



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

Case Reference : **CHI/45UH/LSC/2015/0020**

Property : **2 Chatham Road, Worthing, West Sussex
BN11 2SP**

Applicants : **Mr F Wilson &
Miss J Callaway**

Representative : **In person**

Respondent : **Mr T Holter**

Representative : **In person**

Type of Application : **Liability to pay Service Charges and
Section 20C**

Tribunal Members : **Judge Paul Letman
Mr N I Robinson**

**Date and venue of
Hearing** : **On paper**

Date of Decision : **26 October 2015**

DECISION

The Application

1. By application dated 12 March 2015 the Applicants sought a determination (1) under section 27A of the Landlord and Tenant Act 1985 primarily as to whether or not the freeholder is entitled to charge for his own time as a management charge for the years 2014 and 2015 (2) whether the insurance charges in 2014 and 2015 were appropriate and recoverable, and (3) for an order for the limitation of the landlord's costs of the proceedings under section 20C of the Landlord and Tenant Act 1985.

The Substantive Decision

2. By decision dated 09 July 2015 and for the reasons set out therein the Tribunal decided in summary as follows:
 - 1) The Respondent is not entitled under the terms of the Lease to recover the so-called 'management costs' charging for his own time in carrying out works or management of the property.
 - 2) The insurance charges in 2014 in the sum of £304.31 and in 2015 in the estimated sum of £367.61 are reasonable and payable as below.
 - 3) The Respondent's demand dated 21 February 2015 constituted a compliant demand for payment of interim service charge on account due as at 24.12.14 in the sum of £297.50 (inclusive of insurance) less a credit in the sum of £100.49 in respect of the y/e 24.12.14 service charge account.
 - 4) As regards a claim by the Respondent to recover the legal costs he had incurred with Henchleys solicitors in the sum of £465.36 (per Doc 29), the Tribunal determined that these were not recoverable under the terms of the Lease.
 - 5) Further, given that the Applicants had succeeded on the principal issue in the application, the Tribunal accepted that it would be just and equitable in all the circumstances to make a direction under 20C of the 1985 Act in favour of the Applicants.

The Present Application

3. Further to the above decision and in the light of their success in the same, by letter dated 30 August 2015 the Applicants have made an application for costs pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (SI 2013/1169) ('the Rules').
4. The Respondent was duly notified of the application and by email to the Tribunal dated 08 September 2015 opposed the application, submitting that it would be unfair to make such an order and that he had hoped that the parties might following the Tribunal's decision 'get back to some form of normality.' Thus the matter comes again before this Tribunal for decision.

Jurisdiction

5. The tribunal's jurisdiction to make orders for costs is under Rule 13 of the Rules, which in so far as is presently material states:

'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 –
 - (ii) a residential property case, or
 - (iii) a leasehold case...

6. As referred to above, section 29(4) of the Tribunal Courts and Enforcement Act 2007 provides as follows:

'29. Costs or expenses

- (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.’
7. In summary, therefore, the tribunal has both a wasted costs jurisdiction to order costs against a legal or other representative where those costs are incurred as a result of any improper, unreasonable or negligent act or omission by them, and a power under Rule 13 to make an order where a party has acted unreasonably in defending or conducting these proceedings. It is the latter jurisdiction which is most obviously of potential relevance here given the way the application for costs is now put by the Applicants.
8. As to the meaning of unreasonable in this context, in *Ridehalgh v Horsefield* [1994] 3 All ER 848, the lead case on the wasted costs jurisdiction, Lord Bingham MR giving the judgment of the Court stated ‘Unreasonable ... aptly describes conduct which is vexatious, designed to harass the other side rather than advance the resolution of the case, and it makes no difference that the conduct is the product of excessive zeal and not improper motive. But conduct cannot be described as unreasonable simply because it leads in the event to an unsuccessful result or because other more cautious legal representatives would have acted differently. The acid test is whether the conduct permits of a reasonable explanation. If so, the course adopted may be regarded as optimistic and as reflecting on a practitioner’s judgement, but it is not unreasonable.’

Decision

9. In the unanimous judgment of this Tribunal the Respondent was not acting unreasonably in defending these proceedings. In the Tribunal’s view it was legitimate for the Respondent, given the evidence and the arguable issues of law arising in the case, to contest the matter before the tribunal.
10. Furthermore, the Respondent acted reasonably in taking legal advice and it was reasonable for him to rely upon that advice as he did in resisting the application. The mere fact that he was unsuccessful on the principal issue and others does not in the Tribunal’s judgement begin to meet the high degree of unreasonableness required for the making of an order under Rule 13(1)(b).
11. Further, and for completeness, the Tribunal does not regard anything in the Respondent’s conduct of his case as improper, unreasonable or negligent within the meaning and for the purposes of section 29(4) (Rule 13(1)(a) refers); and nothing has been identified or relied upon in this regard by the Applicants.
12. For the avoidance of doubt, there is nothing inconsistent in this conclusion with the willingness of the Tribunal to make an order under section 20C, as referred to in its

primary decision. It is one thing to deprive an unsuccessful Respondent from recovering his costs (had they been recoverable under the Lease), but quite another to require him to pay the successful party's costs under Rule 13 based upon unreasonable or improper or negligent conduct.

13. For these reasons and each of them the Applicants' application for their costs is rejected.

Notification of the Right to Appeal

14. The parties are duly notified that they have a right of appeal against the decision herein. That right of appeal may be exercised by first making a written application to this tribunal for permission to appeal under rule 52 of the Rules. An application for permission to appeal must be sent or delivered to the tribunal so that it is received **within 28 days** of the latest of the dates that the tribunal sends to the person making the application (a) written reasons for the decision or (b) notification of amended reasons for, correction of, the decision following a review (under rule 55) or (c) notification that an application for the decision to be set aside (under rule 51) has been unsuccessful.

Dated 26 October 2015

Judge Paul Letman