



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

Case reference : **LON/00BK/HMB/2020/0042**

Property : **21A Lydford Road, London W9 3LU**

Applicant : **FTL Group Ltd (t/a RTR Management)**

Representative : **Chi Zhang, director**

Respondent : **Westminster City Council**

Representative : **Mr M Clough**

Type of application : **Rule 13 costs**

Tribunal member : **Judge Professor Robert Abbey
Sarah Redmond MRICS**

Paper Based Hearing date : **22 June 2021**

Date of Costs Decision : **22 June 2021**

COSTS DECISION

Application for costs

1. An application was made by the respondent under Rule 13 of the Tribunal Rules, (The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 S.I. 2013 No. 1169 (L. 8)), in respect of the

respondent's costs. The Tribunal subsequently received a schedule of costs totalling £500.18. This is the amount listed by the respondent and consists of legal costs for preparing the case bundle. The details of the provisions of Rule 13 are set out in the appendix to these Directions and rights of appeal made available to parties to this dispute are set out in an Annex.

2. Before a costs decision can be made, the Tribunal needs to be satisfied that there has been unreasonableness. At a second stage it is essential for the Tribunal to consider whether, in the light of unreasonable conduct (if the Tribunal has found it to have been demonstrated), it ought to make an order for costs or not. It is only if it decides that it should make an order that a third stage is reached when the question is what the terms of that order should be.
3. The respondent filed with the Tribunal the respondent's written costs application dated 21 April 2021 and comments/observations thereon were requested of the applicant but none were forthcoming.
4. It now falls to us to consider the costs application in the light of the written submissions before the Tribunal. We do this but in the context of the circumstances of the original decision.

DECISION

1. The Tribunal's powers to order a party to pay costs may only be exercised where a party has acted "unreasonably". Taking into account the guidance in that regard given by HH Judge Huskinson in *Halliard Property Company Limited v Belmont Hall & Elm Court RTM, City and Country Properties Limited v Brickman LRX/130/2007, LRA/85/2008*, (where he followed the definition of unreasonableness in *Ridehalgh v Horsefield* [1994] Ch 205 CA), the Tribunal was satisfied that there had been unreasonable conduct so as to prompt a possible order for costs.
2. The Tribunal was mindful of a fairly recent decision in the case of *Willow Court Management Company (1985) Limited v Mrs Ratna Alexander* [2016] UKUT 0290 (LC) which is a detailed survey and review of the question of costs in a case of this type. At paragraph 24 of the decision the Upper Tribunal could see no reason to depart from the views expressed in *Ridehalgh*. Therefore, following the views expressed in this recent case at a first stage the Tribunal needs to be satisfied that there has been unreasonableness.
3. At a second stage it is essential for the Tribunal to consider whether, in the light of any unreasonable conduct it has found to have been demonstrated, it ought to make an order for costs or not; it is only if it decides that it should make an order that a third stage is reached when the question is what the terms of that order should be.

4. In *Ridehalgh* it was said that “Unreasonable” also 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.”
5. The *Willow Court* decision is of paramount importance in deciding what conduct might be unreasonable. I have mentioned the approach of the Upper Tribunal in this decision but we think it appropriate to quote the relevant section of the decision in full: -

“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.....“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?”

6. In *Laskar v Prescott Management Company Ltd* [2020] UKUT 241 (LC) the Upper Tribunal clarified the decision in *Willow Court* as follows:

*“in Willow Court the Tribunal suggested an approach to decision making in claims under rule 13(1)(b) which encouraged tribunals to work through a logical sequence of steps, it does not follow that a tribunal will be in error if it does not do so. **The only "test" is laid down by the rule itself, namely that the FTT may make an order if is satisfied that a person has acted unreasonably in bringing, defending or conducting proceedings.** The rule requires that there must first have been unreasonable conduct before the discretion to make an order for costs is engaged, and that the relevant tribunal must then exercise that discretion. Whether the discretion has been properly exercised, and adequately explained, is to be determined on an appeal by asking whether everything has been taken into account which ought to have been, and nothing which ought not, and whether the tribunal has explained its reasons and dealt with the main issues in such a way that its conclusion can be understood, rather than by considering whether the Willow Court framework has been adhered to. That framework is an aid, not a straightjacket.” [emphasis added]*

7. It seems to Tribunal that therefore the bar to unreasonableness is set quite high in that what amounts to unreasonableness must be quite significant and of serious consequence. This being so the Tribunal must now consider the conduct of the parties in this dispute given the nature of the judicial guidance outlined above.
8. The respondent maintains that the applicant was unreasonable in the conduct of the dispute by failing to comply with the Tribunal Directions and by failing to engage with the proceedings at all. The applicant on behalf of the company has now made two appeal applications, the first at 30E Porchester Square W2 6AN (appeal reference LON/00BK/HNA/2020/0087) and the second at 21A Lydford Road, W9 3LU (reference as above). In regard to both appeals the applicant failed to comply with tribunal directions.
9. Westminster City Council incurred administrative costs for the officer's time in preparing a bundle of documents to comply with tribunal directions. The Council has had to go to the trouble of defending the service of a civil penalty notice for which it considers there was no reasonable prospect of successful appeal. The Council is committed to promoting a private rented sector which is healthy and safe, while at the same time wishing to send out a clear message that breaches of the Housing Act 2004 will not be tolerated. The behaviour of the applicant has frustrated the Council in sending out a clear message and taking punitive action to deal with the matters at hand. The council deems the conduct of the applicant as outlined above to be unreasonable and vexatious. Furthermore, the service of a civil penalty notice is a serious matter and important matters would have been decided on had the hearing gone ahead. The requested costs amount is deemed proportionate given the complexity of matters and the level of fine which was imposed with the civil penalty.
10. The Tribunal issued directions on 9 December 2020, which required, the applicant to comply with paragraphs 8 and 9. The directions expressly warned the applicant that a failure to comply could result in an adverse costs determination under rule 13. Despite the warning given, the applicant failed to comply with these directions at all. No explanation has been given by the applicant for the applicant's conduct in these proceedings.
11. On 15 March 2021 the Tribunal issued a notice that the Tribunal is minded to strike out an application pursuant to regulation 9 of the Tribunal (Procedure) (First-Tier Tribunal) (Property Chamber) Rules 2013. On 24 March a strike out order was made. The tribunal had received no response to its formal notice of 15 March 2021, in which it was stated that it was minded to strike out the application on the grounds that the Applicant had failed to comply with the tribunal's directions, namely to provide a bundle in accordance with paragraphs 8 and 9 of the order dated 9th December 2020 and hence the subsequent strike out order.

12. In the absence of any relevant submissions on the costs claim from the applicant the Tribunal considered the paperwork from the original decision and the costs application and strike out papers and also the respondent's grounds for the application for costs set out above. In these circumstances, the Tribunal was satisfied that there was enough information or detail to persuade it that there had been unreasonable conduct on the part of the applicant. The sustained nature of the unreasonable conduct, (non-compliance with Directions) is sufficient for the Tribunal to decide to exercise its discretion to make a costs order thus addressing stage two of the process described in the *Willow* decision mentioned above. As such, the tribunal's power to grant a costs order under r.13(1)(b) is engaged. The tribunal has considered all the circumstances of these proceeding and in particular the seriousness of repeatedly failing to comply with directions; the need to enforce compliance with procedural directions in the interest of justice; and the prejudice to the respondents, namely additional legal costs that could have been avoided.
13. Taking into account all that the parties have said about the case and the actions of the parties involved, the Tribunal can find evidence to match the high bar of unreasonable conduct set out above. The Tribunal was therefore satisfied that stage one of the process had been fulfilled in that it found there has been unreasonableness for the purposes of a costs decision under Rule 13 on the part of the respondent.
14. In the circumstances the Tribunal determines that there be an order for costs pursuant to Rule 13. The Tribunal has carefully considered the costs schedule prepared by the solicitors for the respondent and is of the view that it is reasonable and proportionate given the nature of the case and the work required to progress the matter through this litigation process.
15. The fees claimed amount to £500.18. This is for 5.62 hours worked. This was the time spent by the respondent in preparing the case bundle. This is at the hourly rate of £89. The Tribunal is satisfied that this hourly rate is reasonable and proportionate as is the total amount of time and hence the total is considered both reasonable and proportionate. This therefore means the total costs claimed and approved by the Tribunal is in the sum of £500.18 and is payable by the applicant to the respondent on or before 28 days from the date of this decision.
16. In the circumstances the Tribunal determines that there be an order for costs payable by the applicant to the respondent in the above terms pursuant to Rule 13 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 S.I. 2013 No. 1169 (L. 8).

Name: Judge Professor Robert
Abbey

Date: 22 June 2021

Appendix

The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 S.I. 2013 No. 1169 (L. 8)

Orders for costs, reimbursement of fees and interest on costs

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—

(i) an agricultural land and drainage case,

(ii) a residential property case, or

(iii) a leasehold case; or

(c) in a land registration case.

(2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.

(3) The Tribunal may make an order under this rule on an application or on its own initiative.

(4) A person making an application for an order for costs—

(a) must, unless the application is made orally at a hearing, send or deliver an application to the Tribunal and to the person against whom the order is sought to be made; and

(b) may send or deliver together with the application a schedule of the costs claimed in sufficient detail to allow summary assessment of such costs by the Tribunal.

(5) An application for an order for costs may be made at any time during the proceedings but must be made within 28 days after the date on which the Tribunal sends—

(a) a decision notice recording the decision which finally disposes of all issues in the proceedings; or

(b) notice of consent to a withdrawal under rule 22 (withdrawal) which ends the proceedings.

(6) The Tribunal may not make an order for costs against a person (the “paying person”) without first giving that person an opportunity to make representations.

(7) The amount of costs to be paid under an order under this rule may be determined by—

(a) summary assessment by the Tribunal;

(b) agreement of a specified sum by the paying person and the person entitled to receive the costs (the “receiving person”);

(c) detailed assessment of the whole or a specified part of the costs (including the costs of the assessment) incurred by the receiving person by the Tribunal or, if it so directs, on an application to a county court; and such assessment is to be on the standard basis or, if specified in the costs order, on the indemnity basis.

(8) The Civil Procedure Rules 1998(a), section 74 (interest on judgment debts, etc) of the County Courts Act 1984(b) and the County Court (Interest on

Judgment Debts) Order 1991(c) shall apply, with necessary modifications, to a detailed assessment carried out under paragraph (7)(c) as if the proceedings in the Tribunal had been proceedings in a court to which the Civil Procedure Rules 1998 apply.

(9) The Tribunal may order an amount to be paid on account before the costs or expenses are assessed.

ANNEX - 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.