FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/29UK/PHI/2022/0042
Property	**:**	Plot 6, Wickens Meadow Park, Rye Lane, Dunton Green, Sevenoaks, Kent, TN14 5JB
Applicant	**:**	Wyldecrest Parks (Management) Limited
Applicant's Representative	**:**	Mr Sunderland
Respondents	**:**	Mrs Truzzi Franconi
Respondents' Representatives	**:**	Mr Oakley (Counsel) instructed by Martin Fraiel, Markel Law LLP
Type of Application	**:**	Application for a costs order pursuant to Rule 13 of the Tribunal's Procedural Rules.
Tribunal Member(s)	**:**	Judge J F Brownhill Mr M J F Donaldson FRICS Ms Jayam Dalal
Date and venue of Hearing	**:**	Paper Determination
Date of Directions	**:**	9th September 2022

DECISION ON THE APPLICANT'S RULE 13 COSTS APPLICATION

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1 The Applicant has, in an application dated 06/09/2022, applied for an unreasonable conduct costs order against the Respondent (Mrs Truzzi-Franconi) pursuant to Rule 13 of the Tribunal's Procedural Rules. The Applicant asks for an order in the sum of £51.84 and the application fee of £20 (totalling some £71.84).

2 The Applicant has indicated that it has served its application on the Respondent.

3 The Tribunal has decided it is able (and it is appropriate) to decide the application without requiring submissions from the Respondent. An oral hearing of the application has not been requested by the Applicant and in the circumstances the Tribunal considers that it is fair, appropriate and in accordance with the overriding objective to determine the application on the papers.

The Law

4 Rule 13 of the Tribunal's procedural rules provides:

"(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. …

ii. A residential property case,

iii. ……

(c)….

(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."

It is clear that the Tribunal has a discretion as to whether or not to make a costs order under these provisions.

5 The Applicant applies for a costs order pursuant to Rule 13(1)(b) and 13(2).

6 The Upper Tribunal gave guidance in Willow Court Management Company (1985) Limited v Mrs Ratna Alexander [2016] UKUT 290 as to how such costs applications should be approached by the Tribunal. A three-stage process was set out;

> "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.

29. Once the power to make an order for costs is engaged there is no equivalent of CPR 44.2(2)(a) laying down a general rule that the unsuccessful party will be ordered to pay the costs of the successful party. The only general rules are found in section 29(2)-(3) of the 2007 Act, namely that "the relevant tribunal shall have full power to determine by whom and to what extent the costs are to be paid", subject to the tribunal's procedural rules. Pre-eminent amongst those rules, of course, is the overriding objective in rule 3 , which is to enable the tribunal to deal with cases fairly and justly. This includes dealing with the case "in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal." It therefore does not follow that an order for the payment of the whole of the other party's costs assessed on the standard basis will be appropriate in every case of unreasonable conduct.

30. At both the second and the third of those stages the tribunal is exercising a judicial discretion in which it is required to have regard to all relevant circumstances. The nature, seriousness and effect of the unreasonable conduct will be an important part of the material to be taken into account, but other circumstances will clearly also be relevant; we will mention below some which are of direct importance in these appeals, without intending to limit the circumstances which may be taken into account in other cases."

The Application

7 The Applicant sets out the conduct which it alleges is unreasonable within the body of its application. Without seeking to set out all of the detail here the following is intended as a summary:

a. That the Respondent had not, in previous proceedings or indeed in previous years, taken issue with the first of January being used as the appropriate review date. The Applicant refers to the pitch fee review having occurred in previous years with a first of January review date.
b. That it was not until the issue with the date specified in the pitch fee review notice was pointed out by the Tribunal that the point was adopted by the Respondent. She had had ample opportunity to raise this before the day of the hearing and had not done so.
c. That the Respondent's counsel indicated that though, on it being pointed out by the Tribunal, the review date should have been 1st February, the Respondent would agree to the new pitch fee proposed by the Applicant (and that it should take effect from 01/01/2022) if the Applicant agreed that water charges were included within the pitch fee.

8 In considering whether the matters referred to by the Applicant amount to 'unreasonable behaviour' the Tribunal considered the guidance given by the

Court of Appeal in Ridehalgh v Horsefield [1994] Ch 205; "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. 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.

9 The Tribunal also noted the comments of the Upper Tribunal in Willow Park (ante) at paragraph 26 "We also 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."

10 The Tribunal did not consider that the Respondent's conduct, whether to the extent relied on by the Applicant or otherwise amounted to the Respondent acting unreasonably in defending or conducting the proceedings.

11 While it was, of course, desirable for points to be taken early and the Respondent to alert the Applicant to matters relied on, that did not mean that in the circumstances of this case, the Respondent had acted unreasonably in not doing so. The Tribunal noted that the issue had not been raised previously in these or earlier proceedings. Once however it was noted, the issue was, in the Tribunal's view one that went to jurisdiction.

12 The issue was then, if the parties could not agree the increased pitch fee then the Tribunal had to consider if there was a valid application and pitch fee review notice before it. If there wasn't then there was no valid application, and without more the Tribunal did not have jurisdiction. The parties are not able, in any event, to agree to confer jurisdiction on the Tribunal where there is none. There was no suggestion by either side of there being a power or discretion to amend the date in the review notice or rectify the error in the review date specified in the notice.

13 While noting that the Applicant took exception to the Respondent's position (that, if the Applicant agreed water costs were included within the pitch fee, the new pitch fee could be agreed), that was not in the Tribunal's view unreasonable conduct either. Had an agreement been reached by the parties, even at that late stage, then pursuant to paragraph 16(a) of Schedule 1 to the Mobile Homes Act 1983 there would have been no need for an application to be made to the Tribunal – therefore any issue as to the validity of the application and underlying review notice would have fallen away.

14 The Tribunal did not find that the Respondent had behaved in a way which engaged rule 13(1)(b).

15 Further, and in any event, and for the avoidance of doubt, the Tribunal also found that even if there had been unreasonable conduct by the Respondent in the matters relied on by the Applicant the Tribunal would **not** have exercised its discretion to make a costs order. There were three other linked pitch review applications before the Tribunal listed for hearing at the same time (relating to other occupiers of Wickens Meadow Park). Those applications proceeded. The Tribunal was not satisfied, aside from the application fee any further costs had been incurred by the Applicant in relation to preparing for the hearing concerning 6 Wickens Meadow Park. The costs application would therefore also have failed at the second stage of consideration in any event.

16 Finally the Tribunal refused to make an order for the reimbursement of the application fee of £20 pursuant to Rule 13(2). The Tribunal did not consider it just to do so. The statutory regime under the Mobile Homes Act 1983 sets out a restrictive process by which a pitch fee can be increased: either there is an agreement between the parties or an application must be made to the Tribunal. An occupier is not obliged to agree to a pitch fee increase. If an application is made to the Tribunal the Tribunal is required to consider the validity of the notice relied on and if there was a valid application exercise its discretion as to whether there should be an increase and the amount of any increase. The Tribunal repeats its comments at paragraph 90 to 98 of its decision of 24th August 2022.

17 The Application for a rule 13 costs order (and/or reimbursement of fees) is refused.

RIGHTS OF APPEAL

18 A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk

19 The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

20 If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

21 The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Judge J F Brownhill
13th September 2022