



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

Case Reference : **LON/00BG/LSC/2022/0203**

Property : **Various blocks at Meath Crescent,
London E2 0QQ**

Applicant : **Various leaseholders as per the
application**

Representative : **Mr Oscar Luque Segovia**

Respondent : **Sace2Management RTM Company
Limited**

Representatives : **Mr John Beresford, counsel instructed
by DAC Beachcroft LLP**

The application : **Application for costs pursuant to rule 13
of The Tribunal Procedure (First-tier
Tribunal) (Property Chamber) Rules
2013**

Tribunal members : **Judge Tagliavini
Mr D Jagger MRICS
Mr O Miller BSc**

Date of hearing : **11 August 2023**
Date of decision : **12 September 2023**

DECISION

The tribunal's summary decision

- (1) The tribunal makes an award of costs to the respondents under rule 13 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 in the sum of £25,000 plus VAT.
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The application

1. The respondent makes an application for costs in the sum of £128,754.00 (including VAT) pursuant to rule 13 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

The background

2. On 7 August 2023 the first day of 5 day hearing was held at which the applicants sought the tribunal's determination as to payability of service charges pursuant to section 27A of the Landlord and Tenant Act 1985 in respect of the service charge years 2016 to 2022.
3. Service charges are said to be divided into:
 - (i) Estate wide charges (including 3 blocks owned or managed by the Housing Association) hereby making up a total of 8 blocks on the Estate.
 - (ii) All flats in the 5 subject blocks of Rathnew Court, Leamore Court, Roundwood Court, Tay Court and Bray Court).
 - (iii) Individual block service charges.
4. The period in dispute concerned the service charge years 2016 to 2022 (inclusive) and the applicants sought to dispute the percentage charged for Estate, Block and individual service charges, specifically:
 - (i) Employment equipment costs and telephone lines
 - (ii) Security costs
 - (iii) Lift maintenance costs
 - (iv) Door entry system/communal TV aerial/vehicle gates/rental/maintenance
 - (v) Drainage maintenance
 - (vi) Refuse collection charges
 - (vii) Pest control charges
 - (viii) Repairs and maintenance charges
 - (ix) Health & Safety and Fire Safety Assessments

- (x) Accountancy fees
- (xi) Management fees
- (xii) Legal fees
- (xiii) Man safe system certification
- (xiv) Buildings/plant/liability insurance
- (xv) Flood restoration works contribution
- (xvi) Sinking fund projects of lift lobby decoration, LED light replacement, EICR reports and varnishing handrails
- (xvii) The allocation and percentage payable of service charges in accordance with the lease

The hearing -preliminary issue

5. The tribunal was provided with a core bundle of 1694 electronic pages; a supplemental bundle of 2095 electronic pages; an invoice bundle in hard form of 4306 pages; an additional bundle of 200 pages filed on the morning of the first day of the hearing by the applicants (and not immediately located by the tribunal members) and not received by the respondent and a skeleton argument from the respondent of 43 electronic pages as well as a late served skeleton argument of 9 pages from the applicants.
6. The first day of the hearing was scheduled for preliminary applications and 'housekeeping' matters. Although, an inspection had also been arranged for 10 a.m. the tribunal adjourned this to a later date, in order to better understand the nature and extent of the dispute in the hope it would be better able to carry out an informed inspection as evidence cannot be taken from the parties at the inspection itself.
7. The applicants sought to rely upon a Case Statement dated 30 June 2022; a revised Statement of Case dated 26 February 2023; a Statement of Case dated 31 July 2023 and Response to Respondent's Statement of Case dated 12 June 2023.
8. Mr Beresford, counsel for the respondent objected to the applicant's Statements standing as their evidence-in-chief and submitted the Statements were incredibly difficult to follow and understand and were overly complex. In the absence of any witness statement from any of the applicants, Mr Beresford submitted it would be almost impossible to carry out any effective cross-examination because of the form in which the applicants had chosen to present their case including a reliance on densely printed tables, a lack of paragraph numbering and some of which lacked a Statements of Truth (although the revised Statement dated 31 July 2023 did include this). Mr Beresford submitted the applicant had persisted in seeking to rely on overly detailed claims rather than taking a 'bigger' picture by focusing on the 'big ticket' items that affected all the lessees such as the Octopus contract; the managing agent costs of 2016 to 2017; the waking watch costs; the consultation procedures followed

for the long-term qualifying agreements the insurance; the concierge/Estate Manager costs and the sinking fund.

9. Mr Beresford submitted that because of the overly detailed and poorly presented Statement of Case (revised from 5 pages to 66 pages) it would, be procedurally unfair if the Statements stood as the evidence in chief.
10. Mr Segovia limited his comments in reply to a complaint some documents had been served late by the respondent and therefore the applicants were only able to recently respond in the form of the additional 200 page bundle.

The tribunal's decision and reasons – the preliminary issue

11. The tribunal accepted Mr Beresford's submissions as it found the various Statements of Case had no numbered paragraphs; contained opinion evidence at various points and made repeated statements on behalf of all lessees and not just the 29 applicants and made allegations of fraud on the part of the respondent and/or its agents and could not stand as the applicants' evidence-in-chief.
12. The tribunal were of the opinion that had the applicants' Statements of Case been properly presented, albeit in a rather unwieldy fashion and supported by evidence of witness statements from some, if not all the applicants and any other relevant witness, rather than the opinion evidence intertwined with the factual comments on disputed charges contained in the largely unsigned Statements of Case, the tribunal could have seen a way, albeit imperfect, by which to allow the applicants to present their evidence on all matters. Further, the tribunal were concerned that Mr Segovia did not understand or appreciate the differentiation between the role of a representative and that of a witness as he moved from one role to the other almost within the same sentence and was likely to do the same on examination of the Scott Schedule and other evidence.
13. While the tribunal understands the difficulties litigants in person often face in presenting their case to the tribunal, in most applications they are able to do so, particularly where the applications concern only their own service charges. In this instance, Mr Segovia purported to represent 29 applicants and give evidence on their behalf and had ignored the tribunal's directions in respect of the service of witness statements, believing it was unnecessary for him to do so.
14. Consequently, the tribunal indicated to the applicants, the tribunal was not able to consider all of the detailed points raised but would hear evidence about the largest items of cost where the absence of witness evidence was not fatal to the claim. These items included the Octopus Energy contact, the managing agent's costs of 2016 to 2017 and the sinking fund. Further, as matter of legal construction the tribunal was

likely to be able to deal with the percentage apportionment of service charges.

15. In response to the tribunal's decision to limit the extent of the application Mr Segovia made an application to withdraw the application and indicated he would make another similar application at a later date.
16. Due to the suddenness of the application, the tribunal adjourned the hearing for two hours to provide Mr Segovia with an opportunity to contact other applicants to discuss this course of action. After the adjournment, Mr Segovia confirmed he had spoken with 10 of the applicants by telephone/remotely, who had confirmed to him they supported the application to withdraw and confirmed he wanted the tribunal to determine every issue the applicants had raised.
17. Mr Beresford strongly opposed the application and submitted that it did not comply with rule 22 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and that the tribunal must consider rule 3 which states:

(1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.

(2) Dealing with a case fairly and justly includes—

(a) 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;

(b) avoiding unnecessary formality and seeking flexibility in the proceedings;

(c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;

(d) using any special expertise of the Tribunal effectively; and

(e) avoiding delay, so far as compatible with proper of the issues.

(3) The Tribunal must seek to give effect to the overriding objective when it—

(a) exercises any power under these Rules; or

(b) interprets any rule or practice direction.

(4) Parties must—

(a) help the Tribunal to further the overriding objective; and

(b) co-operate with the Tribunal generally.

18. Mr Beresford submitted the application had taken up a great deal of the respondent's time and resources without any outcome, successful or otherwise for either party. Mr Beresford submitted the applicants were

likely to make another application which would run the risk of being an abuse of process and that in any event the withdrawal should be conditional on the applicants paying the respondent's costs on an indemnity basis.

The tribunal's decision

19. The tribunal consented to the application to withdraw for the reasons stated in writing in its Notice dated 8 August 2023.

The costs application

20. Immediately after the decision on the application to withdraw was given at first instance, orally to the parties by the tribunal, Mr Beresford made an oral application for rule 13 costs. The tribunal gave directions on this issue and adjourned the hearing to 11 August 2013 for oral submissions.

The hearing on costs

21. Mr Beresford provided the tribunal and the applicants with a Schedule of Costs amounting to £128,754.00. In his submissions Mr Beresford relied upon the leading case of *Willow Court Management (1985) Ltd v Alexander* [2016] 0290 UKUT (LC) ('Willow Court') and submitted the applicants conduct had been unreasonable in the following ways:

- (i) The delay in making the application to withdraw until the first day of the five day hearing.
- (ii) The applicants' motivation in withdrawing the application due to unlikelihood of succeeding on the majority of the issues in dispute after the tribunal's decision on the Statements of Case and Reply not being able to stand as their evidence in chief.
- (iii) The applicants failed to present a coherent claim even after allowances were made for their being litigants in person.
- (iv) The applicants were given three opportunities in the tribunal's case management hearings to put forward a coherent Statement of Case.
- (v) Made wild allegations of fraud and misconduct in their Statements of Case.
- (vi) Unreasonably refused to narrow the issues in dispute and focus on the most substantive of the issues affecting the majority of the applicants.

- (vii) Failed to serve witness statements.
 - (viii) Sought to rely on confidential and privileged information obtained by Mr Segovia from the respondent during his time as a director of the respondent company which required an order from the Tribunal prohibiting its use.
 - (ix) Sought to mislead the tribunal about the respondent's failure to notify the lessees about this application and by making the incorrect assertion the respondent had disclosed the names of the applicants to them.
22. In reply to Mr Beresford's submissions, Mr Segovia responded by telling the tribunal he knew and understood the 'Willow' case, the applicants had sought legal advice on two occasions before the hearing and that the applicants needed a lot of guidance and help to prepare and present their application and that their conduct was not unreasonable in withdrawing it as they wanted all issues to be determined.

The tribunal's decision

23. The tribunal is satisfied the applicants have conducted proceedings unreasonably and that an order for costs should be made.

The tribunal's reasons

24. In reaching its determination the tribunal had regard to the provisions of rule 13 which states:
- (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.*
25. The tribunal also considered the leading case of 'Willow Court' in which the Upper Tribunal set out a three stage systematic approach that should be taken in such applications by answering the following questions:

- (i) Has the person acted unreasonably?

At this stage, there is a high threshold. The UTLC said that *“if there is no reasonable explanation for the conduct complained of the behaviour will be adjudged to be unreasonable, and the threshold for making of an order will have been crossed.”*

- (ii) Should an Order be made?

If the party has acted unreasonably, the Tribunal has a discretion whether to make an order or not. There would be focus on the nature, seriousness and effect of the unreasonable conduct, which will be an important part of the material to be taken into account.

- (iii) What should the order be?

If the above two stages above are satisfied, it does not necessarily follow there will be an order for costs. Importantly, the order need not be confined to “attributable to the unreasonable conduct”.

26. The tribunal considered the applicants’ failure to provide witness statements from any of the lessees or from any other persons whose statement could stand as their evidence in chief and on which they could be cross-examined, despite three case management hearings and the tribunal’s directions, to be unreasonable.
27. It was clear to the tribunal the applicants had spent considerable effort in preparing their application. However, it was also apparent that insufficient thought had been given by the applicants and Mr Segovia in particular as the lead applicant and representative, as to how best to present their evidence to the tribunal, particularly in view of the large number of issues in dispute, the five different blocks included in the application and the twenty-nine of applicants, who included lessees from all of the five blocks.
28. The tribunal appreciates the applicants were litigants in person who had, nevertheless, taken legal advice at some points during the course of the preparations for the hearing. However, the tribunal found that unlike many applications, where one or other of the parties are litigants in person, this application concerned so many issues that the tribunal reasonably required to hear from witnesses and not just Mr Segovia, who purported to both represent and give oral evidence on behalf of all 29 lessees, having assumed the applicants numerous Statements of Case

and in Reply would be accepted by the tribunal as their evidence in chief, an approach to which the respondent strongly objected.

29. The tribunal considers that even if the respondent had not been successful in its objection to the Statements of Case and Reply standing as the applicants' evidence in chief, the tribunal finds that conduct of the application in a manner that was fair to both parties was unlikely to be achievable, in light of the extent of the applicants' limitations in being able to properly present their case without an over reliance on the tribunal's own powers to conduct proceedings to the exclusion of the respondent and its legitimate interests and concerns.
30. The tribunal finds the applicants' preparation for the hearing, their assumption that witnesses statements were not necessary and that Mr Segovia could both represent and give evidence on behalf of all 29 witnesses, including on matters on which he was likely not have any first-hand knowledge to be unreasonable and was without any reasonable explanation.
31. The applicants' decision to withdraw the application, once the tribunal had narrowed the issues to some of the larger items of costs in dispute, that could be determined from the documentary evidence alone, was prompted by the applicants openly acknowledged wish to have all issues in dispute determined by the tribunal. The tribunal does not consider the late withdrawal of the application to be inherently unreasonable but does consider why it was necessary to do so are unreasonable.
32. The tribunal considers an order for costs should be made in light of the wasted resources incurred by the respondent and the absence of any decision on any of the contested issues that might otherwise have allowed the parties some clarity and resolution. The tribunal also considers the application to withdraw could have been avoided by the applicants had they followed the tribunal's directions.
33. In determining the amount of the costs that should be awarded, the tribunal considers the respondent's bill of costs to be grossly inflated and out of all proportion to the nature of the application. Although, the issues raised by the applicants were numerous and the presentation made overly and unnecessarily complex, the application was made under a single and familiar legal provision i.e., section 27A of the Landlord and Tenant Act 1985.
34. The tribunal also has regard to the respondent's cover of their legal costs by the director's insurance (an assertion made by the applicants and not disputed by the respondent). The tribunal finds the respondent approached this litigation, as if it concerned all of the lessees on the whole of the estate and not just the 29 applicants, as it appeared concerned that any adverse findings by the tribunal may have a wider

impact on the payability of service charges running into millions of pounds for the whole Estate.

35. In summarily assessing the costs, the tribunal considers the rate charged by the fees earners to be reasonable. However, the tribunal considers the time spent by these fee earners to be disproportionate to the issues involved. Similarly, the tribunal finds the use of counsel at all stages to be excessive and the rate paid to counsel for a 5 day hearing in the First-tier tribunal to be wholly out of line with the legal complexity of the case and at odds with the otherwise 'no costs' or cost limitation powers of the tribunal.
36. The tribunal therefore limits the award of costs to the respondent to £25,00 plus VAT.

Name: Judge Tagliavini

Date: 12 September 2023

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 should be made on Form RP PTA available at <https://www.gov.uk/government/publications/form-rp-pta-application-for-permission-to-appeal-a-decision-to-the-upper-tribunal-lands-chamber>

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).