FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BA/LSC/2022/0291** **PAPER:REMOTE**
Property	**:**	**Somerset House & Burghley House, Somerset Road, London, SW19**
Applicant	**:**	**Masin Ramatalla**
Representative	**:**	**Hadi Shubber**
Respondent	**:**	**Oakfield Residents Limited**
Representative	**:**	**-**
Type of application	**:**	**Rule 13 costs application**
Tribunal members	**:**	**Judge Professor Robert Abbey**
Date of Costs Decision	**:**	**17 April 2023**

COSTS DECISION

Decision of the tribunal

(1) The tribunal determines that: -

(2) There be no order for costs pursuant to Rule 13 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 S.I. 2013 No. 1169 (L. 8) for the reasons set out below.

Application for costs

1. An application was made by the Respondent under Rule 13 of the Tribunal Rules in respect of the Respondent's costs. The Tribunal subsequently received a schedule of costs totalling £1526.50. This is the amount listed by the Respondent and consists of consultancy costs, property manager 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. The respondent seeks a costs order under Rule 13(1)(b), based on the applicant's unreasonable conduct.

3. 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.

4. The Respondent filed with the Tribunal the Respondent's written costs application and comments/observations thereon were requested of the applicant and these were received by the Tribunal.

5. It now falls to me to consider the costs application in the light of the written submissions before me. I do this but in the context of the circumstances of the original dispute.

6. This has been a remote hearing which has been consented to by the parties. The form of remote hearing was coded as PAPERREMOTE - used for a hearing that is decided entirely on the papers submitted to the Tribunal. A face-to-face hearing was not held because it was not possible due to the Covid -19 pandemic and more particularly because all issues could be determined in a remote paper-based hearing. The documents that were referred to are in a bundle of many pages, the contents of which we have recorded, and which were accessible by all the parties. Therefore, the tribunal had before it an electronic/digital trial bundle of documents prepared/agreed by the parties, in accordance with previous directions.

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. The Tribunal was mindful that that this jurisdiction is generally a "no costs" jurisdiction. By contrast with the county court, residential property tribunals are designed to be "a largely costs-free environment": *(1) Union Pension Trustees Ltd, (2) Mr Paul Bliss v Mrs Maureen Slavin* [2015] UKUT 0103 (LC).

2. The Tribunal was also mindful of a fairly recent but important 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. Under Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, this Tribunal can decide whether a party has behaved unreasonably. To make this order, the Tribunal must be satisfied that the party's conduct was unreasonable in bringing the action in the first instance e.g., the claim lacked merits in its entirety.

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. At paragraph 43, the UT emphasised that Rule 13(1)(b) applications "*…should not be regarded as routine…*" and "*…should not be allowed to become major disputes in their own right.*" It seems to this 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.

7. The Respondent maintains that the Applicant was unreasonable in the conduct of the dispute. Consequently, the Respondent invited the Tribunal to make a finding of unreasonableness on the part of the Applicant. In the original application the applicant withdrew at a time that was close to the hearing date. This withdrawal was after the respondent had incurred costs and disbursements that represents the fees forming the substance of this application in the amount set out at the start of this determination.

8. In his evidence supporting the respondent's claim Anthony G Rudd said

> *"I am making this claim for expenses on behalf of Oakfield residents limited which is the company that holds the freehold for the 106 leaseholders on the estate. The company is a private company limited by guarantee without share capital. The company is run by directors who are elected by the members and who are themselves leaseholders They perform the role voluntarily without any remuneration. On the 17th September 2022 Mr Shabber on behalf of leaseholder Mr Ramatalla submitted an application to the FTT claiming that the cost of work proposed to refurbish the common parts of the estate was too high. They further complained that the board had been unreasonably refusing to compromise over the scope specification and cost of the work. Two days before the scheduled hearing the complainants withdrew the application to the court without to our knowledge having provided any evidence to support their application. By that time ORL had obtained professional advice from our surveyor and from a property management consultant (Grey consultancy) to support our defence to the claim.*

9. To try to demonstrate unreasonable behaviour Mr Rugg went on to say that -

> *"ORL is obliged to maintain the common parts of the estate. Every effort was made by ORL to consult with members as to the specification. Mr Ramatalla's son in law's building firm had originally bid for the work and in the meeting between board members and Mr Ramatalla to try to understand each others point of view it appeared that the failure of his son-in-law to get the contract seemed to be the main concern expressed by Mr Ramatalla's representative Mr Shabber. Even if the only issue was the design the Board considered it unreasonable for Mr Ramatalla to try to impose his views over and above the views of the majority who had participated in the consultation exercises. We obtained 5 quotes from companies to do the work and contracted the firm that gave the lowest bid."*

10. In reply the Applicant says -

"*The claim for costs is totally rejected for the following reasons*

1. *It is hardly frivolous and without substance where a large body of owners take issue with the estate management's competency in controlling a common parts refurbishment project which balloons from an initial estimate of $150k plus VAT to and accepted award price of £392K plus VAT, not to mention a further £50k wasted on the unnecessary duplication of the two lots of surveyors fees.*
2. *No effort was made by the Respondent to enter compromise discussions suggested by the Applicant aimed at trimming the specification and reducing costs.*
3. *The reasons why the Applicants withdrew the proceedings were in no way due to lack of confidence in their case, but because of not wishing to continue the bitter division in the estate over this issue when no real benefit would be gained. In particular:*
    1. *By the time an agreed hearing date was ultimately fixed the Respondent had instructed its contractor to start work ,stripping wallpaper, damaging the existing carpet which was to be replaced..etc.*
    2. *Therefore in practice, the Tribunal was unlikely to stop the contract in mid-stream and by the Applicant preceding with the case the only likely outcome was further disruption to owners and added costs from contractors claims for disruption/delay, which we naturally wished to avoid. The only upside of continuing would have been to seek a financial penalty on the Respondent which could be passed through to those Board members most to blame, but this, whilst tempting, was not considered worth the further aggravation and bitterness it would cause.*
    3. *The Respondents AGM took place a few days prior to the proposed Hearing date. Two new directors were elected to the Board and the Applicant concluded it would be unfair, given the*

> *limited benefit, to plunge them immediately into this bitter and controversial issue which was not of their making, and would be a distraction from other matters on which we were hopeful they would make a useful contribution."*

11. The Applicant asserted that the conduct alleged by the respondent to have been unreasonable was not unreasonable. To assist in its decision in this regard the Tribunal took note of the *Willow Court* decision at paragraph 95 which says, (wording made bold by this Tribunal)-

> *The first ground did not relate to the conduct of the proceedings at all. The FTT was entitled to be critical of Ms Sinclair's failure to pay her service charges unless and until she was required to do so in order to participate in the enfranchisement and to obtain her new lease, but it was not entitled to rely on that conduct as supporting the charge that she had "acted unreasonably in bringing, defending or conducting proceedings." Only behaviour related to the conduct of the proceedings themselves may be relied on at the first stage of the rule 13(1)(b) analysis. We qualify that statement in two respects. We do not intend to draw this limitation too strictly (it may, for example, sometimes be relevant to consider a party's motive in bringing proceedings, and not just their conduct after the commencement of the proceedings)* ***but the mere fact that an unjustified dispute over liability has given rise to the proceedings cannot in itself, we consider, be grounds for a finding of unreasonable conduct.*** *Secondly, once unreasonable conduct has been established, and the threshold condition for making an order has been satisfied, we consider that it will be relevant in an appropriate case to consider the wider conduct of the respondent, including a course of conduct prior to the proceedings, when the tribunal considers how to exercise the discretion vested in it.*

12. Having carefully noted all of the above, was any of this sufficient to show unreasonableness on the part of the applicant? I think not. The Tribunal accepted the position set out by the applicant, (and as confirmed by the Upper Tribunal), in regard to the making of the application and that as a result it did not seem to the Tribunal to amount to unreasonableness. The withdrawal was explained by the applicant in terms that made it clear that this was not a vexatious act or one that was designed to harass the other side.

13. The Tribunal did of course carefully consider the whole conduct of the Applicant and whilst this may have meant costs were incurred by the respondent, this did not in the view of this Tribunal amount to unreasonable conduct so as to allow a Rule 13 costs order. It is not unreasonableness to pursue your statutory rights. The applicant was entitled to seek an application in regard to the lease and the service

charges claim which was an entirely proper application to make and as such the Tribunal was not satisfied that the Applicant's conduct was unreasonable.

14. Taking into account all that the parties have said about the case and the actions of the parties involved, the Tribunal cannot find evidence to match the high bar of unreasonable conduct set out above. The Tribunal was therefore not satisfied that stage one of the process had been fulfilled in that it had not found there has been unreasonableness for the purposes of a costs decision under Rule 13 on the part of the Applicant.

15. In the circumstances the tribunal determines that there be no order for costs pursuant to Rule 13.

Name: Professor Robert Abbey **Date:** 17 April 2023

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.