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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AY/LSC/2018/0357**
Property	:	**Flat 22, Century House, 245 Streatham High Road, London SW16 6ER**
Applicant	:	**Dravidian Investments Ltd**
Respondent	:	**Century House Freehold Ltd**
Representative	:	**PDC Law**
Type of Application	:	**Rule 13 costs application**
Tribunal	:	**Judge Nicol**
Date of Decision	:	**26th November 2018**

COSTS DECISION

The Applicant shall pay the Respondent costs in the sum of £532.10.

Reasons

1) On 23rd October 2013 the Tribunal struck out the Applicant's application challenging various service charges and gave directions for the determination of the Respondent's application for costs under rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. In accordance with those directions, each party has provided a small bundle of submissions and relevant documents and the Tribunal has proceeded to reach its decision on the papers, without a hearing. The parties were notified that the determination has been postponed but Tribunal Judge Nicol was able to attend to the matter on the original timetable.
2) The relevant parts of rule 13 state:

(1) The Tribunal may make an order in respect of costs only—
(a) ...
(b) if a person has acted unreasonably in bringing, defending or conducting proceedings in—
(iii) a leasehold case; ...

3) The Upper Tribunal considered rule 13(1) in *Willow Court Management Co (1985) Ltd v Alexander* [2016] UKUT 0290 (LC). They quoted with approval the following definition from *Ridehalgh v Horsefield* [1994] Ch 205 given by Sir Thomas Bingham MR at 232E-G:

> "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 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 judgment, but it is not unreasonable.

4) The Upper Tribunal in *Willow Court* went on to say:

> 24. ... 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. We see no reason to depart from the guidance given in *Ridehalgh* at 232E, despite the slightly different context. "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?
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> 26. We ... consider that tribunals ought not to be over-zealous in detecting unreasonable conduct after the event and should not lose sight of their own powers and responsibilities in the preparatory stages of proceedings. As the three appeals illustrate, these cases are often fraught and emotional; typically those who find themselves before the FTT are inexperienced in formal dispute resolution; professional assistance is often available only at disproportionate expense. ...
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> 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. ...

5) The Tribunal set out at paragraphs 3 to 8 of its previous decision its findings as to what the Applicant had done which justified striking out his application and so they are not repeated here.

6) In his submissions dated 20th November 2018, Mr Chelliah made a number of points as to why the Applicant's conduct should not be regarded as unreasonable:

   (a) He said he had acted in good faith, without any intention of misleading. In particular, he pointed out that the two dispensation cases which he had failed to mention did not involve the same remedy. In the Tribunal's opinion, this submission is not remotely credible. The request for information about other cases in the Tribunal application form which he completed is crystal clear that it is referring to any case involving the same parties. Even taking Mr Chelliah's submission at face value, the county court case he failed to mention substantially overlapped the current application so that, on his own case, he had no excuse for not mentioning it.

   (b) Rule 14 of the Tribunal Procedure Rules requires a party to inform the Tribunal and other parties if a legal representative is appointed. Mr Chelliah asserts that the Respondent failed so to inform the Applicant and that they should not be able to recover any costs of that representation. However, that provision is to allow for proper service and is not relevant to costs unless the lack of compliance has some direct effect on the amount of costs, which it does not in this case.

   (c) Mr Chelliah accuses the Respondent of vexatious and mischievous behaviour in not complying with section 22 of the Landlord and Tenant Act 1985. However, the Tribunal has made no finding on this allegation and has not been presented with the evidence and submissions from both parties which would allow them to do so. Furthermore, it is no answer to unreasonable behaviour to accuse the other party of their own separate unreasonable behaviour.

   (d) Mr Chelliah submits that there is a principle that no order for costs will be made in favour of a lessee-owned company against one of its member lessees. It may be that previous Tribunals have taken into account the fact that a dispute is between such parties in refusing to make a costs order but there is no such principle or any foundation for such a principle. The fact that, if no order is made, the Applicant might have to pay a proportionate part of the costs through the service charge or a call on company members, weighs little in the balance as against its behaviour which resulted in the strike-out.

7) The Tribunal has no doubt that the Applicant's behaviour may be characterised as "unreasonable" within the meaning elucidated in the *Willow Court* case. The failure to mention the other cases was clearly

vexatious, designed to harass the Respondent with multiple legal suits, rather than to advance resolution of the dispute. The Applicant has not been able to provide any reasonable explanation for its conduct. For the same reasons, it is appropriate that the Tribunal exercise its discretion to make a costs order.

8) The Respondent claims the total sum of £532.10, made up of:

   (a) £397.10 for PDC Law's services; and

   (b) £135 for LPC Law to provide an agent to attend the hearing on 23rd October 2018.

9) Although LPC Law claimed VAT and PDC Law is VAT registered, the Tribunal notes that no VAT element is claimed.

10) Mr Chelliah objects that Mr David Earl of LPC Law did little work at the relatively short hearing on 23rd October 2018. However, that is irrelevant. His fee is fixed and would have remained at that level even if he had done enough work to justify a higher fee in Mr Chelliah's view. LPC Law's fee is a very modest fee for representation at a hearing and the Tribunal is satisfied both that it was incurred and that it is reasonable.

11) Mr Chelliah also objects that PDC Law wrote an unnecessarily verbose letter and spent more time than necessary on the case. However, the Tribunal is looking at the case summarily and in the round. Again, the costs of £397.10 are very modest. Again, the Tribunal is satisfied both that they were incurred and that they were reasonable.

Name: NK Nicol **Date:** 26th November 2018