

10494



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

Case Reference : **CAM/12UE/LSC/2014/0013**

Property : **1 – 24 Watersmead, 1 – 18 Marina View &
1 – 39 Ouse Valley Way, Buckenden Marina,
Buckenden, Cambridgeshire PE19 5QS**

Applicants : **The Leaseholders**

**Recognised Tenant's
Association** : **Mr Barry Tucker (Secretary)
Buckden Marina Residents Association**

**First Respondent
Immediate Landlord
Representative** : **Aquatime Limited
Y & Y Management Ltd.**

**Second Respondent
Freeholder & Head
Landlord
Representative** : **MW Leisure Estates Limited
Leeds Day Solicitors**

**Date of Original
Application** : **24th January 2014**

Application : **Application for costs (Part 2, rule 13
Tribunal Procedure (First-tier Tribunal)
(Property Chamber) Rules 2013 following
an Application for a determination of the
reasonableness and liability to pay Service
charges (Section 27A Landlord and Tenant
Act 1985)**

Tribunal : **Judge JR Morris
Mr David S Brown FRICS**

Date of Decision : **19th December 2014**

DECISION

© CROWN COPYRIGHT 2014

Decision

The Tribunal makes no order for costs under Part 2, rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. .

Reasons

Application

1. On 6th May 2014 the Second Respondent's Solicitors applied for an Order of Costs against Buckden Marina Residents' Association in the sum of £391.50 plus VAT.

Evidence

2. On the 24th January 2014 the Recognised Tenant's Association purported to apply for a determination of reasonableness and payability of the service charges incurred for the year ending 30th June 2013 and 14 on behalf of the Leaseholders.

3. The part 1 of the Application form stated that the Applicants were:

The Leaseholders of 1-24 Watersmead, 1-18 Marina View and 1-39 Ouse Valley Way, Buckden Marina. As per attached list.

However, in lieu of the list there was an extract from the Annual General Meeting of the Recognised Tenants' Association on the 21st July 2013, which minuted that it was agreed the Application should be made.

4. The extract from the minutes read:
 1. The Committee proposes that the BMRA (Buckden Marina Residents' Association) action be taken to audit the 2012/2013 accounts.
 2. The Committee proposes that when the results of the audit are available the BMRA proceed to the LVT to reclaim any unreasonable under spend as a rebate.
 3. The Committee proposes that legal advice is sought regarding the alleged breach of lease by MWLA (MW Leisure Estates Limited) in not giving proper notice to the Tenants of the previous qualifying long term agreement of the Leisure Club Business to Senico and an application made to the LVT if appropriate.
 4. The Committee proposes that the legal advice is sought regarding the validity of MWLE demanding "Landlord Consent" fees and the maximum level of fees of landlord consents and an application made to the LVT if appropriate.
 5. The Committee proposes that should the Tomlin Order relating to the repair of the ski lake still be in breach by MWLE at the end of August 2013 the order be enforced in the Courts.

The minutes then recorded that a vote to adopt all five proposals was called for which was passed unanimously but for one abstention.

5. The Secretary of the Recognised Tenants' Association had signed the Application Form.
6. With the Application Form was letter dated 21st January 2014 to the Respondents' Solicitors stating that Buckden Marina Residents' Association had appointed a named Auditor to carry out a Management Audit for the service year 2012-13. It specified the evidence that the Auditor required sight of and said that:

"In accordance with section 80 our Auditor proposes to begin his inspection at the business premises of MWLE, Buckden Marina on February 24th 2014 which is not less than one month or more than two months from the date of this Notice."
7. With the Application Form was a letter, which referred to a previous Application (a copy of which was enclosed), which had been made to the Tribunal in 2010 when a full list of names and signatures of Leaseholders had been provided. It also referred to the Annual General Meeting of the 31st January 2013 and the vote taken mentioned above. It was further mentioned that the Buckden Marina Residents' Association was a member of the Federation of British Residents' Association and had been accepted as an equal partner by a number of different solicitors, in particular the Second Respondents' Solicitors. It was also stated that:

"You will appreciate the amount of work involved in obtaining signatures for 81 owners, some of who may not come to the Marina through the winter months. It is our hope the tribunal are prepared to accept this application without the need for yet more work in the preparation of our case."
8. On 28th January 2014 a copy of the Application Form and enclosures was sent to the Second Respondent's Solicitors who returned it on the 14th February 2014 saying that they had not been instructed to accept service.
9. The Tribunal gave Directions on the 17th February 2014, which were sent out on the 19th February 2014. The Directions were issued under the misapprehension that the list of Applicants referred to in the Application Form had been provided and that it was a signed Schedule of Leaseholders. They noted that a notice had been served to inspect the accounts and an allowance had been made in the timing of the first Direction, which was for the Applicants to serve a Statement of Case after the inspection.
10. On the 3rd March 2014 the Second Respondent's Solicitors informed the Tribunal that they had been passed a copy of the Directions and Application Form and noted that it referred to an attached schedule confirming which of the leaseholders are a part of the application but that this had not been included.
11. On the 5th March 2014 the Tribunal wrote stating that it agreed a signed Schedule of Leaseholders would be required and requested this from the Secretary of Buckden Marina Residents' Association.

12. On 4th March 2014 the Secretary of Buckden Marina Residents' Association emailed the Second Respondent's Solicitors stating that the decision to submit an Application to the Tribunal had been unanimously agreed at the Annual General Meeting on the 31st January 2014 and trusted that this was sufficient.
13. On the 6th March 2014 the Secretary of Buckden Marina Residents' Association wrote to the Tribunal referring to an email from the Second Respondent's Solicitors of the 3rd March 2014 stating that the Second Respondent had refused to allow the Auditor to inspect the accounts and other documentation as the relevant notices had not be correctly served. Therefore the Applicants could not comply with the first Direction.
14. On the 10th March the Secretary of Buckden Marina Residents' Association wrote to the Tribunal providing a list of Applicants and stating that 76 of the Leaseholders had contributed to the Application Fee.
15. On 28th March 2014 the Second Respondent's Solicitor wrote to the Tribunal requesting that the matter be struck out as an abuse of process because the Applicant had failed to provide a Statement of Case as directed. The Secretary of Buckden Marina Residents' Association made a statement of truth in the Application Form which alleged the service charges were unreasonable and this should now be substantiated.
16. On 31st March 2014 the Tribunal Judge confirmed that there had been no signed Schedule of Applicants with the Application Form. Therefore the Application was not valid and the Directions were issued in error. It was added that the signatures of the Leaseholders would be required for the Application that the Secretary of Buckden Marina Residents' Association had in mind.
17. On 2nd April 2014 the Secretary of Buckden Marina Residents' Association wrote to the Tribunal expressing his disappointment at the decision and that he did not know sooner that the signatures would be required. He also added that the Association was seeking advice regarding obtaining a full statement of costs so they could audit the Service Charge.
18. On 6th May 2014 the Second Respondent's Solicitors applied for an Order of Costs against Buckden Marina Residents' Association in the sum of £391.50 plus VAT because they had failed to continue with the Application which had in effect been struck out.
19. On the 10th September 2014 the Secretary of Buckden Marina Residents' Association wrote stating that he had made the Application in good faith and was under the impression that the consent of the Leaseholders having been obtained for the previous Tribunal Application would be sufficient. Also the unambiguous consent of the Leaseholders on a list sent to the Tribunal had been obtained by their contribution towards the cost of the Application.
20. On the 16th September the Second Respondents Solicitors replied confirming the content of their letter of 6th may 2014

21. On 9th October 2014 the Tribunal issued Directions with regard to the Application in respect of Costs considering the case suitable for a determination on the basis of the papers lodged or to be lodged without the need for a hearing and that a determination will be made on or after the 10th November 2014. It was stated that a hearing would be arranged if either party requested but neither did so (Part 4, rule 31 Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

The Law

22. The Law relevant to this application for costs is as follows:

Orders for costs, reimbursement of fees and interest on costs

13. (1) *The Tribunal may make an order in respect of costs only—*
(b) *if a person has acted unreasonably in bringing, defending or conducting proceedings in—*
(ii) *a residential property case, or*
(iii) *a leasehold case; or*
- (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.*

Decision

23. The Tribunal has given careful consideration to the evidence and law under Part 2, rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. It takes the view that proceedings include any action in the course of bringing an application such as submitting an application form.
24. The proceedings commenced on the 24th January 2014 when the Applicants through the Recognised Tenant's Association purported to apply for a determination of reasonableness and payability of the service charges incurred for the year ending 30th June 2013 and 14. The proceedings ended on 31st March 2014 when the Tribunal Judge confirmed that there had been no signed Schedule of Applicants with the Application Form and therefore the Application was not valid and the Directions were issued in error.
25. The Tribunal then considered the conduct of the Applicants in bringing and conducting the proceedings during this period to assess whether that conduct was unreasonable.
26. The Tribunal identified two questions:
1. Whether the Leaseholders and Buckden Marina Residents' Association were reasonable in their belief that they had given authority for the taking of proceedings?
2. Whether the proceedings were well founded?

27. The proceedings were based upon the five proposals passed at the Annual General Meeting. Proposals 1, 4 and 5 are not within the jurisdiction of a First-tier Tribunal of the Property Chamber (Residential Property).
28. With regard to the first issue the Tribunal noted that the list of Leaseholders was omitted from the Application Form although in part 1 of the form it was stated it had provided. In response the Secretary of Buckden Marina Residents' Association submits that it was thought that it would be sufficient for there to be a combination of:
 - The list of signatures of Leaseholders from the previous case,
 - The extract from the Buckden Marina Residents' Association Annual General Meeting held on the 31st July 2013,
 - The list of Leaseholders recording their contribution to the proceedings.
29. The Tribunal determined that this belief was reasonable. Therefore it considers the action of the Secretary of Buckden Marina Residents' Association was reasonable in bringing the action based on the vote, notwithstanding it the vote was not enough and a signed Schedule of Leaseholders was required.
30. With regard to the second issue the Tribunal firstly noted that the evidence for the Applicants' Statement of Case for the action based on Proposal 2 in respect of the service charge generally was dependant on the Buckden Marina Residents' Association's own audit of the Service Charge Account for the year ending 31st March 2013. As this had not occurred at the time of the Application, the Application was pre-emptive. As the audit had not taken place it is not clear what evidence there was to say the service charge was unreasonable. Notwithstanding that the Directions took account of the need for the audit and required the Applicant's statement of case to be submitted before any action was required by either Respondent, nevertheless if the Application had been solely on this basis it is questionable whether the Application would have been reasonable.
31. Secondly with regard to the second issue the Tribunal considered whether it was reasonable to make an application based on Proposal 3, that it had been alleged that a qualifying long term agreement had been entered into without consultation. The Tribunal determined that it was reasonable for the allegation to be answered through making the Application.
32. Therefore as Buckden Marina Residents' Association reasonably believed they had authority to commence proceedings and that it was reasonable to commence proceedings in respect of a qualifying long term agreement having allegedly been entered into without consultation, the Tribunal finds that the Association has not acted unreasonably in bringing the proceedings and makes no order for costs under Part 2, rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

Judge JR Morris

*Any party to this Decision may appeal against the Decision with the permission of the Tribunal. The provisions relating to appeals are set out in Part 6 of **The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013**. An application for permission to appeal must be delivered to the Tribunal within 28 days after the Tribunal sends the Decision to the person making that application.*