



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

Case reference : **LON/00AM/LRM/2021/0040**

HMCTS code : **P:PAPER**

Property : **133 Blackstock Road, London N4 2JW**

Applicant : **133 Blackstock Road (Hackney) RTM
Company Limited.**

Representative : **Commonhold and Leasehold Experts
Limited**

Respondent : **Assethold Limited**

Representative : **Scott Cohen, Solicitors**

Type of application : **Application for costs under Rule 13 of
the Tribunal Procedure (First-tier
Tribunal)(Property Chamber) Rules
2013, following an application in respect
of Right to Manage Section 84(3)
Commonhold and Leasehold Reform
Act 2002**

Tribunal member : **Judge Pittaway**

Date of decision : **31 May 2022**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers. The form of remote hearing was P:PAPERREMOTE, A face-to-face hearing was not held because the tribunal considered that the application might be determined by summary assessment, pursuant to rule 13(7)(a), without a hearing, on the basis of the written submissions from the parties unless any party requested a hearing and neither party did.

In reaching its decision the tribunal had before it a bundle of 77 pages which included

- The tribunal decision and directions of 23 March 2022
- The applicant's reply of 14 January 2022
- An e mail from Commonhold and Leasehold Experts Limited to Scott Cohen dated 11 April 2022 and schedule of the applicant's claimed costs with supporting terms of engagement and an invoice from Julian Wilkins
- The respondent's statement of case dated 25 April 2022

The decision made and reasons are set out below.

Decision of the tribunal

Under rule 13 (1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

- The tribunal makes no order for surveyor's costs;
- The tribunal makes an order for legal costs in the sum of £610 plus VAT.

Background

- (1) On 23 March 2022 the tribunal determined that the applicant was on 3 December 2021 entitled to acquire the Right to Manage 133 Blackstock Road, London N4 2JW pursuant to section 84(5)(a) of the Commonhold and Leasehold Reform Act 2002.
- (2) The applicant had also sought an order under Rule 13 (1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (the '**Rules**'). Rule 13(1)(b) provides that the tribunal may make an order in respect of costs if a person has acted unreasonably in bringing, defending or conducting proceedings in a residential property case or a leasehold case.
- (3) The costs' application is made within the time limits prescribed by rule 13(5).

- (4) Rule 13(6) provides that the Tribunal may not make an order for costs against a person without first giving that person an opportunity to make representations. In its decision of 23 March 2022 the tribunal directed that the applicant send the respondent by 11 April 2022 full details of its costs sought, that the respondent make a response by 25 April, to which the applicant might reply by 2 May.
- (5) The directions stated that the tribunal would determine the costs application on paper in the week commencing 30 May 2022 unless either party requested a hearing, which neither did. Rule 13(7)(a) permits the tribunal to determine matters on the basis of written submissions from the parties.

The applicant's case

1. In its statement of reply, made in connection with the substantive application, the applicant submitted that the respondent had acted unreasonably in not considering the letter sent by the applicant to the respondent on 23 September 2021, which referred to the previous review of the uses of the premises in connection with an enfranchisement claim, and submitting that the respondent should have been aware that the non-residential element of the premises was considerably less than 25% as it had owned the premises for more than nine years.
2. In an e mail dated 11 April 2022 the applicant set out its costs as legal fees payable to Commonhold and Leasehold Experts Limited of £1,904.40 (including VAT), with a breakdown as to how this was calculated, and surveyor's fees payable to Julian Wilkins & Co of £1,800 (including VAT)

The respondent's case

3. In its reply dated 25 April 2022 the respondent referred the tribunal to the three stage test set out in *Willow Court Management Company Ltd v Mrs Ratna Alexander* [2016] UKUT (LC) (**'Willow'**) and submitted that the respondent's conduct in this case did not pass the high threshold for awarding costs set out in this case.
4. The respondent also referred the tribunal to the meaning of 'unreasonable' conduct set out in *Ridehalgh v Horsefield* as being 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 a more cautious legal representative would have acted differently. The acid test is whether the conduct permits of a reasonable explanation. If so, the course may be regarded as optimistic and a reflecting on the practitioner's judgement but it is not unreasonable'*.

5. The respondent submitted that whether the premises qualified to be subject to the RTM scheme was fundamental to the applicant's case and that it was entitled to ask the applicant to provide expert evidence in relation to the measurement of the residential and non-residential elements of the premises, referring to the decision in *Assethold v 63 Holmes Road (London) RTM Co Ltd* [2020] UKUT 0228 (LC) and *Pineview Ltd v 83 Crampton Street RTM Co Ltd* [2013] UKUT 598 (LC), in which the Deputy President of the Upper Tribunal stated that a landlord was entitled to put a claimant to proof and that, having regard to its own interests, it may mount a technical challenge.
6. As to the amount of legal costs claimed the respondent submitted that these were excessive and unsupported by timesheets, attendance notes or copies of correspondence. It questioned the appropriateness of charging in minimum units of 6 minutes. As for the surveyor's report it submitted that this was essential to the resolution of the claim.

Reasons for the tribunal's decision

7. Rule 13(1)(b) provides,

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

(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

8. The three stages that the tribunal need to go through when considering whether a costs order should be made under Rule 13 are set out in *Willow* at Paragraphs 27 and 28 which are set are below.

27. When considering the rule 13(1)(b) power attention should first focus on the permissive and conditional language in which it is framed: "the Tribunal may make an order in respect of costs only ... if a person has acted unreasonably...." We make two obvious points: first, that unreasonable conduct is an essential pre-condition of the power to order costs under the rule; secondly, once the existence of the power has been established its exercise is a matter for the discretion of the tribunal. With these points in mind we suggest that a systematic or sequential approach to applications made under the rule should be adopted.

28 At the first stage the question is whether a person has acted unreasonably. A decision that the conduct of a party has been unreasonable does not involve an exercise of discretion but rather the application of an objective standard of conduct to the facts of the case. If there is no reasonable explanation for the conduct complained of, the behaviour will properly be adjudged to be unreasonable, and the

threshold for the making of an order will have been crossed. A discretionary power is then engaged and the decision maker moves to a second stage of the inquiry. At that second stage it is essential for the tribunal to consider whether, in the light of the 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.

9. On the facts of this case, and in light of the authorities referred to above, the tribunal finds that it was reasonable for the respondent to require the applicant to provide expert evidence in relation to the measurement of the residential and non-residential elements of the premises.
10. The tribunal therefore makes no order for costs in respect of the surveyor's costs of £1,800 (including VAT).
11. The respondent has provided no reasonable explanation as to why it did not accept that the premises did qualify under the RTM scheme once it had seen the surveyor's report, which confirmed that the non-residential element of the premises was less than 25%. The report is dated 20 January 2022. If it had this would have obviated the need for a tribunal determination.
12. The tribunal find that it was unreasonable, within the definition set out in *Ridehalgh v Horsefield*, of the respondent not to accept that the premises qualified under the RTM scheme once it had seen the surveyor's report. On the facts of the case the tribunal finds that it ought to make an order for legal costs, limited to the costs incurred by the applicant after the date of the surveyor's report, and incurred in connection with the preparation of the case for the tribunal.
13. The tribunal note that the respondent has challenged the level of charge of £230 but has not offered an alternative rate of charge. The tribunal therefore accepts this charge-out rate. The tribunal also notes the respondent's challenge of the use of six-minute units of charge and has borne this in mind when considering the amount of the order to be made.
14. Unfortunately it is not clear from the papers before the tribunal as to when the surveyor's report was provided to the respondent. Further it is not clear from the papers before the tribunal when the attendances on the client, the landlord and FTT, set out in the schedule of the applicant's legal costs, occurred. Many of these will have been before the production of the surveyor's report. Seven months elapsed between the applicant's notice of claim and the production of the surveyor's report, only two months between the date of the report and the tribunal's decision.
15. The tribunal therefore makes an order in respect of legal costs incurred by the applicant costs in the sum of £610 plus VAT. This includes the fees incurred by Commonhold and Leasehold Expert Limited in preparing the

bundle for the tribunal and the schedule of costs, and a proportionate part of the cost of attendances. In the absence of any other basis before the tribunal upon which to make the apportionment, it has calculated the proportion of the attendances on the respective number of months between the original notice and the date of the surveyor's report, and the date of the surveyor's report and the date of the tribunal decision,.

Name: Judge Pittaway

Date: 31 May 2022

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).