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

Case Reference : **LON/00BG/LSC/2013/0284**

Property : **Flat 3, Balmoral House, 12 Lanark Square, London E14 9QD**

Applicant : **Limebase Limited**

Representative : **Limebase Limited**

Respondent : **Dr Jade Piper-Smith**

Representative : **Mr O Gibbins**

Type of Application : **Costs - Paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002**

Tribunal Members : **Judge John Hewitt Chairman
Mr Peter Roberts DipArch RIBA**

Date and venue of Determination : **9 September 2013
10 Alfred Place, London WC1E 7LR**

Date of Decision : **10 September 2013**

DECISION

Decisions of the Tribunal

1. The Tribunal determines that the Applicant's application for costs be refused.
2. The reasons for our decisions are set out below.

Procedural background

3. The Respondent, Dr Piper-Smith, is the proprietor of a long lease of the Property. Until 5 November 2012 the Applicant, Limebase, was the immediate landlord which granted the lease in or about 1997 for a term of 190 years from 1 July 1996. Another party to the lease, Glengall Bridge Management Limited (Glengall) was said to be responsible to provide services and entitled to recover service charges from the lessee.
4. On 18 April 2013 Dr Piper-Smith made an application to the Leasehold Valuation Tribunal (LVT) pursuant to section 27A Landlord and Tenant Act 1985 seeking a determination of service charges payable. A pre-trial review was held on 28 May 2013. Limebase did not attend and was not represented. Directions were issued. By a letter to the LVT dated 3 June 2013, Limebase objected to the Directions and asserted that it had no liability for the service charges.
5. The proceedings are now subject to The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (the Rules).
6. Further directions were given on 22 July 2013 following a preliminary hearing when the Tribunal decided that Limebase should remain a party and that other parties should be joined in what was considered to a complex property set-up.
7. It appears that Dr Piper-Smith sought further advice from LEASE and apparently had further discussions with other lessees in the development with a view to resolving matters.
8. By email dated 30 July 2013 Dr Piper-Smith sought permission to withdraw her application in the light of the recent developments.
9. By letter dated 26 July 2013 Limebase made an application for costs. It claimed a nominal £250 + VAT. Directions were given on 1 August 2013. The parties were notified that it was proposed to determine the application on the papers and without an oral hearing. The Tribunal has received representations from Limebase set out in a letter dated 13 August 2013. The Tribunal has received representations from and on behalf of Dr Piper-Smith set out in a letter 28 August 2013. The Tribunal has not received a request for a hearing.

Discussion and conclusions

10. The substantive proceedings were issued in the LVT before 1 July 2013 and by reason paragraph 3(7) of Schedule 3 to The Transfer of Tribunal

Functions Order 2013 SI 2013 No. 1036 the Tribunal may only make an order for costs to the extent that an order could have been made before 1 July 2013.

11. In consequence any order for costs made by us can only be made pursuant to paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002.

Paragraph 10 provides as follows:

“10 Costs

(1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).

(2) The circumstances are where—

(a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or

(b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.

(3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—

(a) £500, or

(b) such other amount as may be specified in procedure regulations.

(4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.”

12. An order for costs can only be made if a party has acted in the manner mentioned in paragraph 10(2)(b). The threshold is high and is not easily met.

13. There is nothing in the representations made by Limebase that causes us to conclude that Dr Piper-Smith has adopted or displayed any of the conduct or characteristics mentioned in paragraph 10(2)(b).

14. Given the complex background to the property structure, partly contributed to by Limebase we conclude that it was not frivolous, vexatious, abusive, disruptive or otherwise unreasonable for Dr Piper-Smith to have made her substantive application and then to have withdrawn it at a very early

stage and before the parties had incurred any significant time and expense once matters had been explained to her and a different way forward to resolve matters was preferred.

15. For these reasons we have refused the application for a costs order.

Judge John Hewitt