FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BK/LAC/2022/0011**
Property	**:**	**Land at Rear of 33-34 Craven Street, London, WC2N 5NP**
Applicant	**:**	**Craven Street Management Limited (Respondent as to costs)**
Represented by	**:**	**Gordons Partnership Solicitors**
Respondent	**:**	**James Lapushner (Applicant as to costs)**
Represented by	**:**	**In Person**
Type of application	**:**	**Application for costs under Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013**
Tribunal Chair	**:**	**Mrs. H. Bowers (Chairman)MRICS**
Date of decision	**:**	**19 July 2023.**

DECISION

- The Tribunal determines that no costs are awarded under Rule 13.

REASONS

A. The Tribunal has received a bundle of 158 pages and references in these reasons to a page in the bundle will be shown in square brackets and will refer to the electronic page number. The Tribunal has also received a one-page letter from Gordons Partnership Solicitors dated 30 May 2023, that was copied to the Respondent.

B. This case was allocated for determination on the 'paper track'. No party requested a hearing, and the matters are such that, it was appropriate to proceed on that basis.

BACKGROUND:

1. The Tribunal received an application for a determination of reasonableness of an administration charge in relation to "Land at the back of 33 Craven Street, London, WC2N 5NP" (the subject premises) - (the substantive application). The application was dated 14 October 2022 and made under the provisions of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (the 2002 Act).

2. On 10 January 2023 the Tribunal struck out the substantive application on the grounds that it did not have jurisdiction, under Rule 9(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (the 2013 Rules).

3. The current matter arises from an application made by the Respondent, Mr James Lapushner, for an order of costs under Rule 13 of the 2013 Rules. The Applicant is Craven Street Management Limited. The application was made on 27 January 2023. Directions were issued on 4 April 2023 with the matter set down for a paper determination in the fourteen days from 5 June 2023, unless either party requested a hearing. There has been no request for a hearing.

THE LAW:

4. Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 is set out in the Appendix to this decision.

THE RESPONDENT'S CASE:

5. The Respondent is seeking an order for the sum of £2,840 to be paid by the Applicant under Rule 13. The sums are set out in a schedule [28]. The costs show the sum of £1,200 plus VAT of £240, for the services of Robert Bowker of counsel (4 hours at an hourly rate of £300). The work is described as the consideration of the main application and relevant emails and a call with Mr Lapushner in November 2022 and advice in relation to the Rule 13 application. In addition, the Respondent is seeking £1,200 for his own time at a rate of £200 per hour. The time

relates to 1.5 hours reviewing the application, 1 hour on a call with counsel, 0.5 hours drafting a letter re the time limit for the costs' application extension and four hours drafting the application for costs. However, in his statement of Reply, the Respondent seeks to increase the costs to £3,540, with the addition of another £700 to reflect the 3.5 hours he had spent drafting his reply and witness statement.

6. It was explained that the Applicant brought the application for a determination of reasonableness in respect of administration charges for the sum of £936 in relation to 'Land at the back of 33 Craven Street, London, WC2N 5NP'. The application was struck out on the basis that the Tribunal found that the Mr Lapushner was not a tenant of a dwelling and so the Tribunal had no jurisdiction in relation to the case under the provisions of the Commonhold and Leasehold Reform Act 2002 (the 2002 Act).

7. The Applicant had previously filed a claim in the county court for the disputed sum, under claim number H19YX096. It is the Respondent's position that on 11 April 2022 Deputy District Judge Redpath-Stevens struck out the claim "*on the basis that the claim failed to meet the requirements in relation to a variable administration charge within the meaning of section 158 and Schedule 11 to the 2002 Act"*. The wording of the Order of DDJ Redpath-Stevens states "*AND UPON the sum being claimed being a variable administration charge within the meaning and purpose of section 158 of and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 AND UPON the demand for the said sum not having been accompanied by the relevant summary of rights and obligations in the prescribed form IT IS ORDERED THAT 1. The claim is struck out*" [18].

8. In applying the three-stage test in Willow Court Management Company (1985) Ltd v Mrs Ratna Alexander [2016] UKUT (LC), it is suggested that the Applicant's behaviour has been "*antagonistic, vexatious, and designed to harass*" by burdening the Respondent with legal costs rather that advancing the resolution of the case. The Respondent has stated in the background to this case, that it began when the Applicant was unsuccessful in stopping the Respondent from completing decoration works to an enclosed storage area in May 2020. The Applicant had entered onto the subject premises without permission and demanded the contractors ceased the decoration works. The Respondent completed the works based on contractual rights of the lease granted by the Applicant on 8 May 2008. The first demand for the legal costs arose on 2 September 2020 and the county court claim was filed on 12 February 2021. The Respondent made a settlement offer on 21 May 2021 but that was rejected as the Applicant wanted the full sum plus all legal costs up to May 2021. In early April 2022 the Respondent made a Calderbank offer that was refused. The refusal at [157] sets out the amount that the Applicant had incurred in legal costs to that date. The claim was struck out on 11 April 2022. The Applicant threatened further litigation on 15 August 2022 and a further offer to settle was

made by the Respondent on 12 September 2022. This offer was rejected, and the Applicant repeated its request for £936 plus £1,000 for additional legal fees [26]. The application to the Tribunal was made on 12 October 2022.

9. It is stated that the Applicant had been represented by Gordons Solicitors and by various counsel in 2013, 2015 and 2018. The Applicant had rushed to issue a claim and make the application and failed to properly research the basis of the claim and application. As such it is unreasonable for a party with a professional advocate to commence such proceedings. The Applicant has incurred £12,655.80 in legal fees pursuing the claim for £936. The statement of costs is at [20]. The Applicant is claimed to continue to harass the Respondent with a threat to bring a third case and to pursue the costs from defending the current application.

10. The Respondent criticises the Applicant, who blames the county court for the Applicant's incorrect filing with the Tribunal, rather than the Applicant carrying out its own research. In summary the Applicant has acted in a vexatious manner and has been unreasonable in bringing and conducting the application as it has failed to accept the settlement offers; failed to properly investigate the appropriate cause of action; had the claim and the application struck out and continues to threaten legal action against the Respondent.

11. In respect of the second stage, it is submitted that because of the refusal to settle, the failed claim and application and the continued threat of litigation, the Applicant's unreasonable conduct is vexatious. The purpose is to harass the Respondent and not advance a resolution of the case. The two matters were brought without proper research and analysis and has wasted the courts' time, harassed the Respondent for the last three years with the potential for future harassment and the waste of court resources.

12. The form and quantum of any costs order should be based on the resources of the parties. The Applicant has been professionally advised, whilst the Respondent is a litigant in person. The Applicant has been willing to invest a disproportionate amount of resources in order to harass the Respondent. The Applicant's conduct is contrary to the overriding objective to deal with cases justly and proportionately.

13. In his reply, the Respondent has stated that he considers his application for costs has detailed the Applicant's unreasonable behaviour in bringing and conducting the substantive application. The reply repeats the submissions made in the Respondent's statement of case. It is stated that the Applicant has tried to obfuscate the issues by dealing with the background for the claim and substantive application to the Tribunal rather than deal with the costs' application. The Respondent's position is that there should not be a mini-trial of the

substantive application. He denies the Applicant's version of events and it is said that this is the reason that the case was struck out.

14. The Respondent denies that the county court order was one that to the effect that the sums sought were a variable administration charge. The order was to strike out the claim "*upon the failure to meet the requirements regarding a variable administration charge as defined in Section 158 and Schedule 11 of the 2002 Act*". The Tribunal's strike out was on the basis that "*the Respondent was not a tenant of a dwelling, thereby excluding the County Court and the Tribunal from having jurisdiction over the case under the 2002 Act.*" It is said that the defects were brought to the Applicant's attention and was given the opportunity to rectify the issue and the case was struck out after failing to do so. The Applicant had numerous resources and the claim was struck out as the Applicant had not undertaken the necessary research and not because of a technicality.

15. The Tribunal should disregard the transcript of the post-trial comments as it gives the impression of support from the Judge despite the claim being struck out; that the Judge stated in the transcript that he had not heard the Respondent's arguments and the commentary is not binding.

16. The details of the offers to settle is relevant as it shows that the Applicant was only willing to settle at the full sum of £936 and only if the Respondent paid the maximum amount of the Applicant's legal costs. Regarding the sentiment of good relationships between the parties, this is inconsistent with the Applicant's decision to reject three offers made by the Respondent.

17. It is stated that a company through its directors or agents, could be antagonistic, vexatious or harassing to the Respondent. Mr Lapushner provides his own witness statement with the reply that has a signed statement of truth. He states that this sets out the evidence of the Applicant's unreasonable behaviour. The witness statement provides his position in relation to the matters that are in dispute between the parties and the specifics in relation to the disputed sum of £936. As such I do not intend to summarise these unless they are relevant to the issues I need to address in this decision.

18. The Respondent's position is that he is a litigant in person as he has had conduct of the litigation and represented himself. He sought advice from counsel because of the history of the alleged conduct. He considers that counsel's fees of £1,440 is proportionate in comparison to the £15,000 spent by the Applicant to claim £936. The Respondent states that before the substantive application was struck out, he sought counsel's advice. In summary he seeks an order for costs to reflect the nature, seriousness and effect of the Applicant's unreasonable behaviour. Costs should be awarded based on the relevant circumstances and the resources of the parties.

THE APPLICANT'S CASE:

19. The Applicant takes issue with the Respondent's allegations of harassment and antagonism from the Applicant. It is stated that the Applicant is a company, and the Respondent has failed to identify a specific person against whom these allegations are made. In addition, the Respondent had originally not signed a statement of truth. The manner in which the allegations are made are such that the Applicant is unable to respond and therefore the Tribunal should disregard the comments. The Applicant denies it has undertaken any form of antagonism, harassment or vexatious behaviour.

20. The Applicant sets out its position in relation to the background of this case. The Applicant is the freeholder of the subject premises. This is subject to a lease granted on 8 May 2008. The Respondent purchased the lease in 2019. In early 2020 the Respondent sought the Applicant's permission in respect of various works to the subject premises. There is a dispute about how the request/s were worded, but that is not relevant to this application. The lease required the Applicant's consent for structural/external alterations. The Applicant sought advice of its solicitors and on 25 June 2020 refused consent for the works on the basis that the Respondent had failed to provide examples of the works in respect of design, structure and material and had not consider the impact of the works at the subject property in relation to access and fire safety amongst other matters. The lease allowed the Applicant to recover its legal costs in relation to this matter and the Applicant sought £936 in that regard on 13 October 2020 as a service charge. At [105] an email dated 12 September 2020 from the Respondent stated "*I will not be paying these improper legal costs. Please feel free to seek whatever remedies you think that you are entitled to*". A claim was issued and at the trial and DDJ Redpath-Stevens ordered that the sum was an administration charge, and it did not have the relevant summary of rights and obligations. In the post-judgment comments, DDJ Redpath criticised the Respondent's defence and that the Respondent's 'grammatical argument' would be unlikely to succeed [117]. The Applicant then issued an invoice for the disputed sum as an administration charge. This was not paid, and the substantive application was made to the Tribunal.

21. There is a witness statement from David North dated 28 March 2022 [55] in relation to the county court claim under claim number H19YX096 that helps with some of the background. Mr North is a director of the Applicant company.

22. The Applicant denies it has acted unreasonably, but that the matter was a technicality. The Applicant accepted DDJ Redpath-Stevens ruling and proceeded as if this was an administration charge under the 2002 Act. The Applicant's position that it was not unreasonable to make the

application given the terms of the order made by DDJ Redpath-Stevens.

23. In respect of the Respondent's offer in April 2022, this was made seven days before the trial and after the Applicant had incurred substantial legal fees and the offer was considered derisory. As the offer was in relation to the county court claim, then the Tribunal should disregard this. The Respondent's statement regarding the Applicant incurring substantial legal costs is misleading as the costs were incurred before the Respondent made his offer. With regards to the subsequent offer, this was lower than the first offer and the Applicant responded with a counteroffer and was reasonable in relation to the legal costs that had been incurred. As such the Applicant was not acting unreasonably.

24. The lease makes clear provision for the Respondent to pay reasonable costs in relation to the request for consent. Despite the procedural history of the claim and application, the Respondent has a contractual obligation to pay the sums due.

25. It is submitted that the Respondent has not provided any evidence of unreasonable behaviour. The threshold for proving unreasonable conduct is a high one. The definition of unreasonable conduct from Ridehalgh v Horsefield [1994] EWCA Civ 40 is set out. It is stated that following the obligations under a lease is not conduct akin to harassment. The Applicant is entitled and obliged to enforce the rights under the lease. The Respondent has succeeded on a technicality and seeks to compound matters upon the Applicant. A Rule 13 order should be reserved for the clearest cases.

26. If the Tribunal does find unreasonable behaviour, then the Applicant states that there should still be no order for costs. There is no evidence of vexatious behaviour. The Respondent's submission that the claim should not have been issued in the county court, but the Applicant's position is that is not a matter for the Tribunal. However, such a claim would have been avoided if the Respondent had paid the charge of £936. The Respondent has still not complied with his contractual obligations. Rather than paying the outstanding sum, the Respondent has incurred £1,440 instructing counsel with 28 years' experience. The Tribunal struck out the matter for want of jurisdiction rather than a determination that the sum was unreasonable.

27. If the Tribunal is not with the Applicant in respect of the first two stages, then the Applicant states there is a contradiction in the Respondent's position. It denies that the Respondent is a litigant in person as he had instructed counsel. As a litigant in person he would have no basis to recover any time spent on the matter and no basis for awarding himself an hourly rate. As to counsel's fees, these are disproportionate. As a barrister of 29 years' call, the use of Mr Bowker was disproportionate to the sum in dispute. This matter was struck out

at an early stage and the Respondent did not engage until he made his application for costs. Asks for the Tribunal to dismiss the application for costs.

28. In the letter from Gordons Partnership Solicitors dated 30 May 2023, the Applicant highlights the additional evidence but says that it does not wish to incur additional costs making a response or seeking the Tribunal's permission to make a response. However, it is highlighted that the costs sought have increased to reflect the work on the Reply.

DETERMINATION:

29. First, I would comment that the Respondent's reply is far more extensive than provided for in the Directions dated 4 April 2023. The reply includes a witness statement and various other documents in support of his case. The Respondent produced the witness statement and additional documents without seeking a variation to the Tribunal's Directions and the Applicant has not had an opportunity to respond to those additional matters. In the letter from Gordons Partnership Solicitors dated 30 May 2023, the Applicant highlights the additional evidence but says that it does not wish to incur additional costs making a response or seeking the Tribunal's permission to make a response. However, the Applicant has highlighted that the costs sought have increased to reflect the work on the Reply.

30. The approach the Tribunal is to take in consider a Rule 13 application is the three-staged approach as suggested in *Willow Court Management Company (1985) Limited v Alexander and others [2016] UKUT 290 (LC)* (Willow Court). The first stage is to consider whether there has been any unreasonable conduct on the part of the Respondent. The quotation from Ridehalgh is useful to help determine whether there has been any unreasonable behaviour. This defines unreasonable conduct as "*conduct which is vexatious, designed to harass the other side rather then 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 simple 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 eb regarded as optimistic and as reflecting on a practioner's judgment, but it is not unreasonable.*"

31. The Tribunal will not be making any findings in relation to the payability of the £936. That is an issue that should be properly addressed in a different forum. But the background to the county court claim and the relationship with the substantive application is important in deciding whether the Applicant has acted unreasonably in bringing and conducting the current application. I appreciate that I have not had

sight of the claim form and therefore I do not know on what basis the claim was issued in the county court. However, there is clearly a dispute between the parties about a sum that may be claimed under the lease. I do not agree with the Respondent's analysis of the county court Order. The Order states "*AND UPON the sum being claimed being a variable administration charge within the meaning and purpose of section 158 of and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 AND UPON the demand for the said sum not having been accompanied by the relevant summary of rights and obligations in the prescribed form IT IS ORDERED THAT 1. The claim is struck out*" [18]. To me the Order identifies the sum as a variable administration charge and makes reference to the 2002 Act. This would appear to be a clear signpost that the Deputy District Judge considered the matter to be within the Tribunal's jurisdiction. It is unfortunate that either that decision was not appealed or that appropriate research was not undertaken. I appreciate that the Applicant was professionally represented from 2020 by solicitors. However, I also appreciate that the Order from the Deputy District Judge and the comments in the post hearing transcript would seem to give a clear direction to the Applicant about how to proceed. I understand the Respondent states that the Tribunal should disregard the transcript on the basis that the impression is of support from the Judge despite the claim being struck out; that the Judge stated in the transcript that he had not heard the Respondent's arguments and the commentary is not binding. However, the transcript provides a useful background to the forceful message given by DDJ Redpath-Stevens about the nature of the sum.

32. The Respondent has commented that the Applicant has refused to engage in settling this matter and suggests that the Applicant is seeking all of its legal costs from the Respondent. However, I find that one response from the Applicant to the offer was that the settlement sum offered was too small and that the legal fees sought were only £1,000 from the total incurred of over £12,000. Whilst the Applicant's position is that has been to emphasise the extent of the costs, I can see no evidence of an absolute refusal only to settle for the full amount plus all of the Applicant's costs.

33. Given the comments made by DDJ Redpath-Stevens and the distance between the parties to settle the matter, I find that there is a reasonable explanation as to why the Applicant had made/brought the substantive application. I find that there is nothing in the Applicant's behaviour during the current application that suggests conduct that is vexatious and designed to harass the Respondent. The Applicant clearly considers it has a valid claim against the Respondent and it is unfortunate that it arrived at the Tribunal, but that does not mean that the Applicant has acted unreasonably.

34. Given that the Tribunal found no unreasonable behaviour it was not necessary to go to the second or third stage as set out under Willow Court.

Name: ***Helen Bowers*** **Date: 19 July 2023**

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.

APPENDIX

The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013

13.— Orders for costs, reimbursement of fees and interest on costs

(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, section 74 (interest on judgment debts, etc) of the County Courts Act 1984 and the County Court (Interest on Judgment Debts) Order 1991 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.