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		FIRST-TIER TRIBUNAL PROPERTY CHAMBER (RESIDENTIAL PROPERTY)
Case Reference	:	LON/00AX/LSC/2015/0459
Property	:	21 Osiers Court, Kingston upon Thames, KT1 1PL
Applicant	:	Stephen Raymond Guest
Representative	:	In person
Respondent	:	Osiers Court Properties Ltd.
Representative	:	Carter Bells Ltd.
Type of Application	:	Applicant's application for costs
Tribunal Members	:	Judge Dickie
Date of decision	:	9 December 2016

DECISION

The application for costs is dismissed for the following reasons:

1. Mr Guest seeks his costs in resisting the Respondent's application for an extension of time to seek permission to appeal, and those in making his application for costs. A jurisdictional issue arises in interpreting the Tribunal Rules. The Tribunal may only make an order for costs if a person has acted unreasonably in "bringing, conducting or defending proceedings", and the deadline for making an application for costs is 28 days after the Tribunal sends "a decision notice recording the decision which finally disposes of all issues in the proceedings"¹.
2. The Tribunal has considered whether an application for an extension of time to seek permission to appeal is "an issue in proceedings". If it is not, then Mr Guest's

¹ Rule 13(5)(a)

application is out of time and, by implication, no costs are payable under the Rules in relation to such an application. The Respondent's solicitors have identified the issue in their written submission – and remarked that Mr Guest has not provided any evidence or submissions that “issues in the proceedings” can include responding to an application made for an extension of time to seek permission to appeal.

3. The Tribunal's decision on the application was issued on 30 June 2016, and the period of 28 days from that date expired on 28 July 2016. No application for costs was made by that date. This was, of course, because the application for costs relates to matters which took place after that date.
4. Mr Guest submits that his application is in time because it was received within 28 days of issue of the Tribunal's decision refusing to extend time for the Respondent to appeal out of time. That application had been received by the Tribunal on 5 August 2016. If Mr Guest is correct, then any application for an extension of time to seek permission to appeal revives the opportunity to apply for costs under Rule 13 (without an extension of time) which had otherwise expired.
5. The Tribunal prefers the Respondent's position, and considers that the notice sent on 30 June 2016 was the final determination of all issues in the proceedings, and that the out of time application for permission to appeal did not raise “issues in the proceedings”, but was instead a preliminary to seeking permission to appeal. Such an appeal would have been separate proceedings (in relation to which the Upper Tribunal would have jurisdiction in respect of costs).
6. However, if that is wrong, and it was for the Tribunal to consider whether to extend time, it would in all of the circumstances not be appropriate for it to do so. The Respondent's solicitors rightly identify that the overriding objective requires the Tribunal to deal with cases in a way which is proportionate. Mr Guest in applying for an order for costs of over £1000 (a plainly unreasonable figure for a litigant in person to respond to a paper application of this nature), seeks to drag out this litigation still further and engage the Tribunal and the Respondent's resources in additional disproportionate disputes which would be unjust.
7. Should the Rule 13 discretionary power extend to an order for costs in respect of an application to extend time for permission to appeal (because the costs application was in fact in time, because time was extended, or because the Respondent's application could be said to be separate “proceedings” before the Tribunal), this is certainly an inappropriate case for its exercise. Mr Guest's position amounts to a suggestion that, having failed to seek permission to appeal in time, it was unreasonable of the Respondent's solicitors to seek an extension of time for permission to appeal. Plainly, however, seeking an extension of time was in fact the only reasonable step which a solicitor could take in such circumstances, and as it sought the exercise of a discretion it cannot logically be said that the application was bound to fail.
8. The Tribunal considers that the tests in *Willow Court Management Company Limited, Sinclair and Stone* are not met. The Tribunal refers to the comments upon the Respondent's conduct in these proceedings in its substantive decision, and would refuse to exercise discretion in his favour in any event.