



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

Case Reference : **LON/00AL/LSC/2014/0036**

Properties : **97 Farnsworth Court, West
Parkside, London SE10 0RU and
31 Newton Lodge, West Parkside,
London SE10 0BA**

Applicant : **Greenwich Millenium Village Ltd**

Representative : **Brethertons**

Respondent : **Nimi Fiona Alabraba**

Type of Application : **Costs of proceedings in relation to
liability to pay service charges
and/or administration charges**

Tribunal : **Judge Nicol
Mr WR Shaw FRICS**

Date of Directions : **16th June 2014**

DECISION ON COSTS

Decision of the Tribunal

The Tribunal determines that the Applicant shall pay the Respondent's costs in the sum of £847.45.

Background

1. In May 2013 the Applicant issued a claim in the county court against the Respondent for alleged unpaid service charges, namely combined heating and power charges incurred from October 2010 to July 2012 in respect of the two subject properties, together with legal costs "incurred in enforcing the terms of the Lease."

2. The Particulars of Claim sought £3,564.69 plus interest. The Defence filed at court raised two issues:
 - a) Paragraph 2(d) asserted that relevant service charge demands did not comply with the Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007; and
 - b) It was further asserted that payment had been tendered by direct bank transfer but then returned.
3. On 13th January 2014 the court transferred the matter to this Tribunal. On 11th February 2014 the Tribunal issued directions with the hearing due to take place just after Easter on 23rd April 2014.
4. It appears that the Respondent complied with the directions by serving her Scott Schedule and statement of case but that the Applicant failed to serve any reply or co-operate with compiling a bundle of documents for the hearing, despite being granted an extension of time. Instead, by letter dated 17th April 2014 the Applicant's solicitors sought to withdraw their case. Due to the Good Friday and Easter Monday bank holidays, this meant they sent their notice of withdrawal with only one clear working day before the hearing. The Respondent was not sure what was going to happen and so attended at the Tribunal for the scheduled hearing anyway.
5. Nothing happened on the day scheduled for the hearing. On the following day, 24th April 2014, the Tribunal issued its consent to the withdrawal, subject to conditions. In accordance with those conditions, the Applicant issued a Notice of Discontinuance at the county court and confirmed this to the Tribunal and the Respondent.
6. However, by letter dated 28th April 2014 the Respondent protested that she had incurred time and costs and therefore applied for her costs. In due course, her Amended Schedule of Costs was made up of the following sums:-

(i) Whitecross Solicitors Invoice dated 25 June 2013	£200
(ii) Whitecross Solicitors Invoice dated 16 December 2013	£480
(iii) Cost of travel to deliver 3 Trial Bundles to Tribunal	£10
(iv) Stationery costs	£119.75
(v) Postage	£27.70
(vi) Cost of travel to the Tribunal on 23 April 2014	£10
(vii) Time spent in researching and preparation for written response for Schedule, Trial Bundles and Statement of Case, 7 hours @ under Part 46.5(2) under the Civil Procedure Rules (cf. Charles Oke of Whitecross solicitors charges £150 per hour)	£700
7. On 8th May 2014 the Tribunal issued directions for the determination of the Respondent's application for costs. Accordingly, the Applicant sent in written representations by letter dated 22nd May 2014 and the

Respondent provided a statement supported by various documents. The Tribunal proceeded to determine the matter on the papers, without a hearing.

Reasons for decision

8. Under rule 13 of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 the Tribunal may make an order in respect of costs only if the Applicant has acted unreasonably in bringing or conducting the proceedings.
9. The Applicant claims to have brought the claim in good faith but that is not the relevant test. The Respondent has pointed out, and the Applicant has not disputed, that the Applicant notified her by formal notice under the Landlord and Tenant (Covenants) Act 1995 that it had transferred its interest on 26th May 2010 and would be released from its covenants with effect from that date. The entirety of the claim arises from liabilities incurred after that date.
10. The Applicant claims that, on receipt of the Respondent's Scott Schedule, it became apparent to them that the case was more complex than they had initially thought and they withdrew the case in order to review it. This does not explain why they waited until 17th April to withdraw but, more importantly, it does not answer the Respondent's point at all.
11. The Applicant based its claim on the lease. As the Respondent has pointed out, they were not a party to the lease for the period when the relevant liabilities were incurred. They had no cause of action on their pleaded case and should never have brought proceedings on that basis. Even if there is some complexity to be sorted out, it should have been sorted out before proceedings were issued. It is unreasonable to expect to be able to put a case in order after issue.
12. The Respondent pointed out, and the Applicant appears to concede, that she paid some of the sums demanded but her payments were returned. The Applicant responds that the sums were paid by direct bank transfer to Stiles Harold Williams but asserts that they should have been paid to their solicitors, Brethertons. The Tribunal finds this assertion difficult to follow. The demands specifically stated that payment was to be made to Stiles Harold Williams so it would seem that tendering payment to them would constitute discharge of any liability.
13. The Applicant asserts that it was in everyone's interest that the proceedings be withdrawn. Indeed it was but the point is that they should not have been brought in the first place. Moreover, they should have been withdrawn at the earliest possible moment, rather than the latest which was what 17th April was.
14. In relation to the Respondent's costs, the Applicant challenges the Respondent's preparation of trial bundles and attendance on the day of

the hearing. The Tribunal is satisfied that the Respondent's behaviour on these points was the product of the Applicant's default in failing to co-operate in relation to the bundle and in withdrawing at the last minute.

15. The Tribunal is satisfied that the remainder of the Respondent's costs were reasonably incurred, save for one exception, and that all the costs are reasonable in amount. The exception is that the Respondent claims for costs as a litigant in person under rule 46.5 of the Civil Procedure Rules. However, those are the rules which govern the courts, not this Tribunal. The fact is that the Respondent did not incur any liability, for £700 or any other sum, in relation to the preparation time she refers to. She claims to have taken out time from her business but does not claim any monetary loss in respect of that time, whether as loss of income or otherwise. Therefore, the Tribunal has no power to award the sum of £700 claimed at the end of the list in paragraph 6 above.
16. In summary, the Tribunal is satisfied that the Applicant behaved unreasonably in bringing and in the conduct of these proceedings so that they should pay the Respondent's costs, assessed in the sum of £847.45.

Name: NK Nicol

Date: 16th June 2014