



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

Case reference : **CAM/00KG/HIN/2022/0048**
HMCTS Code : **P: PAPER REMOTE**

Property : **6 Kennet Green, South Ockendon,
Essex RM15 5RB**

Applicant : **Gloriana Marks de Chabris**

Respondent : **Thurrock Council**

Type of application : **Costs - rule 13(1)(a)/(b) and fees
under rule 13(2) of the Tribunal
Procedure (First-tier Tribunal)
(Property Chamber) Rules 2013**

Tribunal member(s) : **Judge Wayte**

Date of decision : **30 January 2023**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers which has been consented to by the parties. The form of remote hearing was P:PAPER REMOTE. A face-to-face hearing was not held because it was not necessary and all issues could be determined in a remote hearing/on paper. Both parties made representations in accordance with the directions. The order made is as follows:

The tribunal determines that the Respondent should pay the Applicant £750 in respect of her wasted costs and fees within 28 days.

Background

1. The respondent issued an improvement notice in respect of the property on 13 September 2022 and an associated demand for payment of charges on 27 September 2022. The improvement notice was addressed to Ms Gloriana Marks de Chabris – House Revival Limited whereas the demand for charges was addressed solely to Ms de Chambris (sic). The letter accompanying the improvement notice stated that it was being “*served upon you as the owner of the premises*”. It is accepted that the property is in fact owned by House Revival Limited, with Ms de Chabris the director of that company.
2. On 14 October 2022 the applicant’s legal advisor Mr Macauley emailed the council pointing out their error in terms of the ownership of the property. He requested confirmation that the notice and demand were withdrawn by 4pm on 17 October 2022, failing which the applicant would have no option but to apply for an appeal and seek the costs of that appeal from the council.
3. No response was received and the application was made on 19 October 2022. On receipt of that application the respondent confirmed they had missed the earlier email and originally proposed amending the notice. After further correspondence the respondent agreed to revoke the notice and withdraw the demand. Unfortunately the first revocation gave an incorrect address but on 9 December 2022 Thurrock issued a further revocation in respect of 6 Kennet Green stating that the decision had been made to revoke the notice because “*The person the notice was served on originally was incorrect*”.
4. That revocation brought the appeal to an end and the applicant reiterated their claim for costs. On 12 December 2022 the tribunal wrote confirming that the power to award costs was covered by rule 13 of the 2013 Rules. Unfortunately, the tribunal advised the parties that the sole ground for such an application was that a party has acted unreasonably in bringing, defending or conducting proceedings under rule 13(1)(b). This was of course incorrect as the tribunal also has the power to make an order for wasted costs under rule 13(1)(a). Both parties made written submissions in respect of the application which argued that the council’s officer was negligent in serving the notice and demand for payment on the wrong person. This claim falls more naturally under the wasted costs provisions, not least as it relates to conduct in advance of the proceedings.
5. Under rule 13, the tribunal may make an order on its own initiative, provided the respondent is given the opportunity to make representations. I have therefore considered this application under both rule 13(1)(a) and (b), taking into account the respondent’s submissions which were focused primarily on unreasonable costs but deal with the same conduct by its officer Gurmeet Singh Rehal.

The Law

6. Rule 13(1)(a) states that the tribunal may make an order for wasted costs under section 29(4) of the Tribunal Courts and Enforcement Act 2007, including the costs incurred in applying for such costs. The definition of wasted costs in section 29(5) states that it means any costs incurred by a party:
 - (a) as a result of any improper, unreasonable or negligent act or omission on the part of any legal or other representative or any employee of such a representative, or
 - (b) which, in the light of any such act or omission occurring after they were incurred, the relevant Tribunal considers it is unreasonable to expect that party to pay.
7. The leading decision on wasted costs in the courts is *Ridehalgh v Horsefield* [1994] Ch 2005, CA. The Court of Appeal provided guidelines as to the meaning of improper, unreasonable and negligent conduct. In this case the applicant relies on negligent conduct. *Ridehalgh* stated that “negligent” should be understood in an untechnical way to denote failure to act with the competence reasonably to be expected of ordinary members of the profession. Under the 2013 rules, representatives before the tribunal do not need to be lawyers and therefore this guidance should be considered in the light of a reasonably competent council officer.
8. The leading case on unreasonable costs, a parallel process under rule 13(1)(b), is *Willow Court Management Company 1985 Ltd v Alexander* [2016] UKUT 0290. In paragraph 43 the Upper Tribunal made it clear that such applications should be determined summarily and the decision need not be lengthy, with the underlying dispute taken as read. There are three steps: I must first decide if the respondent has been improper, unreasonable or negligent in the *Ridehalgh* sense; if so, whether an award of costs should be made and, finally, what amount.
9. In respect of the application for the reimbursement of fees, the tribunal has an absolute discretion under rule 13(2) of the 2013 Rules.

The applicant’s case

10. The applicant’s case was based on the alleged unreasonable behaviour of the council in failing to properly consider the legal title of the property, to engage with the email dated 14 October 2022 and the failure to revoke the notice until 9 December 2022. As a result, the applicant had incurred costs of £750 in respect of her legal consultant and the application fee of £100.
11. Following a query from the council, Mr Macauley confirmed that he is a SRA registered, non-practising solicitor, assisting the applicant at an hourly rate of £50. He is not registered for VAT.

The respondent's case

12. The respondent pointed out that its letter and improvement notice were addressed both to the applicant and the company and sent to the company's registered address (which was the same as the applicant's home address). It argued that the decision to revoke the notice was taken to avoid litigation in light of the technical arguments raised.
13. It argued that no unreasonable conduct had been alleged within the proceedings as opposed to its conduct beforehand.
14. It also argued that Mr Macauley had not been properly appointed under rule 14(2) and as a non-practising solicitor he was unable to conduct litigation under the Legal Service Act 2007. In those circumstances it was unreasonable to pay his costs.

Tribunal decision and reasons

15. As indicated above, the application under rule 13(1)(b) was always likely to fail as the main conduct identified pre-dated the proceedings. In any event, it falls short of unreasonable conduct in the *Willow Court* sense, certainly in respect of the errors made during the appeal with the revocation notice.
16. However, I do consider that Mr Rehal was negligent in terms of his serving the notice and demand for payment on Ms de Chabris personally. Having issued their Notice of Revocation on that basis, the council can hardly deny their mistake in their response to the application for costs. Even if their argument that the improvement notice was also addressed to the company has some force, when read with the demand for payment it is clear that Mr Rehal considered that Ms de Chabris was the owner of the property, which was incorrect. Given the importance of serving the notice on the right legal person, I consider that this is conduct which fell short of that to be expected of a reasonably competent council officer. That conduct led to the applicant incurring costs unnecessarily and it is reasonable that she should be reimbursed.
17. The fact that Mr Macauley is not a practising solicitor is not a bar to him claiming costs. Anyone can represent a party before the tribunal. His hourly rate is reasonable, although I consider 5 hours in respect of the actual application for costs is excessive and reduce it to 3. In the circumstances I will therefore order that the respondent refund the application fee of £100 under rule 13(2) and pay £650 in respect of the applicant's costs under rule 13(1)(a).

Judge Ruth Wayte

30 January 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 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).