



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

Case reference : **LON/00BK/LSC/2019/0021**

Property : **17 Falmouth House, Clarendon Place,
W2 2NT**

Applicant : **Falmouth House Limited**

Respondents : **1. Treetop Investment LLC
2. Anar Properties Limited (now
removed as a party)
3. Kiran Sancheti & Harshavardhan
Sancheti**

Type of application : **Costs – Rule 13 Tribunal Procedure
Rules**

Tribunal member(s) : **Mr M Martyński (Tribunal Judge)
Mrs N Carr (Tribunal Judge)**

Date of decision : **23 November 2020**

DECISION

Decision summary

1. The tribunal determines that the Applicant has not acted unreasonably in the ways alleged by the Third Respondents and dismiss the application for an award of costs.

Background

2. This application for costs, made by the Third Respondents against the Applicant, arises from a Service Charge dispute between the parties in respect of which this Tribunal (which at that time included Mr Geddes, who has since retired from the Tribunal) issued a decision in March 2020.
3. In that decision, the tribunal determined that the sums claimed by the Applicant in respect of Service and Administration Charges were not payable by the Respondents. The decision is now the subject of an appeal.
4. We have been assured by the parties that the appeal of the tribunal's decision of March 2020 does not, and will not, affect the tribunal's deliberations and decisions on the costs application. The reason for this is that the application for costs concerns behaviour which occurred during the course of the proceedings but prior to the final hearing.
5. This decision has been made on the basis of the written representations received from the parties following the publication of the Tribunal's decision in March 2020.

The Third Respondents' case on costs

6. The Third Respondents claim costs in the sum of £10,960.20. The claim is made pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
7. During the course of the substantive proceedings, a final hearing was set for 30 September 2019. That hearing was adjourned by Judge Vance on 24 September 2019. The Judge noted;

'the case is not ready to proceed' and; 'the tribunal's case officer's enquiries of the applicant's solicitors have indicated that there has been a change of solicitor with conduct of this matter, and that hearing bundles have not been prepared'.
8. Prior to this there had been warnings from the tribunal that the parties were required to comply with the directions given.
9. It is the Third Respondents' case that prior to the hearing date set for 30 September 2019, the Applicant;

- (a) Did not give proper disclosure in accordance with directions
 - (b) Served no witness statements
 - (c) Did not prepare any hearing bundles
10. The Third Respondents argue that the Applicant failed to make even the most basic preparation for the trial and in so doing, had failed to comply with the tribunal's directions. This was unreasonable behaviour and there was no adequate explanation for such behaviour.
11. The Third Respondents go on to suggest that the Tribunal should exercise its discretion to make an award of costs given that the Applicant's failings were serious, resulting the vacation of a trial date. This in turn led to the Third Respondents being liable for Counsel's brief fee for the aborted hearing and witnesses' cancelled flights.

The Applicant's response

12. In its response, the Applicant sets out the procedural detail of the proceedings in considerable detail. Some highlights from that chronology are as follows:-

5 August 2019; A filed its amended Statement of Case and responses to the Third Respondents' schedule. At the same time A complained that the Third Respondents had failed to file an amended schedule as ordered and the schedule was not in the format as directed by the tribunal. Further, the schedule challenged every item making up the service charge demands in the period 2011-2017 on generic and unparticularised grounds. To provide a full response would require an audit going back to 2011 and would require longer than allowed for in the tribunal's directions and would put the Applicant to considerable expense. A asks the tribunal to make an order to the effect that the Third Respondents set out a properly argued case or to amend the directions timetable further to allow it time to undertake the exercise of responding to the Third Respondents' current schedule.

13 August 2019; The Third Respondents' solicitors state that they are unable to particularise their client's case until they have had full disclosure from the Applicant.

2 September 2019; The Third Respondents make an application for specific disclosure.

12 September 2019; The Applicant opposes the application pointing out that the Third Respondents needed to particularise their claim and reiterated that the Third Respondents had done so far was to raise repeated generic objections to the Service Charges claimed.

23 September 2019; The Applicant writes to the Third Respondent's solicitors setting out their position that a substantive hearing would not be possible until the Third Respondents' application for disclosure was dealt with. They propose that the first day of the trial date be utilised for dealing with this application and for the giving of further directions.

24 September 2019; The tribunal converted the trial date to a Case Management Hearing.

30 September 2019; The tribunal use the hearing to give further detailed directions and to make a decision that the First Respondent's bankruptcy had not extinguished a claim for Service Charge arrears.

13. The Applicant then states; "*As is apparent from the chronology set out above, the Claim had a vexed procedural history which has, in large part, been caused by the conduct of Rs*".
14. The Applicant's submission on costs continues as follows:-

45. Thus, when considering if there was a reasonable explanation for the behaviour complained of, that behaviour must be set in its context: A and its solicitors, have been dealing with proceedings where the goal posts were constantly moving, both in terms of the defences it was having to meet but also in terms of which parties were participating in the litigation, in what capacity and to what extent.

The Third Respondents' response

15. The response can be summarised from the following extracts taken from the Third Respondents' submission in response to the Applicant's case on costs;

2. A's representations are a *tour de force* and include a mass of detail. But they do not obscure the telling admission at para 56 "*...that A did not file a trial bundle or witness evidence prior to the hearing*" listed for 30.09.19 and 1.10.2019. These "*defaults*" (A's own word) were the actual reason the hearing went off. Try as it may, A cannot get round the reasons this happened, which were explained by Judge Vance in the Tribunal's letter of 24.09.19.

3. Nowhere in the 65 paragraphs of A's representations is there actually any explanation about why A did not provide the basic material for the trial of the application to the Tribunal and the other parties in time for the hearing. Neither is there any explanation as to why A ignored the F-tT's clear warning on 17.09.19 that there was "*no merit in vacating these hearing dates*" and that "*the parties will need to try and deal with the case as best they can at the hearing*".

The law

16. The relevant parts of Rule 13 of the Tribunal's rules provide as follows:

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.

17. In *Willow Court Management Company (1985) Limited v Mrs Ratna Alexander* [2016] UKUT 290 (LC), the Upper Tribunal set out a guideline procedure to determine applications for costs under Rule 13 as follows:

28. At the first stage the question is whether a person has acted unreasonably. A decision that the conduct of a party has been unreasonable does not involve an exercise of discretion but rather the application of an objective standard of conduct to the facts of the case. If there is no reasonable explanation for the conduct complained of, the behaviour will properly be adjudged to be unreasonable, and the threshold for the making of an order will have been crossed. A discretionary power is then engaged and the decision maker moves to a second stage of the inquiry. At that second stage it is essential for the tribunal to consider whether, in the light of the 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.

18. The issue of unreasonable conduct and reasonable explanation was further considered by the Upper Tribunal in *Laskar v Prescott Management Limited* [2020] UKUT 241 (LC). In this case the Tribunal emphasised the need to consider context in coming to a conclusion as to whether conduct is unreasonable. The Tribunal comments as follows:

41. In order to determine whether, objectively, the conduct complained of was unreasonable it was essential for the FTT to consider it in its context and not simply, as it appears to have done, to have treated it as the latest examples of a litany of random abuse directed against the respondent and its officers and agents by the appellants and Mr Khan.

Decision

19. In our decision made in respect of the substantive issues in March 2020, we made the following comments;

20. Treetop have not paid any Service Charges, nor has Anar Properties, nor have the Sanchetis. We have little doubt that their intention is to pay nothing and to avoid liability by any means. We come to that conclusion for the following reasons:

(a) The history of litigation between the parties clearly shows that there is huge animosity between two main factions at the Building, the first of those factions being the current directors of the Applicant and the others being the former directors (including Mr Dao) and the various owners of Flat 17 and other members of the Sancheti family.

(b) The fact that no Service Charges whatsoever have been paid – even if there was genuine concern on the part of the Respondents on the way the Building is managed, the fact is that the Building cannot be run without some contribution to its funds.

(c) The fact that Treetop were willing to rely on any technical argument to avoid liability, no matter how far-fetched and unmeritorious, in these proceedings (see later in this decision).

20. Context is everything in this application. The relevant context being that the Respondents were determined to use any argument, regardless of merit, in order to defeat the Applicant's case. Of course, the Third Respondents were successful

in their endeavours. However, the way in which they and the First Respondent went about contesting the proceedings contributed in part to the delays, adjournments and confusion in the proceedings.

21. In our view, the tactics employed by the Respondents, including their decision to contest all Service Charges over several years, but only in generic terms, and, in the light of that, to then demand disclosure of all documents from those years, put the Applicants in a very difficult position.
22. It is clear, in hindsight, that the case could not have gone to a final hearing in September of 2019, too much by way of unresolved case management, was outstanding. One of the directions made on the aborted trial date was for the Third Respondents to properly set out their case.
23. The Applicant's solicitors could clearly see that there were going to be insurmountable problems in trying to make 30th September an effective date for trial. They clearly made efforts to adjourn the proceedings in order to get some clarity in the preparation of the case.
24. In this context, whilst the Applicants undoubtedly failed in the three principle respects as alleged by the Third Respondents, that failure had a reasonable explanation, in part at least down to the way in which the Respondents (there is of course a close connection between the Respondents) were conducting proceedings.
25. Accordingly, we conclude that the Applicant's conduct was not objectively unreasonable in the circumstances and that the Third Respondents' application for costs falls at the first hurdle. Having come to this conclusion, there is no need for us to consider if we should go on to use our discretion to make an award of costs nor to quantify such costs.
26. We should add that, if we are wrong on our consideration of the first stage of the procedure, i.e. that the Applicants had behaved unreasonably, for the reasons set out in this decision, we would have exercised our discretion not to make an award of costs.

Name: Deputy Regional Tribunal
Judge Martyński

Date: 23
November 2020

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).