

10514



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

Case reference : **LON/00AW/LSC/2014/0237**

Property : **Penthouse Flat, 7 & 8 Floor, 344
Kensington High Street, London
W14 8NS.**

Applicant : **Mrs. M. Barkhordar & Mrs. M.
Mehrjerdi**

Representative : **Radcliffes Le Brasseur**

Respondent : **Middle East International
Corporation**

Representative : **Thomas Eggar LLP**

Type of application : **Costs - Rule 13(1)(b) of the Tribunal
Procedure (First-tier Tribunal)
(Property Chamber) Rules 2013**

Tribunal members : **Aileen Hamilton-Farey**
Ms. M. Krisko BSc (Est Man)
FRICS.

**Date of hearing and
venue** : **1 December 2014 at
10 Alfred Place, London WC1E 7LR**

Date of decision : **23 December 2014**

DECISION

Summary of the tribunal's decisions

- (1) The tribunal makes an order under rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Procedure) Rules 2013, that the applicant must pay the respondent the sum of £9540.00, including VAT, within 28 days of the date of this decision.

Background

1. This was an application made by the applicant leaseholders, Mrs M. Barkhordar and Mr. M. Mehrjerdi in respect of the reasonableness of and their liability for service charges in respect of the above property.
2. The applications was made under S.27a and S.20c of the Landlord & Tenant Act 1895.
3. Directions were issued by the tribunal on 12 June 2014 which required amongst other things that the parties exchange documentation including service charge accounts and estimates of expenditure in relation to the years in question. The matter was listed for hearing on 1 December 2014 at which Mr. S. P. McLoughlin of Counsel appeared for the applicants and Mr. S. Allison of Counsel for the respondents.

The hearing:

4. The hearing was listed to start at 10.00am, however the clerk informed the tribunal that the parties were in negotiation, having exchanged further documents that morning, and hoped to settle all matters.
5. The tribunal agreed to start the proceedings at 12.30am in order to assist settlement.
6. The parties then confirmed to the Tribunal that they had agreed all matters, save that the applicants wished to make an application under Rule 13 for wasted costs.
7. The Tribunal was presented with a schedule of the costs claimed and Mr McLoughlin drew the tribunal's attention to what was considered to be unreasonable behaviour on the part of the respondent; fees had been incurred unnecessarily and could have been saved, he said, if the respondent had engaged in the process earlier; had complied with directions and had produced the documentation on time so that the applicants could see the actual position on arrears claimed. He told the tribunal that, following the arrival of the final accounts on the morning of the hearing, it could be seen that the applicant's were actually in credit with their service charges. He said that the actions were not that of a reasonable landlord acting reasonably.

8. Mr. Allison on behalf of the respondents told the tribunal that it was not unreasonable for the respondent to pursue the matter; that arrears did appear on the applicants' account and that although the documentation might have been incorrect, and that criticisms could be made of those papers, it could not be made of the conduct of the respondent. He referred to the fact that the respondent had made concessions and had accepted that accounts had had to be prepared. He could understand that the applicants' were frustrated in the matter, but having made the corrections required to the accounts to show the actual position, there was nothing further that the respondent could do. He said that his client did not defend the proceedings on unreasonable grounds and that it was stretching the point for the applicants to attempt to recover all of the costs before and at the hearing.
9. It had been agreed between the parties that the respondent would pay the costs of the application and the hearing to the applicants, and that none of the landlord's costs of proceedings would form part of the service charge.

The Rules:

10. So far as material, rule 13 reads:
 - "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 (iii) a leasehold case ..."
11. So far as relevant, section 29 of the Tribunals, Courts and Enforcements Act 2007 states:
 - "29(1) The costs of and incidental to—
 - (a) all proceedings in the First-tier Tribunal, and
 - (b) all proceedings in the Upper Tribunal,shall be in the discretion of the Tribunal in which the proceedings take place.
 - (2) The relevant Tribunal shall have full power to determine by whom and to what extent the costs are to be paid.
 - (3) Subsections (1) and (2) have effect subject to Tribunal Procedure Rules.
 - (4) In any proceedings mentioned in subsection (1), the relevant Tribunal may—
 - (a) disallow, or
 - (b) (as the case may be) order the legal or other representative concerned to meet,

the whole of any wasted costs or such part of them as may be determined in accordance with Tribunal Procedure Rules.

- (5) In subsection (4) “wasted costs” means 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 of 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 is unreasonable to expect that party to pay.
- (6) In this section “legal or other representative”, in relation to a party to proceedings, means any person exercising a right of audience or right to conduct the proceedings on his behalf.”

Reasons for the tribunal’s determination

Unreasonable conduct

12. The tribunal was aware of the failure by the respondent to comply with directions, and in particular the failure to produce up to date and certified/audited service charge accounts in a timely manner. This in the tribunal’s view hindered the negotiation process and lead to costs being incurred.
13. The tribunal was also satisfied that the respondents had only produced documentation as a result of the RPT application and although in some ways that could be considered a successful result, costs were incurred by the applicants in bringing the application. It was also clear to the tribunal that, had the parties, sat down before the hearing date, this matter could have been resolved without the need for a hearing and the attendant expense some months before the eventual hearing.
14. In the above circumstances, the tribunal considers that it is just to make an order costs against the respondent, to compensate the applicants for at least some of the additional costs that were incurred as a result of the hearing on 1 December effectively going ahead.

The amount of costs to be awarded

15. The tribunal considers that the applicants are not entitled to claim all of the costs incurred in this matter, but only those, following the making of the application and wasted hearing costs. It is reasonable in the tribunal’s view for a party to incur some costs in attempting to resolve service charge problems, even where the eventual outcome is that nothing appears to have been payable by them, and that they appear to be at least £26,000 in credit.

In the circumstances, the tribunal awards 40% of the amended cost schedule on the basis that had the matter settled the applicants could have saved Counsels' and RPT fees and some of their solicitors costs., but should be liable for some of the costs of applying to the tribunal.

16. Altogether, the tribunal makes an order that the respondent should pay the applicant, the sum of £9540.00 (inclusive of VAT) in respect of costs within 28 days of date of this decision. This sum does not include the agreed fees.

S.20C Application:

17. The respondent confirmed to the tribunal that it would not seek to place any of the costs of these proceedings on the service charge and therefore the tribunal declines to make an Order under S.20c.

Name: Aileen Hamilton-Farey **Date:** 23 December 2014.