



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

Case Reference : **LON/00BA/LBC/2015/28**

Property : **50a High Street Colliers Wood
London SW19 2BY**

Applicants : **Dalajit Matharu**

Representative : **Laurence Kingsley**

Respondent : **Riaz Christopher Malik**

Representative : **Mr S Bishop Counsel instructed by
the above**

Type of Application : **Application for a determination
UNDER Rule 13 Tribunal Procedural
Rules of the Respondent's costs**

Tribunal : **Judge Daley**

**Date of paper
determination** : **14 December 2016 at 10 Alfred
Place, London WC1E 7LR**

Date of Decision : **16.01.2017**

DECISION

The application

- (1) On 6 August 2015, the tribunal determined that it had no jurisdiction to consider the application, made on 18 March 2015 under section 168(4) of The Commonhold and Leasehold Reform Act 2002, (that a breach of covenant had occurred) and that the costs of the hearing dated 29 June 2015 were recoverable by the Respondent.
- (2) The hearing of this matter had taken place on 29 June 2015, and as a result of the Respondent raising a new argument, which had not been set out in his Statement of Case (as provided for in the directions), the Tribunal determined that whilst it would hear argument from the Respondent that the Tribunal did not have the jurisdiction to determine the Application, it would adjourn the Application and the Applicant would have the opportunity to make further written submissions, post-hearing. On 6 July 2015, the Applicant's representative served detailed submissions in response.
- (3) In its decision dated 6 August, the Tribunal determined that-: *"[it] invited Mr Kingsley to set out the new grounds upon which he relied {in support of the breaches alleged} he did not introduce any new grounds. Accordingly the Tribunal determines that the Respondent shall be entitled to recover the cost of the hearing dated 29 June 2015. Of the cost occasioned by the adjournment, the Tribunal determines that these costs are not recoverable by the Respondent."*
- (4) The costs occasioned by the adjournment related to all costs associated with the further submissions made by the Applicant on 6 July 2015, and the Respondent's response. As the Tribunal determined the preliminary matter in the Respondent's favour no other costs were occasioned by the adjournment.
- (5) On 4 September 2015, the Applicant applied for Permission to Appeal to the Upper Tribunal (Lands Chamber), permission was refused. On 2 November 2015, application for permission was renewed directly to the Upper Tribunal. On 5 February 2016 Permission to Appeal was refused.
- (6) By letter dated 25 August 2016, the Respondent's renewed their Application for costs (first made on 1 September 2015), which had been awarded pursuant to paragraph xxii.
- (7) On 2 December 2016, the Tribunal wrote to the Applicant's Solicitor, Mr Kingsley informing him of the date for the summary assessment. On 7 December 2016, Mr Kingsley wrote to the Tribunal stating-: "...I have forwarded it to my client, as I am no longer acting..."
- (8) On 14 December 2016, the Tribunal made the following directions.
"...On 6 August 2015, the Tribunal determined that the Respondent should be awarded his costs occasioned by the Applicant's Application for a breach

of covenant. The costs were awarded because the Tribunal determined that it had no jurisdiction to determine the application following an agreement reached by the parties as no new grounds were relied upon by the Applicant in support of the breach.

The costs awarded were up to and including the costs of the hearing dated 29 June 2015.

The Respondent has made an Application for costs to be awarded in the sum of £4450.00.

Unless the Applicant has an objection to the sum claimed then the Tribunal will issue its decision, based on its summary assessment of costs on 8 January 2017.”

The Tribunal further provided that the Applicant should make any submissions on or *before 4 January 2017*

- (9) Notwithstanding the Tribunal providing the Applicant with an opportunity to provide submissions in response. Not further submissions were made either by the Applicant or on the Applicant’s behalf.
- (10) The Tribunal has considered rule 13 The Tribunal Procedure (First-tier Tribunal) Property Chamber Rules 2013
- 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) an agricultural land and drainage case,
- (ii) a residential property case, or
- (iii) a leasehold case; or
- (c) in a land registration case.
- (2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.
- (3) The Tribunal may make an order under this rule on an application or on its own initiative.
- (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.

(6)The Tribunal may not make an order for costs against a person (the “paying person”) without first giving that person an opportunity to make representations.

(7)The amount of costs to be paid under an order under this rule may be determined by—

(a)summary assessment by the Tribunal;

(b)agreement of a specified sum by the paying person and the person entitled to receive the costs (the “receiving person”);

(c)detailed assessment of the whole or a specified part of the costs (including the costs of the assessment) incurred by the receiving person by the Tribunal or, if it so directs, on an application to a county court; and such assessment is to be on the standard basis or, if specified in the costs order, on the indemnity basis.

- (11) The Tribunal considered the conduct of the Applicant and whether it was appropriate for costs to be awarded. It noted at the Case Management Conference on 21 April 2015, the Tribunal noted that the Applicant had previously brought proceedings against the Respondent for breach of covenant and that proceedings had been withdrawn at the hearing. The Tribunal noted “ *...Mr Kingsley informs me that new grounds had arisen since the agreement made on 15 February 2015 and insisted that this new application was valid...*”
- (12) The Tribunal hearing the matter on 29 June 2015; noted that no new grounds had been advanced, and accordingly determined that notwithstanding Mr Kingsley’s reassurance that there were new grounds, no new grounds had been advanced at hearing. Accordingly it was appropriate to make a costs award under rule 13, as the costs had been occasioned by the Respondent, in circumstances where the conduct of the Applicant were frivolous and vexatious.

The Decision of the Tribunal

- i. The Tribunal has considered the schedule of costs provided by the Respondent, it has noted that the Respondent has as appropriate limited the costs to be recovered to the sum that the Respondent has agreed to pay, that is, £4450.00. The Tribunal has also considered the schedules provided.
- ii. The Tribunal having considered the schedule of costs; was satisfied that the sums claimed were reasonable and proportionate. The Tribunal finds in the absence of any detailed objection to the sums claimed by the Respondent that the sum of £4320.00 is assessed as payable. The Tribunal noted of the disbursement of £130.00, that no information in support of the disbursement, such as an invoice or explanation was provided accordingly the Tribunal has determined that this sum is not payable.

Name:

Judge Daley

Date: 16.01.2017

ANNEX - RIGHTS OF APPEAL

1. **If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.**
2. **The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.**
3. **If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.**
4. **The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.**