11874

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AY/LSC/2015/0486**
Property	:	**Flats A & B 5 Heyford Terrace, London SW8 1XT**
Applicant	:	**Ian Harvey, Redbrick Management Limited, appointed manager**
Representative	:	**Sam Phillips instructed by PDC Legal**
Respondent	:	**Darren Gidden**
Representative	:	**Nick Macleod-James, by direct access**
Type of application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal members	:	**Judge Hargreaves** **Michael Taylor FRICS**
Date and venue of hearing	:	**10 Alfred Place, London WC1E 7LR** **21st March 2016**
Date of decision	:	**7th April 2016**

COSTS DECISION 10TH AUGUST 2016

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1. The Respondent must pay the Applicant's costs of the proceedings before the Tribunal on the standard basis to be summarily assessed.
2. By 5pm 26th August 2016 the Applicant must file and served a revised schedule of costs limited to those incurred in relation to LON/00AY/LSC/2015/0486 and the application issued on the day of the

hearing, verified by a certificate to the effect that the costs claimed are limited to these costs and that the Applicant is liable to pay them.

3. By 5pm 9th September 2016 the Respondent must file and serve any submissions on quantum only.

REASONS

1. The substantive decision made on 7th April 2016 recites the history of the application and the Tribunal's conclusions on the legal and factual defences relied upon by the Respondent to the Applicant's claims which were entirely successful. It is quite clear, reviewing that decision, that there are numerous criticisms of the weakness of the Respondent's case both factually and legally, both in terms of content and presentation.

2. The Applicant made an application for costs dated 13th April 2016. It was accompanied by a schedule seeking costs in a sum of around £14,000 including profit costs, VAT, and disbursements. That appears to include costs incurred during the county court proceedings (from 21st May 2015 in any event[1]) which were referred to the Tribunal after 9th November 2015, and in relation to which the Tribunal has no jurisdiction, as the Respondent's submission correctly states. The application is supported by submissions running to 9 pages, relatively concise, which claims costs on the basis of (i) Tribunal Rule 13, (ii) as administration charges pursuant to clause 4, Schedule 3 of the lease, and (iii) on the basis that the Applicant is authorised by the terms of his appointment as a manager to incur costs in instructing solicitors to recover service charge arrears. That might be correct but that would only put the Applicant in the position of other litigants before the Tribunal, generally speaking.

3. As the Applicant does not identify any current claims issued to the Respondent to be reimbursed contractually; alternatively it is premature, we proceed to deal with the application based on Tribunal Rule 13.

4. The Respondent's reply dated 25th April runs to 21 pages and 113 paragraphs. Unsurprisingly the Respondent submits that the appropriate order is no order for costs despite admitting (paragraph 111) that the decision was *"trenchant"*. His skeleton argument contains an attack on the Tribunal's decision (whilst purporting not to) and a re-run of arguments which the Respondent lost before the Tribunal, though there has been no appeal against the decision made in April.

5. In considering, first, the application of the costs regime applicable to this claim, Tribunal Rule 13, we focus on the proceedings before the Tribunal. We make it clear, if it needs to be stated, that we disagree with the Respondent's criticisms of the presentation of the Applicant's case in the Tribunal. He knew full well what the dispute was and the fact that the Applicant was forced to issue a further protective application on the day of the hearing to avoid the Respondent taking further bad points about

[1] See paragraph 33 Applicant's submissions dated 13th April 2016

jurisdiction and risking even more delay, demonstrates the delaying tactics of the Respondent and his generally obfuscatory approach to recognising his obligations in respect of the service charges. That was unreasonable behaviour of itself. It was wholly contrary to the overriding objective and the requirement to co-operate. This was not, as the Respondent suggests, an important point on sinking funds (paragraph 107) justifying an all out defensive position at all. The points were weak and the Respondent had no merit on the facts or law.

6. At paragraphs 15-34 the Respondent seeks to argue that the submissions he made at the hearing were not unreasonable; in particular *"they are not frivolous or unreasonable, the Tribunal could have found for the Respondent on any one of them."* On the basis of the Tribunal's decision, that was unlikely, and the decision explains why. We are not going to repeat our conclusions. The Respondent did not suffer a near miss as he suggests and to seek to avoid a costs order on this basis is misconceived, though we accept that losing is not enough of itself to warrant an adverse costs order. Moreover, it is clear that having heard the Respondent give oral evidence, on which he was cross examined by the Applicant's counsel, that we took a critical view of the Respondent's personal conduct in the management of the property, for the reasons we gave, and which were entirely justified.

7. The Respondent invites the Tribunal to consider the history of the application (paragraphs 35-102). We do not consider that it is necessary or desirable to deal with these allegations, many of which predate the county court referral to the Tribunal. But a very good example of the Respondent's failure to understand the impact of his position on the management of the property as a whole is well summarised by paragraph 102: *"It should be remembered that the Respondent had the roof repaired twice and that efforts were in fact made by him. This contrasts with nothing being achieved by the Applicant since his appointment in January 2014".* Anyone unacquainted with this case might be forgiven for not appreciating (i) that the Respondent's own account of his attempt to repair the roof shows how inadequate he was and (ii) the application to appoint the Applicant as a manager was due to the condition of the roof, and the application for service charges heard by the Tribunal, necessitated by the fact that due to the Respondent's refusal to pay anything, he had no funds to repair the roof. This paragraph is also a good example of how the Respondent makes free with submissions which are superficially attractive but absolutely misconceived. It follows that a review of the history of the litigation as proposed by the Respondent would waste judicial time and take this decision no further forwards, it being riddled with irrelevancies at best and inaccuracies at worst.

8. We accept the submissions of the Applicant (paragraphs 36-44) as to the unreasonable litigation conduct of the Respondent. We add to those the observations made above and the conclusions and criticisms made in the substantive decision. We have no hesitation in concluding that the Respondent's litigation behaviour was, and arguably continues to be (in

submitting a lengthy submission on costs which travels well beyond any reasonable remit) unreasonable in the context now set out in the *Willow Court Management* case[2], paragraphs 24-26. We add, for those who might not appreciate it, that the Respondent was represented throughout.

9. The Respondent filed further submissions as invited post *Willow Court* dated 21st July. Again, there is an attempt to re-open argument and history: to summarise, the Respondent's position as fighting back on the grounds that it was the *Applicant* who wasted time and costs (see eg paragraph 34) is yet another example of the Respondent missing the point. That argument alone is a waste of time. Nothing in these submissions justifies a conclusion that the Respondent's behaviour was not unreasonable.

10. On the second *Willow Court* requirement, it should be plain by now that this is a clear case in which we exercise our judicial discretion to award the Applicant his costs of the Tribunal proceedings. It would be plainly wrong to step away from the practical conclusion required by our analysis. The Applicant should have his costs of the Tribunal proceedings on the standard basis to be summarily assessed, and the Respondent should have to pay them.

11. As to the assessment itself, the schedule will have to be revised in accordance with the directions given above. It does not enable the Tribunal to distinguish costs sought generally with those specifically referable to this application, including the costs of the further application issued on the day of the hearing. Once the directions are complied with, the Tribunal will assess the costs.

Judge Hargreaves
Michael Taylor FRICS
10th August 2016

[2] [2016] UKUT290 (LC)