

11976



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

Case reference : **LON/00AC/LSC/2016/0057**

Property : **Flat 3, Hendon Hall Court, Parson Street, London NW4 1QY**

Applicants : **Mr S Leslie and Mr A Barnett**

Representative : **Ms S Walker of counsel**

Respondent : **Ms S Mahdavi**

Representative : **Ms A Just of counsel**

Type of application : **For the determination of the reasonableness of and the liability to pay a service charge**

Tribunal members : **Mr S Brilliant
Ms S Coughlin**

Date and venue of hearing : **27 June 2016
10 Alfred Place, London WC1E 7LR**

Date of decision : **21 September 2016**

Date of costs decision : **26 January 2017**

Decision of the tribunal

1. The Tribunal determines that an order for costs should be made against the Applicants under rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. The order is that the Applicants are to pay the Respondent one half of her costs of these proceedings. We assess the Respondent's total costs summarily in the sum of £5,421.00 including VAT, so the amount payable by this order is the sum of £2,710.50 including VAT. This sum is to be paid within 28 days.
2. Rule 13(1)(b)(iii) of the Tribunal Procedure (First-tier) (Property Chamber) Rules 2013 provides that in a leasehold case the Tribunal may make an order in respect of costs only if a person has acted unreasonably in bringing, defending or conducting proceedings.
3. A leasehold case is defined in rule 1 as a case in respect of which the Tribunal has jurisdiction under any of the enactments specified in section 176A(2) of the Commonhold and Leasehold Reform Act 2002.
4. One of the enactments so specified is the Landlord and Tenant Act 1985.
5. In paragraph 32 of our decision dated 21 September 2016 we directed the Respondent within 14 days to provide to the Tribunal and to the Applicants a schedule of costs in Form N260 or similar and reasons in support of an application for costs. We also directed the Applicants to make representations in reply 14 days thereafter.
6. The Respondent provided submissions on costs prepared by Ms Just dated 2 October 2016, a schedule of costs in the sum of £7,182.36 including VAT, and a witness statement from her solicitor dated 3 October 2016.
7. The Applicants provided submissions on costs prepared by Ms Walker dated 28 October 2016, and a witness statement from Mr Barnett dated 3 November 2016.
8. The Respondent in reply provided a witness statement from her solicitor dated 18 November 2016.
9. In the recent case of Willow Court Management Company (1985) Ltd v Alexander [2016] UKUT 290 (LC), the Upper Tribunal has given the following guidance in respect of an award of costs under rule 13(1)(b)(iii):
 24. ... *"Unreasonable" conduct includes conduct which is vexatious, and designed to harass the other side rather than advance the*

*resolution of the case. It is not enough that the conduct leads in the event to an unsuccessful outcome. The test may be expressed in different ways. Would a reasonable person in the position of the party have conducted themselves in the manner complained of? Or Sir Thomas Bingham's "acid test [in *Ridehalgh v Horsefield* [1994] Ch 205]: is there a reasonable explanation for the conduct complained of?*

28. *At the first stage the question is whether a person has acted unreasonably. A decision that the conduct of a party has been unreasonable does not involve an exercise of discretion but rather the application of an objective standard of conduct to the facts of the case. If there is no reasonable explanation for the conduct complained of, the behaviour will properly be adjudged to be unreasonable, and the threshold for the making of an order will have been crossed. A discretionary power is then engaged and the decision maker moves to a second stage of the inquiry. At that second stage it is essential for the tribunal to consider whether, in the light of the unreasonable conduct it has found to have been demonstrated, it ought to make an order for costs or not; it is only if it decides that it should make an order that a third stage is reached when the question is what the terms of that order should be.*
29. *Once the power to make an order for costs is engaged there is no equivalent of CPR 44.2(2)(a) laying down a general rule that the unsuccessful party will be ordered to pay the costs of the successful party. The only general rules are found in section 29(2)-(3) of the 2007 Act, namely that "the relevant tribunal shall have full power to determine by whom and to what extent the costs are to be paid", subject to the tribunal's procedural rules. Pre-eminent amongst those rules, of course, is the overriding objective in rule 3, which is to enable the tribunal to deal with cases fairly and justly. This includes dealing with the case 'in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal.' It therefore does not follow that an order for the payment of the whole of the other party's costs assessed on the standard basis will be appropriate in every case of unreasonable conduct.*
30. *At both the second and the third of those stages the tribunal is exercising a judicial discretion in which it is required to have regard to all relevant circumstances. The nature, seriousness and effect of the unreasonable conduct will be an important part of the material to be taken into account, but other circumstances will clearly also be relevant; we will mention below some which are of direct importance in these appeals, without intending to limit the circumstances which may be taken into account in other cases.*

10. With regards to parties who act without legal advice or representation the Upper Tribunal stated as follows:
 32. *In the context of rule 13(1)(b) we consider that the fact that a party acts without legal advice is relevant at the first stage of the inquiry. When considering objectively whether a party has acted reasonably or not, the question is whether a reasonable person in the circumstances in which the party in question found themselves would have acted in the way in which that party acted. In making that assessment it would be wrong, we consider, to assume a greater degree of legal knowledge or familiarity with the procedures of the tribunal and the conduct of proceedings before it, than is in fact possessed by the party whose conduct is under consideration. The behaviour of an unrepresented party with no legal knowledge should be judged by the standards of a reasonable person who does not have legal advice. The crucial question is always whether, in all the circumstances of the case, the party has acted unreasonably in the conduct of the proceedings.*
 33. *We also consider that the fact a party who has behaved unreasonably does not have the benefit of legal advice may be relevant, though to a lesser extent, at the second and third stages, when considering whether an order for costs should be made and what form that order should take. When exercising the discretion conferred by rule 13(1)(b) the tribunal should have regard to all of the relevant facts known to it, including any mitigating circumstances, but without either 'excessive indulgence' or allowing the absence of representation to become an excuse for unreasonable conduct.*
11. We do not consider that Applicants should be regarded as unrepresented parties with no legal knowledge within the meaning of paragraphs 32 and 33 of the Willow Court case. The Applicants are professional landlords. The facts in paragraphs 12-14 of Ms Just's submissions were not challenged. Mr Barnett is a director of a property company, CWGR Ltd, whose registered address is also the same as the professional address given by the Applicants in these proceedings. Mr Leslie used to be a director. Another director is a solicitor, Ms Sandler.
12. The Applicants themselves put in a costs bill of £9,230.68 including VAT. This included £5,710.68 for what were described as "legal and administration services, employees of Ultratown Ltd". This is a company whose registered address is the same as the professional address given by the Applicants in these proceedings.
13. Mr Barnett says in his witness statement that no one in Ultratown Ltd is legally qualified except for Ms Sandler who deals with conveyancing transactions in lease extensions and who had no involvement in these proceedings. But the work undertaken by Ultratown Ltd involved 49

hours' work and included work described as "accepting and analysing claim".

14. As to the first stage of the test laid down in the Willow Court case, we are satisfied that the Applicants have objectively acted unreasonably for the reasons put forward by the Respondent in her submissions. In particular:
- (1) the Applicants sent the invoice at the heart of these proceedings [3] by email to the Respondent for the first time on 20 May 2015 stamped overdue for payment;
 - (2) the Respondent sent an email the same day asking to see the underlying documents;
 - (3) no documents were provided or particulars given, and the Applicants commenced county court proceedings on 30 June 2015;
 - (4) the Defence in the county court proceedings clearly flagged up the insurmountable hurdles the Applicants faced;
 - (5) at the directions hearing following transfer to this jurisdiction the Applicants were directed to give disclosure of the underlying documents;
 - (6) the Applicants never gave adequate disclosure or properly particularised their case;
 - (7) the Applicants wrongly asserted that the service charge obligations in the lease and the overriding lease mirrored each other, whereas the lease clearly did not allow for service charges to be demanded in advance;
 - (8) the Applicants were unable to explain any entitlement to the so-called "opening balance" of £770.50;
 - (9) the Applicants failed to attend the hearing despite having served witness statements;
 - (10) the Applicants did not notify the Respondent that they would not be attending, and instead relied upon Mr Saleh (whose client was not a party to these proceedings) as their advocate;
 - (11) through no fault of his own Mr Saleh was in no position to deal with the real issues in the case.

15. Taking into account all the circumstances, we consider at the second stage that we ought to make an order for costs. The commencement of proceedings in the County Court may have been precipitate, but by the time of the transfer order the Respondent had filed and served a detailed Defence putting the Applicants on clear notice of the very points which they failed before us. We therefore feel it appropriate to exercise our discretion in favour of the Respondent's application.

16. We now turn to the third stage, namely what order should we make? The Respondent's schedule of costs totals £5,988.80 plus VAT. The points taken by the Applicants are that (1) the £400.00 for attendance by the solicitor at the hearing where counsel was instructed should not be recovered, (2) the charge out rate of £229.00 per hour for a Grade B Solicitor is on the high side and that (3) some of the work could have been done by a grade D solicitor.

17. There is force in these observations and, taking these matters into account, we summarily assess costs at £4,500.00 plus VAT (£5,400.00) plus £21.00 Land Registry fee, totalling £5,421.00. As the amount in dispute was £2,081.50, we consider that it would be proportionate for the Applicants to be ordered to pay one half of the Respondent's costs, namely £2,710.50 including VAT.

Name: Simon Brilliant

Date: 26 January 2017