



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

Case reference : **LON/00BE/LRM/2018/0002**

Property : **The Gallery 445 New Cross Road
London SE14 6AL**

Applicant : **Gallery 445 Management RTM
Company Ltd.**

Representative : **Barlow Robbins LLP, solicitors**

Respondent : **Rizwan Khan**

Representative : **Global Solicitors & Advocates**

Type of application : **Costs - rule 13(1)(b) of the Tribunal
Procedure (First-tier Tribunal)
(Property Chamber) Rules 2013**

Tribunal member : **Mr N Martindale**

Date of decision : **6 June 2018**

DECISION

Decision of the Tribunal

- 1. The applicant's' application for an order for costs against the respondent, under Rule 13 is allowed, in the sum of £3,273 plus VAT.**

Introduction

- 2.** By a letter dated 22 February 2018 the applicant seeks an order under rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("The Rules"). Rule 13(1)(b) provides that the Tribunal may make an order in respect of costs if a person has acted unreasonably in bringing, defending or conducting proceedings in a residential property case or a leasehold case ("the rule").
- 3.** The application for costs is made within the time limits prescribed by rule 13(5). The respondent, on 9 March 2018 withdrew their counter notice to the applicant's original notice for an RTM at the property. The applicant, then on 19 March 2018 withdrew their substantive application to the Tribunal for determination of the original RTM appointment.
- 4.** There was no application for this matter to be determined at a hearing, so it was determined on the papers in the week listed in the directions.
- 5.** The applicants sought an order for costs against the respondent. In summary this application arose as a result of the latter's late withdrawal of their counter notice objecting to the former's substantive application for an RTM at the property.

Background

- 6.** The applicant served a Claim Notice, dated 3 October 2017, under the Commonhold and Leasehold Reform Act 2002 for the management of this property to pass to Gallery 445 Management RTM Company Ltd..
- 7.** The respondent served a Counter Notice, dated 22 November 2017, denying the applicant's entitlement to "*acquire the right to manage the premises specified in the claim notice.*"
- 8.** The applicant applied to the Tribunal on 16 January 2018 for the determination of the RTM Notice. In a covering letter of 16 January 2018 they drew the attention of the Tribunal to the apparent absence of particulars of "*specified provisions*" of the 2002 Act, set out by the respondent in the Counter Notice, consequentially questioning the validity of the Counter Notice entirely.
- 9.** On 25 January 2018 the Tribunal issued directions for the determination of the application for the denial of the Right to Manage, setting the standard timetable for preparation and exchange of representations by each party, and inviting requests for an oral hearing if required by one or more parties. In particular the directions required at No.3 that: "*On or before 9 February 2018 the respondent shall send a*

statement in reply to the applicant to include any legal submissions, with copies in triplicate to the Tribunal, and this shall be regarded as the respondent's case."

10. On 12 February 2018 the applicant confirmed to the Tribunal that no statement had been received in accord with direction No.3 and that it had generally "*failed to particularise*" their case.
11. On 13 February 2018 the Tribunal issued an Order of its intention to disbar the respondent from the proceedings, inviting it to make representations to the contrary on or before 28 February 2018.
12. On 22 February 2018 the applicant wrote to the Tribunal setting out the background to the substantive application for an RTM. This referred to their original Notice of Claim and the apparent counter notice received. It also confirmed that on 20 December 2017 and again on 9 January 2018 they invited the respondent to withdraw its counter notice, setting out its reasons for their questioning its validity, and informing them that if they did not do so by 11 January 2018 the respondent would have to bear the costs of an application to the Tribunal for determination.
13. Although the respondent had offered on 15 January 2018 to withdraw their counter notice, it was made conditional on settlement of longstanding service charge disputes and payments with the applicant, unrelated to the statutory grounds for a Counter Notice to be valid. The applicant therefore had requested that the Tribunal debar the respondent because their grounds of objection to the Claim had never been made clear and because they had acted in a "frivolous or vexatious, or otherwise an abuse of the process of the Tribunal". They also requested an order for the applicant's costs under Rule 13(1)(b) to be made by the Tribunal against the respondent.
14. On 19 February 2018 the respondent confirmed to the Tribunal that it was withdrawing its Counter Notice, but this was made after the application to the Tribunal had already been made by the applicant and costs incurred. The contents of this letter were then, on prior request from the Tribunal, clarified by the respondent in their letter of 1 March 2018 by confirming their withdrawal of the Counter Notice.
15. On 9 March 2018 the position of the respondent having finally be made clear, the applicant withdrew their application. Following receipt of this withdrawal the applicant was then entitled to make a claim for costs against the respondent because of their conduct in the proceedings.
16. On 19 March 2018 the applicant confirmed that they would be making a submission on costs under Rule 13(1)(b). On 20 March 2018 the Tribunal consented to the applicant's withdrawal.

Costs Directions

17. The Tribunal issued directions in respect of the Rule 13 costs application on 17 April 2018. These stated that the applicant's solicitor's letter of 6 April 2018 would stand

as the applicant's statement of case and that the respondent had to file its submission no later than 11 May 2018. By 25 May 2018 the applicant was to make its counter representations to these.

18. The applicant supplemented its earlier letter with copy documents including a claim for additional time to cover the costs of these costs representations.
19. The applicant generally followed the directions; the respondent generally did not.

Applicants Representations

20. On 6 April 2018 the applicant, through Barlow Robbins had already made submissions to the Tribunal on costs under Rule 13, albeit in advance of the Tribunal's directions of 17 April 2018. The initial claim was for a total of £2,514.50.
21. On 21 May 2018 following the directions of 19 April 2018 full representations were prepared with background documentation between the parties were submitted. The final claim was for a total of £3,273.00 including the sum of £2,514.50 above. It was for legal work undertaken in part by a Grade A solicitor at £275/hr plus VAT, but mostly by one Grade C solicitor at £185/hr plus VAT. The additional sum in the final claim being the costs of preparing and presenting the claim for these costs.
22. In its 6 April 2018 letter, the applicant set out its reasons why they considered that the respondent had acted unreasonably in bringing, defending or conducting proceedings and that this behaviour was sufficient to invoke the rule, dealing with the issues identified in the Upper Tribunal decision in *Willow Court Management Company (1985) Ltd v Alexander* [2016] UKUT (LC). They referred to the three stages for the Tribunal, before making an order under Rule 13.
23. The applicant referred to Stage 1 "*If there is no reasonable explanation for the conduct complained of the behaviour will be adjudged to be unreasonable and the threshold for making of an order will have been crossed.*" The applicant represented that the respondent had failed despite several requests to explain with reasons why the respondent had not withdrawn the counter notice. No legal basis for the opposition was provided. Then to Stage 2 "*Should an order be made ?*" The applicant maintained that it had given the respondent at least 6 weeks prior to issue of proceedings but that in all that time no particularised and valid reasons were offered by the respondent. The effect of this "unreasonable conduct" the applicant maintained was that they had incurred large and unnecessary expense in costs. And finally to Stage 3: "*What should the order be?*". The applicant concluded that the respondent should be liable for all of their legal costs, and the Tribunal's fee incurred as a result of the respondents unreasonable behaviour.

Respondents Representations

24. The respondent made no representations in time with the directions. However in its 4 June 2018 letter, the respondent set out its reasons why they considered they should not meet these costs under Rule 13.

25. They explained that they had thought the whole matter closed with the letter dated 21 March 2018 from the Tribunal. They explained that the Counter Notice would never have been needed if the applicant had corresponded with the respondent in January 2018 about longstanding issues over service charges, but which the applicant had ignored. They considered that the action of the applicant to refer their Notice of Claim to the Tribunal so quickly after the Notice of Claim, was unreasonable and taken unreasonably soon without discussion of the issues.

The Law

26. Rule 13 of the 2013 Rules provides as follows:

(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—*
 - (i) *an agricultural land and drainage case,*
 - (ii) *a residential property case, or*
 - (iii) *a leasehold case; or*
- (c) *in a land registration case.*

27. Rule 13(1)(a) is not relevant to this application as it concerns costs incurred by legal representatives. We need to determine if an order for costs should be made under Rule 13(1)(b). Clarification as to how this Tribunal should approach a Rule 13(1)(b) costs application has been provided in the detailed decision of the Upper Tribunal in *Willow Court*. At paragraph 24 of its decision, it approved the guidance given in *Ridehalgh v Horsefield* [1994] Ch 205 which described “unreasonable” conduct as including conduct that is “vexatious, and designed to harass the other side rather than advance the resolution of the case. It was not enough that the conduct led, in the event, to an unsuccessful outcome.

28. It then went on to set out a three stage test for Rule 13 costs orders. The first stage is whether a person has acted unreasonably. This is an essential pre-condition of the power to award costs under the rule. If there is no reasonable explanation for the conduct complained of, the behaviour will properly be adjudged to be unreasonable. This requires the application of an objective standard of conduct to the facts of the case. The second and third stages involve the exercise of discretion on the part of the tribunal. At the second stage the tribunal must consider whether or not, in the light of the unreasonable conduct identified, it ought to make an order for costs. The third stage is what the terms of the order should be.

Decision and Reasons

- 29.** In the Tribunal's view this application succeeds. At the first stage of the test in *Willow Court*, the respondent's counter notice was without merit. At no time were valid reasons for its retention provided, despite requests from the applicant and provision of an adequate time period to provide them prior to referral to the Tribunal, for which due notice was also given by the applicant.
- 30.** It was only after preparation and submission of an application to the Tribunal, that the respondent prepared to, and eventually did, withdraw, allowing in turn, after clarification of the respondent's position, the applicant to withdraw their application to the Tribunal. The Tribunal accepts that there is a genuine and substantial dispute of importance between the parties and that it was appropriate for the applicant to bring these proceedings, it being the existence, or not, of an RTM in management control of the property.
- 31.** The Tribunal notes the confusion and poor preparation by the respondent to each stage of the Notice of Claim; of the application for determination; of the application for withdrawal; and now finally of the costs application under Rule 13, all of which contributed to significant and largely unnecessary costs being incurred by the applicant.
- 32.** The information provided by the applicant on the grade of fee earner involved and the time spent and the stages undertaken is accepted by the Tribunal as sufficient for the order to be made. The Tribunal makes it for the full amount sought, including that for the additional costs of the Rule 13 application.

Name: Neil Martindale

Date: 6 June 2018

ANNEX 1 - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.