



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

Case reference : **LON/00AN/HMG/2023/0016**

HMCTS code : **P:PAPER**

Property : **Flat 12 Admiral Court, Admiral Square,
London SW10 0UU**

Applicants : **Ms A Pomini
Mr A Bigotti
Ms C Ambrosini**

Representative : **Represent Law Limited (Ms Hoxha)**

Respondents : **Mr M Zaheer
Golden Homes Property Group Ltd
Bridge Place Limited**

**Representative of
Bridge Place
Limited** : **Dutton Gregory solicitors (Mr R
Heaven)**

Type of application : **Application for costs under Rule 13 of
the Tribunal Procedure (First-tier
Tribunal)(Property Chamber) Rules
2013, following the withdrawal of a Rent
Repayment Order application.**

Tribunal members : **Judge Pittaway
Mr C Gowman BSc MCIEH**

Date of decision : **17 June 2024**

DECISION

Description of hearing

This has been a remote hearing on the papers. The form of remote hearing was P:PAPERREMOTE, A face-to-face hearing was not held because the tribunal considered that the application might be determined by summary assessment, pursuant to rule 13(7)(a), without a hearing, on the basis of the written submissions from the parties unless any party requested a hearing and no party did.

The decisions made and reasons are set out below.

Decisions of the Tribunal

1. The tribunal makes no order for costs under Rule 13 (1)(a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (the '**Rules**').
2. The Tribunal makes no order for wasted costs under Rule 13(1)(b) of the Rules.

Background

- (1) The applicants applied to the tribunal for a Rent Repayment Order to be made against the respondents under Housing and Planning Act 2016. On 20 November 2023 the application against Bridge Place Limited was discontinued. Following a Hearing on 22 November 2023 the Tribunal consented to the withdrawal by the applicants on that date of the application against the other respondents.
- (2) By an application dated 20 November 2023 Dutton Gregory, solicitors to Bridge Place Limited, sought an order for costs under Rule 13(1)(a) and/or Rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (the '**Rules**'). The application referred to a claim for wasted costs but refers to the application being made under Rule 13(1)(b).
- (3) The costs' application was made within the time limits prescribed by Rule 13(5).
- (4) Rule 13(1)(a) provides that the tribunal may order the legal or other representative of a party to meet the whole of any wasted costs or such part of them as may be determined in accordance with Tribunal Procedure Rules.
- (5) Rule 13(1)(b) provides that the tribunal may make an order in respect of costs if a person has acted unreasonably in bringing, defending or conducting proceedings in a residential property case or a leasehold case.

- (6) Rule 13(6) provides that 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 Tribunal advised the parties at the Hearing that it would be issuing Directions in relation to the costs. These were originally dated 22 November 2023, amended on 23 February 2024.
- (8) The Tribunal directed that Bridge Place Limited should provide a statement of case
 - (a) clarifying whether the application was under Rule 13(1) (a) or Rule 13(1) (b), and against whom the application was made,
 - (b) The reasons why it is said that the respondent has acted unreasonably in bringing, defending or conducting proceedings and why this behaviour is sufficient to invoke the Rule 13, dealing with the issues identified in the Upper Tribunal decision in *Willow Court Management Company (1985) Ltd v Mrs Ratna Alexander* [2016] UKUT (LC) (**‘Willow’**) with particular reference to the three stages that the tribunal will need to go through, before making an order under Rule 13;
 - (c) The reasons why it is said that it is just and equitable to make an order under section 20C Landlord and Tenant Act 1985
 - (d) Any further legal submissions;
 - (e) Full details of the costs being sought, including:
 - A schedule of the work undertaken;
 - The time spent;
 - The grade of fee earner and his/her hourly rate;
 - A copy of the terms of engagement with the applicant;
 - Supporting invoices for solicitor’s fees and disbursements;
 - Counsel’s fee notes with counsel’s year of call, details of the work undertaken and time spent by counsel, with his/her hourly rate; and
 - Expert witness’s invoices, the grade of fee earner, details of the work undertaken and the time spent, with his/her hourly rate.
- (9) The Directions directed that the party against whom the costs application was made should send the other parties a statement in response setting out:
 - (a) The reasons for opposing the applications, with any legal submissions;
 - (b) Any challenge to the amount of the costs being claimed with full reasons for such challenge and any alternative costs;
 - (c) Details of any relevant documentation relied on with copies attached.

- (f) The Directions provided for Bridge Place Limited to send the party against whom the costs application was made a statement in reply to the points raised.
- (g) The Directions stated that the Tribunal would determine the costs application without a hearing on the on 5 March 2023 on basis of written submissions. Rule 13(7)(a) permits the tribunal to determine matters on the basis of written submissions from the parties and no party objected to this approach.
- (h) The Tribunal received a statement of case from Dutton Gregory dated 20 November 2023.
- (i) The Tribunal received a statement of case from the applicants' legal representative dated 21 November 2023.
- (j) Following receipt of the Tribunal's amended Directions Mr Heaven of Dutton Gregory e mailed the Tribunal that he had, 'no instructions to take the costs argument further.' He stated, 'In the interest of not wasting any of the parties' time I request that the costs matter is concluded'.

Bridge Place Limited's case

1. Dutton Gregory's statement of case claimed 'wasted' costs under Rule 13(1)(b) [sic] to be ordered against the applicants' solicitors.
2. The costs sought by Bridge Place Limited are under Rule 13(1) are set out in the statement of case as
 - Costs of Dutton Gregory LLP of £2,300
 - Council's fee of £1,000

In each case without VAT as Bridge Place Limited is a Guernsey registered company.

3. Bridge Place Limited submits that in light of the decision in *Rakusen v Jepsen & Ors* [2023] UKSC 9 (**'Rakusen'**) the applicants' solicitors, as declared experts in the field of Rent Repayment Orders, should have known that a claim against Bridge Place Limited, as superior landlord, should fail, and that the entire costs of defending the application are wasted and are claimed against the applicants and/or their solicitors.
4. Mr Heaven referred the Tribunal to his letter to Represent Law of 25 May 2023 in which he had stated that the agreement Bridge Place Limited had with Mr Zaheer was not a sham 'Rent to Rent' agreement, to which letter he had not received a reply, despite chasing for one.
5. Mr Heaven submitted that the claim for wasted costs was being made against Represent Law Limited, not the applicants who are now resident in Italy.

The applicants' case

6. In response to Dutton Gregory's statement of case Ms Hoxha of Represent Law Limited confirmed that Law Represent Limited are a firm specializing in Rent Repayment Orders. Having regard to *Rakusen* it did not purport to advance a case that Bridge Point Limited would be liable as a superior landlord. It had joined Bridge Point Limited as a respondent to ascertain whether or not there was some relationship between Bridge Point Limited and the other respondents such as to make it the immediate landlord of the applicants.
7. Ms Hoxha submitted that the nature of the relationship was not ascertainable before it received relevant evidence, and that this was only received during the 'without prejudice' negotiations with the other respondents, at which point it had discontinued the application against Bridge Point Limited, on 14 November 2023. Ms Hoxha submitted that the nature of the relationship in a rent-to-rent scheme, including potential sham agreements can only properly be explored following evidence, submissions and cross-examination, and that it is therefore not unreasonable to bring an action against the registered title owner.

Reasons for the Tribunal's decision

8. In reaching its decision the Tribunal has had regard to the documentation referred to above and to the decision in *Willow Court Management Company (1985) Limited v Mrs Ratna Alexander* [2016]UKUT 290 (LC) ('**Willow**').

Rule 13(1) costs

9. Rule 13 provides,

'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.'

10. Section 29 Tribunals, Courts and Enforcement Act 2007 provides

'(1)The costs of and incidental to—

(a)all proceedings in the First-tier Tribunal, and

(b)all proceedings in the Upper Tribunal, shall be in the discretion of the Tribunal in which the proceedings take place.

(2)The relevant Tribunal shall have full power to determine by whom and to what extent the costs are to be paid.

(3)Subsections (1) and (2) have effect subject to Tribunal Procedure Rules.

(4)In any proceedings mentioned in subsection (1), the relevant Tribunal may—

(a)disallow, or

(b)(as the case may be) order the legal or other representative concerned to meet,

the whole of any wasted costs or such part of them as may be determined in accordance with Tribunal Procedure Rules.

(5)In subsection (4) “wasted costs” 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.

(6)In this section “legal or other representative”, in relation to a party to proceedings, means any person exercising a right of audience or right to conduct the proceedings on his behalf.’

11. The parties appear to have conflated ‘wasted costs’ which are dealt with in Rule 13 (1)(a) and the costs where a party has acted unreasonably referred to in Rule 13 (1)(b).
12. The Tribunal has considered whether to make an order for costs under both Rule 13(1)(a) and Rule 13(1)(b).
13. The decision in *Willow* is of paramount importance in whether the Tribunal should award costs under Rule 13(1). The Tribunal has had regard to the decision as a whole in reaching its decision, including paragraph 62 of *Willow* in which the Tribunal stated, ‘.....*The residential property division of the First-tier Tribunal is a costs shifting jurisdiction by exception only and the parties must usually expect to bear their own legal costs.*’
14. The decision in *Willow* sets a high threshold as to what constitutes unreasonable behaviour, the Upper Tribunal’s approach being set out in paragraph 24 of that decision,

“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?”

15. Costs under Rule 13(1)(a)

16. For the Tribunal to make an order against Law Represent Limited under Rule 13(1)(a) Bridge Point Limited would have to show that Law Represent had acted unreasonably, as required by Section 29(5) Tribunals, Courts and Enforcement Act 2007.
17. Ms Hoxha provides an explanation, in her statement of case, for why Represent Law Limited acted as it did in joining Bridge Point Limited as a respondent, referred to at paragraph 7 above.
18. In its Directions the Tribunal gave Bridge Point Limited’s solicitors the opportunity of responding to the applicants’ case, which Dutton Gregory did not take, as evidenced by the e mail from it of 5 March 2024.
19. The Tribunal accepts Ms Hoxha’s explanation, and accordingly finds that the applicants’ legal representative did not act unreasonably, so that the costs incurred by Dutton Gregory are not ‘wasted costs’ within the meaning of section 29(5) Tribunals, Courts and Enforcement Act 2007.

Costs under Rule 13(1)(b)

20. On the basis of the submissions before it from Dutton Gregory the Tribunal finds that Bridge Place Limited is not seeking costs against the applicants, but against their legal representative. It therefore makes no order for costs against the applicants under Rule 13(1)(b).
21. If Bridge Place Limited had sought costs against the applicants under Rule 13(1)(b) it would have had to show that the applicants had acted unreasonably.
22. The three stages that the Tribunal needs to go through when considering whether a costs order should be made under Rule 13 (1) (b) are set out in *Willow* at Paragraphs 27 and 28; which are set out below.

‘27. When considering the rule 13(1)(b) power attention should first focus on the permissive and conditional language in which it is framed: “the Tribunal may make an order in respect of costs only ... if a person has acted unreasonably....” We make two obvious points: first, that

unreasonable conduct is an essential pre-condition of the power to order costs under the rule; secondly, once the existence of the power has been established its exercise is a matter for the discretion of the tribunal. With these points in mind we suggest that a systematic or sequential approach to applications made under the rule should be adopted.

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.'

23. The Tribunal do not find that the applicants had acted unreasonably. The applicants instructed a legal representative on whose legal advice they relied and the Tribunal does not find, for the reasons given above, the behaviour of Represent Law Limited to have been unreasonable.
24. In light of the Tribunal's finding in relation to the first stage set out in *Willow* the Tribunal do not need to consider the second and third stages set out in *Willow*.
25. The tribunal therefore makes no order for costs under Rule 13(1)(b).

Name: Judge Pittaway

Date: 17 June 2024

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).