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

Case Reference : LON/00AW/LSC/2014/0430

Property : Flat 9, 54 Hogarth Road, London SW5 0PX

Applicant : 54 Hogarth Road London SW5 Management Limited

Representative : SLC Solicitors

Respondent : Mr Raymond Stone

Representative :

Type of Application : Costs under the provisions of rule 13 Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (the Rules)

Tribunal Members : Tribunal Judge Dutton

Date and venue of determination : 23rd April 2015 10 Alfred Place, London WC1E 7LR

Date of Decision : 23rd April 2015

DECISION

DECISION

I find that the Respondent has acted unreasonably within the meaning provided for in Rule 13 and order that he should pay the Applicants costs limited to an amount of £2,260.80 for the reasons set out below.

BACKGROUND

1. By an application dated 18th August 2014, Mr Stone, the Respondent in these proceedings applied to the Tribunal for a determination of the reasonableness of service charges for the years 2011 to 2013, in particular seeking reimbursements of surpluses for these years, and in respect of works to the property planned for 2014/15. Directions were issued following a Case Management hearing on 9th September 2014.
2. The directions provided that Mr Stone should prepare the bundles for the hearing but in the absence of agreement each side could prepare their own.
3. It appears that in October 2014 negotiations took place between the parties, which on the face of the correspondence do not disclose a complete settlement. Nonetheless the Management company, the Applicant in this case, made payment to the account of Mr Stone in amounts which the company appeared to consider reflected the payment back of the surpluses for which part of the claim was made.
4. It appears that at some point in time Mr Stone contacted LEASE and received advice from them. It is not clear when. What is clear is that by a letter received at the Tribunal offices on 14th January 2015 Mr Stone sought to withdraw the claim. The letter is marked as being copied to the “defendants”. In fact the Tribunal sent a copy to the solicitors acting for the Management company and confirmed with Mr Stone on 15th January 2015 that the claim was withdrawn and issued the Tribunal’s consent to such withdrawal on the same day. The matter was due for hearing on the following Monday 19th January 2015.
5. By a letter dated 11th February 2015 the Applicant in this case made application to the Tribunal for an award of costs against Mr Stone under the provisions of rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (the Rules). This letter lists three issues as being the basis of the application. The first is that Mr Stone was unreasonable in his late withdrawal of the case as payment had been made to him in October 2014. The second was that whilst the application is not wholly clear the directions clearly show that there was an allegation raised concerning the major works and non-compliance with the provisions of s20 of the Landlord and Tenant Act 1985, which was not supported by any evidence. The third element of “misconduct” on the part of Mr Stone is that he failed to comply with the directions and produce a bundle of documents that complied with the directions.

6. Directions were issued by this Tribunal on 17th February 2015 providing for the case to be determined on the papers, unless any party requested a hearing. They did not and the matter came before me for consideration on 23rd April 2015. I had available to me a bundle prepared by SLC Solicitors for the Applicant running to some 133 pages and a bundle from the Respondent received at the Tribunal on 10th April 2015, a copy of which had been sent to the Applicant's solicitors. I have considered these papers in reaching my decision. I note also that the costs have now increased from £4,135.50 on 5th March 2015 to £5,143.50 by a bill dated 8th April 2015. The difference being a further £840 plus VAT for the work in bringing the application under the Rules.

THE LAW

7. The provisions of Rule 13 enable a Tribunal to make an order for costs in Residential Property/Leasehold cases where a person has acted unreasonably in bringing, defending or conducting proceedings (Rule 13(1)(b)). As a result of the recommendations made by Mr Justice Warren the upper limit on costs, formerly £500 has been removed by the Rules.

FINDINGS

8. I remind myself that the jurisdiction of the Tribunal is essentially a cost free one. The question to be answered is whether the Respondent Mr Stone, has acted unreasonably in either bringing or conducting these proceedings. This gives rise to the consideration of the manner in which the application has been conducted as well as the merits of same. Has the alleged conduct caused the Applicant to incur additional costs, has the chance to settle been lost or has there been lengthy unexplained delay?
9. The allegation by the Applicant is that costs incurred from the end of October 2014 should have been avoided in the light of the payment of monies claimed at that time. It is said that the Respondent acted unreasonably in delaying the withdrawal of the case until just before the date set for the hearing. In so delaying the Respondent incurred costs and in particular Counsel's fees of £1,375 plus VAT
10. There does not appear to be an issue that the Respondent acted reasonably in bringing the case. I will therefore confine my determination to the conduct of the Respondent in the proceedings.
11. It does seem to me that the Respondent could have withdrawn the case before he did. The payments had been credited to his account before the end of October. The extract of telephone conversations with LEASE would appear to indicate that he had spoken with them and they had advised him that "*there was no benefit to carry on*". It should have been apparent to Mr Stone that delaying the withdrawal of the case would mean that costs would continue to be incurred by the Respondent, a tenant owned management company,

of which Mr Stone appears to be a member. The question is when was his behaviour so unreasonable as to create a liability to pay the Respondent's costs under the Rules. I find that he was entitled some time to consider the offers made. It is not clear that a full settlement is evidenced by the exchanges of correspondence at that time. However, he must have been able to determine whether the proposals were acceptable to him and by his statement of case dated 17th February 2015 it appears clear that he agreed the sums paid as he says "*Once the Tribunal case was active, again they agreed to repay all the overpayment of service charges to all leaseholders, including themselves. They never repaid this money until recently on a credit to my account.*" It appears to be accepted that such credit took place by the end of October 2014. This still left the issue of s20 of the 1985 Act and the cost of works.

12. In his statement, which came to us under cover of his letter dated 10th April 2015, Mr Stone speaks of the difficulties in obtaining any evidence to support the allegations made in respect of the s20 issue. It must have been apparent to him that with the hearing scheduled for 19th January 2015 and the surveyors, who would provide the report, shut for the first two weeks of January that he was not going to get that evidence in time for the hearing. My finding on the conduct of Mr Stone is that in failing to withdraw the case until a day or so before the hearing he has put the Applicant to additional costs and has acted unreasonably within the meaning of the Rules. I set out below when I think that time runs from.
13. The question is what are the extent of those costs caused by Mr Stone's unreasonable conduct? I do not consider that the costs incurred in preparing the bundle are appropriate to recover from Mr Stone. The directions order provides that in the absence of agreement each side should prepare their own bundles. Mr Stone is a litigant in person and the preparation of bundles is a task that is not always accomplished appropriately by members of the legal profession. The costs incurred by the Respondent in this regard flow from the bringing of the proceedings which is not claimed to be unreasonable. **I would therefore disallow the £360 claimed.**
14. As to the £1,716 plus VAT it is almost impossible for me to see when these costs were incurred and why. I do not consider this is a case where costs should be assessed on an indemnity basis. No application is made and I find that a standard assessment is appropriate. The time spent of 14 hours and 18 minutes seems high, however I take into account that Mr Kay is a grade C fee earner and the hourly rate would not seem excessive.
15. I find that Mr Stone should have withdrawn the case at the beginning of the year, at the latest. The time from the beginning of November to the start of 2015 is some 9 weeks this would give an average of 16 units per week. Doing the best I can **I would therefore allow 32 units at £12 per unit giving a figure of £384 plus VAT for this element.**
16. In so far as the costs incurred from the notice of application (11th February 2015) are concerned I see that it is said some 70 units (7 hours) over an 8 week period were incurred. Again little

information as to the time spent on each item of work has been supplied nor the letters written. Having considered the papers before me **I find that a sum of £500 plus VAT would reflect the work required to prepare the papers for a paper determination.**

17 In so far as Counsels fees are concerned the Applicant in the statement of case explains how the fee was structured. If a cancellation had been made when it should have been the fees would have been substantially reduced. The fee incurred would have been £375 plus VAT. I find therefore that the Applicant incurred a further £1,000 plus VAT in counsel's fees which would have been avoided. **Accordingly I would allow the sum of £1,200 in respect of Counsel's fees.**

18 I calculate therefore that the sum to be payable by Mr Stone under the provisions of Rule 13 is solicitors costs of £884 plus VAT of £176.80 and counsel's fees of £1,200, making a total payable of £2,260.80. I do not consider that the personal circumstances of Mr Stone are relevant to my determination but may be something the Applicant will take into account.

Tribunal Judge Andrew Dutton

23rd April 2015.

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.