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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**MAN/00BY/OAF/2014/0015**
Property	:	**20-22 Larkhill Place, Liverpool L13 9BS**
Applicants	:	**Sabah Elgadhy and Zara Elgadhy**
Representative	:	**Orme Associates**
Respondent	:	**Liverpool City Council**
Representative	:	**Hill Dickinson**
Type of Application	:	**Determination of price payable - section 21(1)(a) Leasehold Reform Act 1967**
Tribunal Members	:	**Mr PA Barber LLM** **Mrs J Brown MRICS**
Date of Paper Determination	:	**16 March 2015**
Date of Decision	:	**24 April 2015**

DECISION ON APPLICATION FOR COSTS

DECISION

The Respondent's application for costs pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 is dismissed and no order for costs is made by the Tribunal.

REASONS

The Applications

1. The Tribunal received an application for costs from the Respondent arising in connection with the Applicant's application for the determination of the price payable pursuant to Section 21(1)(a) of the Leasehold Reform Act 1967 in relation to premises at 20-22 Larkhill Place, Liverpool. The Tribunal made a determination in relation to that application on the 24 April 2015 following an inspection on the 16 March 2015 and a paper determination.

2. The outcome of those applications following a decision on the 24 April 2015 was that the price payable was set at £29,852.00.

3. By a letter dated 04 June 2015 the Respondent freeholder applied to the Tribunal for a costs order against the Applicant leaseholder under rule 13 of the Tribunal Procedure (First-tier Tribunal (Property Chamber) Rules 2013 ("the 2013 Rules"). The ground of the application was that the Applicant had acted unreasonably in bringing the proceedings ("the proceedings"). The essence of the claim is that because the Tribunal's determination of the price payable "mirrors the valuation case put forward by the Respondent to such a degree" that the only conclusion is that the Applicant has acted unreasonably in bringing or conducting the proceedings. The Respondent does not claim all its costs but only those specialist external costs it has incurred as a result of the application. The Respondent also reminds the Tribunal about the additional costs incurred as a result of the failure of the Applicants to file its statement of case in time.

4. No response has been received from the Applicants.

Submissions and discussion

5. The substantive issue therefore, as far as the Respondent's application is concerned, is whether the Applicant acted unreasonably in bringing the applications and/or in its conduct of the proceedings. It was held by the Court of Appeal in *Ridehalgh v Horsefield* [1994] Ch. 205 CA that

> "'Unreasonable' .....means what it has been understood to mean in this context for at least half a century. The expression 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 end 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."

6. The Tribunal does not accept that in the present case the Applicant's action in defending and conducting the proceedings crossed the threshold of unreasonableness. It is the case that the Applicants have made an application and that the Tribunal has preferred the calculations put forward by the Respondent but that does not mean that the Applicant has acted unreasonably. We simply preferred the Respondent's case as put forward by them. There is nothing unreasonably on the part of the Applicant in challenging through this Tribunal (which was established for that very purpose) a figure put forward by the Respondent. It seems to us that the Applicant was entitled to bring the application and that it was appropriate for the Tribunal to make a determination in the circumstances of this application. There is nothing in the application for costs or in the substantive application for an order under section 21(1)(a) that indicates that the Applicants have acted in any way which is vexatious or designed to harass the Respondent. We are satisfied that in bringing and conducting the application the Applicants were merely trying to assert a lower figure than the one the Respondents were requesting they pay to obtain the freehold of the premises and that in no way were the proceedings designed to be vexatious or to harass.

7. Apart from the argument about the fact that the Applicants brought a claim and failed, the Respondent in their costs application reminds the Tribunal that the Applicants also failed to file its statement of case on time and also failed to file a bundle of documents on time resulting in additional costs. It is most unfortunate that the Applicants were unable to comply with the terms of the timetable but this is not unusual and would not ordinarily give rise to a view that they were acting vexatiously. Again the threshold of unreasonableness has not been reached for an order for costs under rule 13.

8. The Respondent's claim for costs under rule 13 of the 2013 Rules is therefore dismissed.