

9315



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

**Case Reference** : LON/00BG/LSC/2013/0050

**Property** : 44 Knighthood Point, The Quarterdeck,  
London E14 8SR

**Applicant** : One Housing Group Limited

**Representative** : In-House Solicitors

**Respondents** : (1) Kong Chuan Lee  
(2) Colin Gary Hall

**Representative** : N/A

**Type of Application** : Application under Section 27A Landlord  
& Tenant Act 1985

**Tribunal Members** : (1) Mr A Vance LLB(Hons) (Chair)  
(2) Mr A Lewicki, BSc(Hons)  
FRICS, MBEng  
(3) Mrs J Hawkins, BSc MSc

**Date of Decision** : 03.10.13

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**DECISION ON COSTS**

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## **Decision of the Tribunal**

1. The tribunal makes no order in respect of the costs of this Application.

## **Introduction**

2. The Applicant sought a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Respondents in respect of 44 Knighthed Point, The Quarterdeck, London E14 8SR ("the Property") for the service charge years 2006/7, 2007/8, 2008/9, 2009/10, 2010/11 and 2011/12.
3. Proceedings were originally issued in the Northampton County Court under claim no. 2QT28394. The claim was transferred to the Bow County Court and then in turn transferred to this tribunal, by order dated 17.01.13.
4. An oral pre-trial review took place on 19.02.13 at which both the Applicant and the Respondent attended. Directions were issued by the tribunal on the same day and the application was listed for hearing on 10.06.13 with a time estimate of one day.
5. The application was part-heard on 10.06.13 but was adjourned as the tribunal required sight of the invoices relating to the costs in dispute (the Applicant had been directed to provide in paragraph 11(d) of the directions of 19.02.13 but this had not occurred) and also because there was insufficient time to deal with all the issues raised by the Respondents.
6. Further directions were made by the tribunal at the hearing on 10.06.13. They included a direction that the Applicant send to the Respondents and to the tribunal, by 01.07.13, copies of all relevant invoices, bills and vouchers relating to the expenditure set out in the service charge accounts for the service charge years in dispute. The Respondents were to provide any submissions in response and any other documents on which they intend to rely by 22.01.13. The application was listed for further hearing to take place on 15.08.13 with a time estimate of one day.
7. Under cover of a letter dated 08.07.13 the Applicant supplied the tribunal with copies of invoices for all years in dispute except 2006/7 and 2007/8 and indicated that the invoices for the remaining years would follow as resources allowed.
8. The Respondents, after consideration of the copy invoices sent to them by the Applicant, sent to the tribunal a further statement of case dated 21.07.13.

9. By letter dated 07.08.13 the Applicant proposed that this application be stayed pending determination of three other tribunal applications concerning properties on the estate that were to be treated as lead cases under Rule 22 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (“the 2013 Rules”).
10. As that request was opposed by the Respondents that tribunal informed the parties that oral arguments concerning the Applicant’s request for a stay would be dealt with as a preliminary point at the start of the hearing listed for 15.08.13.
11. The Applicant responded by letter dated 13.08.13, requesting that the tribunal reconsider its decision not to stay the application. If a stay was not to be granted the Applicant sought permission to withdraw its claim.
12. The tribunal’s response of 14.08.13 was to reaffirm its decision not to stay the application without hearing oral argument from the parties. The parties were notified that if the Applicant wished to withdraw its application then it needed to comply with the provisions of Rule 22 of the 2013 Rules that requires the provision of a written notice of withdrawal containing the information set out at Reg. 22(2). Given the need for the Applicant to enquire as to whether or not the Respondent consented to a withdrawal and the very limited amount of time left the tribunal indicated that any application for withdrawal would be dealt with at the start of the hearing on 15.08.13.
13. The Applicant then decided to discontinue the underlying proceedings in the Bow County Court (Claim Number 2QT28394) by filing and service of a Notice of Discontinuance of those proceedings. The parties were notified that the tribunal no longer has jurisdiction to deal with the matters transferred to it by the County Court and the hearing listed for 15.08.13 was vacated.
14. The tribunal invited both parties to make written submissions as to whether or not an order in respect of costs should be made as per paragraph 10(2) of Schedule 12 Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”). As this application was transferred to the tribunal prior to the coming into effect on 01.07.13 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, the parties were reminded that the most the tribunal can order another party to pay is £500 and that no award can be made unless the tribunal is satisfied that the circumstances set out in paragraph 10(2) are met.

### **The Law**

15. Paragraph 10 (2) of Schedule 12 of the 2002 Act provides that a tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in circumstances where an application to the tribunal is dismissed or where, in the opinion of the tribunal, a party has acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.

16. By virtue of paragraph 10(3) the amount which a party to proceedings may be ordered to pay is limited to £500, unless specified otherwise in regulations.

### **The Respondents Case**

17. The Respondents contend that the test in paragraph 10(2) of the 2002 Act is met and that the Applicant should pay costs in the sum of £1,054.93. A breakdown of the costs said to have been incurred is included in their submissions on costs dated 23.08.13.
18. The Respondents refer to the Applicant's failure to comply with the Tribunal's direction to provide copy invoices, bills and receipts with the result that the hearing of 10.06.13 had to be adjourned to 15.08.13.
19. They also argue that in the run up to the intended hearing on 15.08.13 that the Applicant acted unreasonably in seeking a stay of proceedings without good reason.
20. Reference is also made in their submissions on costs a conversation between the Applicant's solicitor and the First Respondent on 12.08.13. It is asserted that during that conversation the solicitor first threatened to seek costs and interest if the First Respondent continued to contest the Application and when that was unsuccessful offered to settle the claim in a discounted sum. This was then followed by the Applicant discontinuing the claim two days before the restored hearing was due to take place.
21. The Respondent's case is the Applicant was manipulative and acted frivolously and vexatiously "for the benefit of the Applicant" and that it disrupted the proceedings, wasting both the Tribunal's and the Respondents time.

### **The Applicant's Case**

22. The Applicant contends that it acted proportionally throughout these proceedings including in respect of its proposal to stay this application pending determination of the three lead cases to be dealt with under Rule 22 of the 2013 Rules.

### **Decision and Reasons**

23. We do not consider that the threshold for the making of an order for costs set out in paragraph 10(2) of the 2002 Act is met. We consider that our jurisdiction in this respect is limited to the proceedings following transfer from the county court to the tribunal.
24. As far as the proceedings before this tribunal are concerned we do not believe the Applicant's litigation conduct to have been frivolous, vexatious, abusive, disruptive or otherwise unreasonable.
25. Whilst it is regrettable that the Applicant did not comply with the direction to provide copies of the invoices relating to the costs in

dispute as required in the directions of 19.02.13 this was not the sole reason for the adjournment of the hearing on 10.06.13. There was insufficient time to deal with all the issues raised by the Respondents in any event.

26. Clearly, the Applicant should have complied with the tribunal's directions issued on 19.02.13 or contacted the tribunal to seek a variation in those directions. It is also regrettable that discontinuance occurred so close to the restored hearing date when the Respondents may well have spent considerable time in preparation for the hearing.. Nevertheless, we do not consider the Applicant's litigation conduct, including its request for a stay of proceedings; its attempt to seek to compromise this application with the First Respondent and, when that was unsuccessful, its discontinuance of the county court proceedings, amounts to conduct that meets the paragraph 10(2) threshold.
27. We therefore make no order in respect of the costs of this application.
28. This decision is not relevant to any costs incurred in the County Court proceedings.

**Amran Vance**

Judge of the First Tier Tribunal

Dated 03.10.13