



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

Case reference : LON/00BG/LBC/2019/0117

Property : Flat 50, Aegon House,
13 Lanark Square, London E14 9QD

Applicant : Hannah James

Respondent : Glengall Bridge Management Ltd

Type of Application : Costs – Rule 13(1)(b) of the Tribunal
Procedure (First-tier Tribunal)
(Property Chamber) Rules 2013

Tribunal members : Judge Nicol
Mr SF Mason BSc FRICS
Mr JE Francis

Date of Decision : 19th October 2021

DECISION ON COSTS

The Tribunal rejects the Applicant's application under rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and makes no further order as to costs.

Reasons

1. On 31st August 2021 the Tribunal determined that the service charges levied by the Respondent for the years 2016-2018 inclusive are payable by the Applicant save for 2 items.
2. The Tribunal further directed that it will decide any costs issues without a hearing on documentation provided in accordance with directions.
3. On 20th September 2021 the Applicant provided written representations for an order that the Respondent pay her costs of the proceedings under rule 13(1)(b) of the Tribunal Procedure (First-tier

Tribunal) (Property Chamber) Rules 2013, supported by a timesheet from her solicitors. The Respondent made their representations in response by email dated 21st September 2021.

4. The Tribunal proceeded to determine the application for costs on the papers, without a hearing.

The relevant law

5. The relevant parts of rule 13 state:

- (1) The Tribunal may make an order in respect of costs only—
 - (a) ...
 - (b) if a person has acted unreasonably in bringing, defending or conducting proceedings in—
 - (iii) a leasehold case; ...

6. The Upper Tribunal considered rule 13(1)(b) in *Willow Court Management Co (1985) Ltd v Alexander* [2016] UKUT 0290 (LC). They quoted with approval the following definition from *Ridehalgh v Horsefield* [1994] Ch 205 given by Sir Thomas Bingham MR at 232E-G:

"Unreasonable" ... 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. The acid test is whether the conduct permits of a reasonable explanation. If so, the course adopted may be regarded as optimistic and as reflecting on a practitioner's judgment, but it is not unreasonable.

7. The Upper Tribunal in *Willow Court* went on to say:

24. ... 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. We see no reason to depart from the guidance given in *Ridehalgh* at 232E, despite the slightly different context. "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?

26. We ... consider that tribunals ought not to be over-zealous in detecting unreasonable conduct after the event and should not lose sight of their own powers and responsibilities in the preparatory stages of proceedings. As the three appeals illustrate, these 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. ...

The application

8. The Applicant mentions the Respondent's misuse of service charge funds to support an enfranchisement claim. It is not clear if this is alleged to be behaviour within the meaning of rule 13. However, this was only one issue amongst many raised by the Applicant. Conceding this one issue would have made little or no difference to the conduct of proceedings and the failure to do so cannot be categorised as unreasonable as defined above.
9. The Applicant relies on the Respondent's alleged failure to provide disclosure. In fact, the same arguments were addressed in the Tribunal's order of 29th March 2021 (paragraphs 7-11) and its decision of 31st August 2021 (paragraphs 5-11). The Respondent's behaviour as described there does not get anywhere near the required level to be regarded as unreasonable as defined above.
10. The Applicant also complains of being served with a demand dated 1st July 2020 for a payment of £29,250.41 in relation to the costs of these proceedings. She claims that this demonstrates that the Respondent was trying to discourage her from pursuing these proceedings. In the Tribunal's opinion, it does no such thing.
11. The overwhelming majority of the Applicant's challenges to the service charges were rejected. She has demonstrated her intention to persist in challenges long after it would have become apparent that they were not likely to succeed and so no reasonable person with knowledge of this case would think that an invoice of this type would discourage her. In any event, she is well aware of her right to challenge the reasonableness and payability of this invoice, if that is what she wishes to do. That is her remedy, not an application for costs under rule 13.
12. The Respondent also pointed out that they offered £10,000 in settlement (the Applicant referred to this herself previously in her submissions to the Tribunal) whereas her share of the amounts the Tribunal held not to be payable is less than £150. The Applicant chose to reject this offer.

Name: Judge Nicol

Date: 19th October 2021