



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

Case Reference : **MAN/OOCX/LBC/2020/0002**

Property : **Flat 506 Cheapside Chambers, 43
Cheapside, Bradford BD1 4HF**

Applicants : **Fairfield Rents Ltd**

Representative : **Mr C O'Dell**

Respondent : **LaunchPad (Mercury) Ltd**

Representative : **Law.X**

Type of Application : **Commonhold and Leasehold
Reform Act 2002-Section 168(4) –
Application for costs**

Tribunal Members : **Judge J. E. Oliver
Tribunal Member S. Latham**

Date of Decision : **17th September 2020**

Date of Determination : **27th October 2020**

DECISION

Decision

1. The Applicant is to pay the Respondent's costs in the sum of £1440 plus VAT, if applicable.

Application

2. This is an application made by Launchpad (Mercury) Ltd ("Launchpad") for an order for costs pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the Rules"). The amount claimed is £5,236.25.
3. Launchpad also asks from the Tribunal to impose conditions upon the withdrawal application as follows:
 - (1) The Applicant is not to seek to recover and is barred from claiming any of its purported costs, fees, expenses and disbursements (whether legal fees or otherwise) arising from or in connection with the alleged breach of the Lease from the Respondent (whether directly pursuant to any provision in the Lease or via the service charges or otherwise).
 - (2) The Applicant is prohibited and restricted from bringing/re-starting any action, claim or proceedings against the Respondent concerning the matter in this case, whether before the Tribunal or any other court/tribunal having jurisdiction.
 - (3) That had the Tribunal been required to make a determination on the case, then it would have decided against the Respondent and would have noted, in obiter, that had the Applicant acted without negligence and recklessness then this matter would have been resolved before it started.
 - (4) That had the Tribunal been required to make a determination on the case, then it would have, in obiter, rebuked the Applicant for, and warned it against, using the process of the Tribunal for gain, unjust enrichment and betterment.
4. The costs relate to an application issued by Fairfield Rents Ltd ("Fairfield"), pursuant to section 168(4) of the Commonhold and Leasehold Act 2002 for breach of covenant.
5. Both parties have made extensive written submissions upon the application for costs.
6. The Tribunal has already determined that no determination will be made upon the original/primary application for breach of covenant

The Law

7. Before an order for costs can be made, the Tribunal must be satisfied that a party to proceedings has acted unreasonably. Rule 13(1) provides:

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

(1) an agriculture land and drainage case,

- (2) a residential property case,
(3) a leasehold case ;or
(c) a land registration case.
8. Once the test of unreasonableness has been considered then the Tribunal must consider whether an order for costs should then be made and finally, the terms of any order for costs.
 9. The question of unreasonableness has been considered in several cases. In **Ridehalgh v Horsefield [1994] Ch 205 CA** it was said that unreasonableness describes conduct that is vexatious, designed to harass the other side rather than advance the resolution of the case and there is no difference that the conduct is the product of excessive zeal and not improper motive.
 10. In **Willow Court Management Company Limited v Alexander & Others [2016] UKUT 290 (LC)** the Upper Tribunal considered what amounted to unreasonable. It was said:

“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 conduct 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?

Submissions

11. Launchpad’s application for costs is based upon their claims that Fairfield has been “*negligent and reckless*” in issuing the application and has been “*improper and unreasonable*” in its use of the Tribunal.
12. The Lease under which the Property was held required a notice of assignment to be served, within one month of any transfer, to the Landlord, namely the Applicant. The fee to be charged for the notice was said to be £60 plus VAT.
13. It is stated there was correspondence between the parties regarding the issue, but Launchpad did not lodge any notice nor pay the fee. Fairfield issued proceedings for breach of covenant on 21st January 2020.
14. In compliance with the Tribunal’s directions, Launchpad filed a statement in which it was said Fairfield had always treated it as the owner of the Property and had issued Ground Rent demands. Further, a restriction on the Property title prevents any registration of any disposition of the title without the provisions of the Lease being complied with. In particular, the covenant contained in paragraph 9 of Schedule 4 of the lease. This is the covenant said to have been breached.
15. In its statement, Launchpad advised Fairfield had provided a letter to confirm compliance with the restriction on 27th March 2018, following the completion of the purchase of the Property on 2th March 2018.

16. Launchpad argued Fairfield, having issued the letter of compliance, did not require a separate notice and fee.
17. Launchpad's statement also included an application for costs together with a requirement for the Tribunal to issue the directions outlined in paragraph 3 above.
18. Fairfield filed a statement in reply seeking permission to withdraw its application. In the statement it advised the letter of compliance had been issued in error and it did not wish to pursue the matter any further. It submitted that it had not been aware the letter of compliance had been issued and questioned why Launchpad had not made this point at an earlier stage.
19. The Tribunal confirmed it would not make a determination upon the original application, but would do so upon the issue of costs and the request for the conditions to be imposed upon the withdrawal of the application.
20. The parties submitted further statements upon the issues. Launchpad's final statement confirmed the costs then claimed amounted to £5,236.25.

Reasons

21. The Tribunal first considered the issue of costs and whether Fairfield's behaviour was unreasonable, as required by Rule 13. Launchpad questioned whether any proceedings should have been issued for something it considered to be trivial.
22. The Tribunal determined Fairfield should have known a letter of compliance had been issued, whether erroneously, or otherwise. A fee had been paid to the Management Company for the payment of it as shown on the completion statement relating to the purchase of the Property.
23. When considering the requirements of unreasonableness as established in **Ridehalgh** and **Willow Court**, the Tribunal must assess whether the Fairfield's conduct is such that there is a reasonable explanation for it. Should its failure to properly maintain its records justify the application to the Tribunal and put the Launchpad to expense?
24. It can be seen Fairfield, once aware of the position following the Launchpad's statement of 15th June 2020 immediately sought permission to withdraw its application, on 17th June 2020. Had the Launchpad agreed to that, the proceedings would have ended and its costs much less than the final sum claimed in excess of £5,000.
25. The Tribunal determines Fairfield has behaved unreasonably in issuing the application; it should have been aware from its own records that a Certificate of Compliance had been issued confirming the covenant contained within the Lease had been complied with. There had been significant correspondence between the parties before the issue of the proceedings. In asking itself whether a reasonable person would have issued the application, given the amount of money involved in the loss of any fee and that Fairfield had issued Ground Rent demands, thereby accepting Launchpad was the legal owner of the Property, the Tribunal determines the answer to that is no.

26. In making this decision, the Tribunal determines an order for costs should be made, but not to the amount sought by Launchpad. It has been put to expense in responding to the application; none of the costs claimed are before the issue of proceedings. Costs are to be limited to the costs that would have been incurred up to and including the 17th June 2020, when the Applicant indicated its willingness to withdraw its application. It was not necessary or appropriate for Launchpad to seek to have conditions imposed upon the withdrawal in the manner sought and for the reasons given below.
27. The Tribunal considered the hourly rate claimed in the sum of £295 per hour and, when considering the guidelines for a solicitor working in Croydon, determines this should be in the sum of £240 per hour. This is within the guideline range of £229-£267. The amount of time claimed by Launchpad from the issue of proceedings to the 18th June (being the date the Applicant's response was received) totalled 11 hours 15 minutes. The Tribunal considers this to be an excessive amount of time claimed by a solicitor when considering the issues and determines the time allowed for this period is 6 hours.
28. The Tribunal therefore determines the costs payable by Fairfield are in the sum of £1,440 plus VAT, if payable.
29. The Tribunal thereafter considered the conditions asked for by Launchpad, as referred to in paragraph 3 above and determines that no conditions will be attached.
30. In respect of the first condition, Fairfield has already stated it does not intend to make any application for costs. It is evident that should such an application be made, it would be considered in the light of this determination.
31. In respect of the second condition the Tribunal cannot fetter the future use of either the Tribunal or the Court by any party.
32. The Tribunal declines to make the remaining declarations as sought by the Launchpad; they are unnecessary.