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

Case Reference : **LON/00AC/LVL/2013/0014**

Property : **7 Foley Court, 55 Nether Street,
London N12 7NP**

Applicant : **Various leaseholders**

Representative : **Mr D. J Birn – Dealshaker Limited**

Respondent : **Foley Court Management Limited**

Representative : **Rennie & Partners**

Type of Application : **Application for costs under rule 13
The Tribunal Procedure (First-tier
Tribunal)(Property Chamber)
Rules 2013**

Tribunal Members : **Judge O’Sullivan**

**Date and venue of
Hearing** : **10 Alfred Place, London WC1E 7LR**

Date of Decision : **16 December 2013**

DECISION

Decisions of the tribunal

Pursuant to Rule 13 the tribunal determines that the Respondent shall pay to the Applicants the sum of £500 plus Vat in respect of Counsel's fees and £250 in respect of solicitors costs.

The application

1. The Applicants seek an order for costs against the Respondent following the withdrawal of proceedings. The original application for a lease variation of Flat 7 at the above address was made under Part IV of the Landlord and Tenant Act 1987. It was dated 18 July 2013 and directions were issued on 24 July 2013 and a hearing scheduled to take place on 20 November 2013.
2. The variation sought is the deletion of the provision that limits the lessee's liability to pay a service charge until planning permission has been granted for the flat. The tribunal subsequently received a cross application on 19 November 2013 to withdraw the matter on the basis that a cross application was necessary to vary the service charge percentages payable pursuant to the other leases in the premises and that this had not been identified at an early stage.
3. Directions were made in relation to the costs application dated 20 November 2013 and the application was considered on 16 December 2013 by way of a paper determination.

The Applicants' case

4. By letter dated 26 November 2013 the Applicants served a calculation of their costs, a copy of Counsel's fee note and a statement of case. The Applicants' costs totalled £1,537 together with Counsel's fees in the sum of £1200 plus Vat.
5. The costs were incurred at the rate of £250 per hour with 6 minute units of £25 for perusals and outgoing email/letters and half of that rate for incoming items. No Vat is payable on those fees. Counsel's fees are £1200 plus Vat. The Applicants say that the Respondent instructed Counsel at a very late stage and had they been instructed at an earlier stage they may have been able to agree an amendment of the present application. The Applicants say that they have incurred all the essential costs for the trial of the matter and that Counsel had prepared his brief and skeleton and had reserved the day of the hearing to attend. It is also said that on any new application new and further costs will be incurred as the matter will be on a substantially different basis.

The Respondent's case

6. The Respondent says that the reason for the late withdrawal was the late instruction of Counsel. The Respondent was advised by Counsel that if the application to vary the lease of Flat 7 were to be granted the variation of the other leases in the building would be necessary. The Respondent had hoped that the variation of all remaining leases could be achieved voluntarily rather than via an application to the tribunal.
7. It also says that no point was taken by the Applicants on the issue of the other leases.
8. The Respondent says that this is not an unmeritorious or frivolous application. The lessee of Flat 7 has not paid any service charges since 2000 and has been subsidised by the other lessees. The application is said to be withdrawn due to errors rather than due to a lack of merit.
9. The Respondents accept however that the late withdrawal was unreasonable and ask that any costs order be limited to hearing costs only. They point out that much of the work done will be relevant to the new application and will not have to be repeated, the withdrawal being due to a technical point.

The Tribunal's decision

10. The tribunal has the power to order costs under Rule 13. However this power is limited to wasted costs or if person has acted unreasonably in bringing, defending or conducting proceedings.
11. Rule 13 provides 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) a residential property case, or

(iii) a leasehold case”
12. Section 29(5) of the Tribunals, Courts and Enforcement Act 2007 defines wasted costs as;

“any costs incurred by a party-

(a) as a result of any improper, unreasonable or negligent act or omission on the part of any legal or other representative or any employee or such a representative, or

(b) which, in the light of any such act or omission occurring after they were incurred, the relevant Tribunal considers it unreasonable to expect that party to pay”

13. The Applicants do not specify if the application is made on the basis of an application for wasted costs under 29(4) of the 2007 Act or under Rule 13 (b). The tribunal will therefore deal with both provisions.
14. The tribunal does not consider that it is appropriate to make an order for wasted costs in this instance. It does not consider that it can be said that any legal or other representative has acted improperly, unreasonably or negligently. There is no suggestion by the Applicants of any improper or negligent conduct.
15. In relation to an application under Rule 13, the Applicant’s main submission is that had Counsel been instructed at an earlier stage agreement may have been reached in relation to a conditional application on the basis of the tribunal’s findings.
16. The tribunal first considered whether the Respondent could be said to have acted unreasonably in bringing the application. The tribunal notes that the issue of whether the leaseholder of Flat 7 was the appropriate party to the application was considered by Judge Andrew when making directions on 24 July 2013. He noted that although all lessees were named as Respondents to the application, he was satisfied that the correct Respondent was the lessee of Flat 7 as the application only related to that flat. The tribunal is therefore satisfied that the Respondent acted reasonably in bringing the application.
17. The tribunal then considered whether the Respondent could be said to have acted unreasonably in conducting the proceedings. No criticism is made of the Respondent in relation to any compliance with directions and in fact a hearing bundle was lodged by them in readiness for the hearing.
18. The criticism in relation to the conduct of the proceedings appears to solely relate to the late withdrawal of the proceedings. The application was withdrawn on 19 November 2013 when the hearing was due to take place on 20 November 2013. It is unfortunate that the Respondent did not seek a variation of the directions at an earlier stage and/or consider making an application in respect of the other leases at the property with a request that both applications be heard together. In such

circumstances it may have been possible to obtain the tribunal's agreement to an adjournment of the hearing and the withdrawal may not have been necessary.

19. The Respondent accepts that the late withdrawal was unreasonable.
20. The tribunal considers that it is appropriate in this instance to make an order for costs under Rule 13. However it considers that these should be limited to the costs of the late withdrawal. Counsel's fee note does not contain a breakdown of the fee relating to the attendance at the hearing and thus taking a broadbrush approach the tribunal considers an order should be made for £500 plus Vat of those costs. As far as Mr Birn's costs are concerned the tribunal considers that a total of one hour should be allowed for the time spent in dealing with the issue of an adjournment in the total sum of £250.

Name: S O'Sullivan

Date: 16 December 2013