in dispute by 10 December 2020. The directions expressly warned the Respondent that a failure to comply could result in an adverse costs determination under rule 13. Despite the warning given, the Respondent failed to comply with these directions at all. The Applicants’ solicitors provided the draft lease to the Respondents’ solicitors for comment. Again, no substantive response was received. On 13 November 2020 the Respondent’s solicitors came off the record because they had been unable to obtain instructions from their client. Indeed, the Respondent has been giving time to respond in detail to the costs claim on more than one occasion. Regrettably he has failed to do so. No explanation has been given by the Respondent for his conduct in these proceedings.
10. In the absence of any relevant submissions on the costs claim from the Respondent the Tribunal considered the paperwork from the original decision and also the Applicant’s comments. In these circumstances, the Tribunal was satisfied that there was enough information or detail to persuade it that there had been unreasonable conduct on the part of the Respondent. Despite adequate notice of the hearing having been given to the Respondent, the Respondent failed to attend without it would seem any mitigating reasons not to do so. This in itself allows the Tribunal to make this determination. Furthermore, the sustained nature of the unreasonable conduct is sufficient for the Tribunal to decide to exercise its discretion to make a costs order thus addressing stage two of the process described in the *Willow* decision mentioned above. As such, the tribunal’s power to grant a costs order under r.13(1)(b) is engaged. The tribunal has considered all the circumstances of these proceeding and in particular the seriousness of repeatedly failing to comply with directions; The need to enforce compliance with procedural directions in the interest of justice and

the prejudice to the Applicants', namely additional legal costs that could have been avoided.

11. Taking into account all that the parties have said about the case and the actions of the parties involved, the Tribunal can find evidence to match the high bar of unreasonable conduct set out above. The Tribunal was therefore satisfied that stage one of the process had been fulfilled in that it found there has been unreasonableness for the purposes of a costs decision under Rule 13 on the part of the respondent.
12. In the circumstances the Tribunal determines that there be an order for costs pursuant to Rule 13. The Tribunal has carefully considered the costs schedule prepared by the solicitors for the Applicant and is of the view that it is in part reasonable and proportionate given the nature of the claim and the work required to progress the matter through this claim process.
13. The Tribunal fees claimed are accurate and therefore approved. The disbursements being Counsels fees cannot be approved as it includes a refresher fee when there was only one hearing day. Therefore, the fee of £1500 plus vat of £300 is disallowed in full. Furthermore, the drafting time of 3 hours seems disproportionate given the nature of the work involved and is therefore reduced to 2 hours. This reduces the drafting costs to £800 and reduces the vat thereon to £240. This therefore means that the claim is approved as amended by the reductions in total of £2280. This therefore means the net costs claimed approved by the Tribunal is in the sum of £10332 and is payable by the Respondent to the Applicant on or before 28 days from the date of this decision.
14. In the circumstances the Tribunal determines that there be an order for costs payable by the Respondent to the Applicant in the above terms pursuant to Rule 13 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 S.I. 2013 No. 1169 (L. 8).

Name: Judge Professor Robert
Abbey

Date: 23 March 2021

Appendix

The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 S.I. 2013 No. 1169 (L. 8)

Orders for costs, reimbursement of fees and interest on costs

13.

(1) The Tribunal may make an order in respect of costs only—

(a) under section 29(4) of the 2007 Act (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) an agricultural land and drainage case,

(ii) a residential property case, or

(iii) a leasehold case; or

(c) in a land registration case.

(2) 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.

(3) The Tribunal may make an order under this rule on an application or on its own initiative.

(4) A person making an application for an order for costs—

(a) must, unless the application is made orally at a hearing, send or deliver an application to the Tribunal and to the person against whom the order is sought to be made; and

(b) may send or deliver together with the application a schedule of the costs claimed in sufficient detail to allow summary assessment of such costs by the Tribunal.

(5) An application for an order for costs may be made at any time during the proceedings but must be made within 28 days after the date on which the Tribunal sends—

(a) a decision notice recording the decision which finally disposes of all issues in the proceedings; or

(b) notice of consent to a withdrawal under rule 22 (withdrawal) which ends the proceedings.

(6) The Tribunal may not make an order for costs against a person (the “paying person”) without first giving that person an opportunity to make representations.

(7) The amount of costs to be paid under an order under this rule may be determined by—

(a) summary assessment by the Tribunal;

(b) agreement of a specified sum by the paying person and the person entitled to receive the costs (the “receiving person”);

(c) detailed assessment of the whole or a specified part of the costs (including the costs of the assessment) incurred by the receiving person by the Tribunal or, if it so directs, on an application to a county court; and such assessment is to be on the standard basis or, if specified in the costs order, on the indemnity basis.

(8) The Civil Procedure Rules 1998(a), section 74 (interest on judgment debts, etc) of the County Courts Act 1984(b) and the County Court (Interest on

Judgment Debts) Order 1991(c) shall apply, with necessary modifications, to a detailed assessment carried out under paragraph (7)(c) as if the proceedings in the Tribunal had been proceedings in a court to which the Civil Procedure Rules 1998 apply.

(9) The Tribunal may order an amount to be paid on account before the costs or expenses are assessed.

ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. 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.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. 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.