



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

Case Reference : **BIR/00FN/LLC/2014/0006
BIR/00FN/LSC/2013/0009**

Property : **Stoughton Court, 24 Stoneygate Road,
Leicester, LE2 2AD**

Applicants : **Talvinder Singh Billen and Satbir
Kaur Billen,**

Respondents : **Mr Andrew Willis, Ms Michelle Gill,
Ms Claire Simmons, Mr Salim
Boodhoo**

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

Tribunal Members : **Judge C Goodall LLB MBA
Mr G S Freckelton FRICS**

Date of Decision : **17 December 2014**

DECISION

Background

1. The Respondents in this application are all leaseholders of flats at Stoughton Court, 24 Stoneygate Road, Leicester (“the Property”). The leases give responsibility for discharging management responsibilities to a company called Stoughton Court Management (Leicester) Limited (“the Management Company”). Mr & Mrs Billen (“the Applicants”) are the freehold owners of Stoughton Court.
2. In 2011, a number of flat owners at the Property formed a Right to Manage company which took over management of the Property on 15 December 2011. The Management Company therefore now has no role in the management of the Property, and it has been struck of the register of companies.
3. Mr Willis and five other lessees made an application (“the Original Application”) on 17 April 2013 for a determination of the service charges payable for service charge years 1 July to 30 June 2007/08, 2008/09, 2009/10 and 1 July 2010 to 15 December 2011. That application was given the reference number BIR/00FN/LSC/2013/0009. Mr Willis named the Applicants, and only the Applicants, as the respondents. By a direction of the Tribunal, the Management Company was made the Second Respondent in those proceedings.
4. On 27 May 2013, Mr Billen wrote to the Tribunal saying that he believed the correct respondent should be the Management Company. He subsequently instructed solicitors who clarified the issue he was raising as follows:

“We note that the Respondents in the application are Mr Talvinder Singh Billen and Mrs Satbir Kaur Billen. The allegations set out in the claim relate to service charges and management duties. Mr and Mrs Billen contend that these allegations should be addressed to the Management Company, a separate entity, and not to them in their personal capacity.”
5. The Tribunal held a hearing to determine, as a preliminary issue, the question of which parties should be included as respondent(s). The hearing took place at Leicester Magistrates Court on 23 September 2013. In its determination dated 1 October 2013, the Tribunal determined that:

“43. There is no realistic prospect of the Applicant’s [who are now the Respondents] case against the First Respondents [who are now the Applicants] succeeding for the reasons given. Accordingly, under Rule 9(3)(e) of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013, the Tribunal strikes out the claim against the First Respondents.”
6. The Management Company was still named as a respondent. But it had been struck off the register. Mr Willis, Ms Gill and Ms Simmons considered whether to apply to restore the Management Company to the

register and proceed, but in the end they decided not to do so and withdrew the Original Application by providing individual withdrawal applications dated between 28 March and 25 April 2014. Mr Boodhoo took no further part in the proceedings and failed to answer correspondence from the Tribunal, and the remainder of the Original Application was struck out by the Tribunal on 10 July 2014.

This application

7. On 28 August 2014, the Applicants solicitor faxed an application to the Tribunal (“the Costs Application”) for an order that the Respondents should pay the Applicants costs of successfully opposing the Original Application.
8. The Costs Application appeared to the Tribunal to be substantially out of time. The Tribunal has therefore considered as a preliminary issue whether it should be allowed to proceed, or whether it may not be brought because it is out of time. Both parties have been invited to make representations. Both have agreed that this preliminary issue can be determined on the basis of written representations.
9. The Tribunal has now considered the preliminary issue and this decision is the outcome of that consideration. The Tribunal has taken into account two letters from the Applicants’ solicitors, dated 18 September and 24 October 2014. It has also considered the representations of Mr Willis, dated 28 October 2014.

The Procedural Rules about a costs application

10. In so far as is relevant to this application, Rule 13 of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 (“the Rules”) provides as follows:
 - 13.— Orders for costs, reimbursement of fees and interest on costs
 - (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.

...

(4) A person making an application for an order for costs—
(a) must, unless the application is made orally at a hearing, send or deliver an application to the Tribunal and to the person against whom the order is sought to be made; and (b) may send or deliver together with the application a schedule of the costs claimed in sufficient detail to allow summary assessment of such costs by the Tribunal.

(5) An application for an order for costs may be made at any time during the proceedings but must be made within 28 days after the date on which the Tribunal sends—

(a) a decision notice recording the decision which finally disposes of all issues in the proceedings; or

(b) notice of consent to a withdrawal under rule 22 (withdrawal) which ends the proceedings.

The Tribunal's consideration and its decision

11. As is apparent from Rule 13(5), the application for costs must be submitted within 28 days of the date the Tribunal sends a decision notice recording the decision which finally disposes of all the issues in the proceedings. So far as the Applicants are concerned, the decision which finally disposed of all the issues in which they had an interest was the decision dated 1 October 2013. Their application for costs therefore had to be made by or on 28 October 2013. It was not made until 28 August 2014.
12. Under Rule 6(3)(a) of the Rules, the Tribunal may extend the time for complying with any rule even if the application for an extension is not made until after the time has elapsed. The Costs Application has to be treated as an application for an extension of time. Should the Tribunal grant it and allow the Costs Application to proceed?
13. The Tribunal would look for there to be a good reason for delay when considering this question. The reason offered by the Applicants' solicitors in their letter dated 24 October 2014 is that they were instructed at a very late stage in the proceedings, though the actual stage is not clarified. It would appear to have been after the 1 October 2013, as the Applicants' previous solicitors were the recipients of a copy of the 1 October 2013 decision, no notification having been given to the Tribunal in 2013 of any change in solicitors for the Applicants. That being the case, the Applicants' solicitors go on to say that they overlooked the fact that the 1 October 2013 decision disposed of all issues in the case. This does not appear to the Tribunal to be a good reason for the delay.
14. The purpose of time limits is, inter alia, to provide certainty to parties to litigation that it is at an end.

15. Balancing the reason for the delay with the potential disadvantage to the Respondents, the Tribunal is in no doubt that it would be unfair to the Respondents to have to answer the Costs Application so long after the decision which dismissed the Original Application. For that reason, the Tribunal is not willing to extend the time limits in this case and therefore the Applicants application for costs is dismissed for the reason that it is out of time.

Appeal

16. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Judge C Goodall
First Tier Tribunal (Property Chamber)

17 December 2014