



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)
& IN THE COUNTY COURT
SITTING AT 10 ALFRED PLACE,
LONDON WC1E 7LR**

Case reference : **LON/00AG/LLC/2017/0004**

Court Claim no. : **D3QZ29K7**

Property : **Ground floor flat, 32 Mackeson Road, London NW3 2LT**

Applicant/claimant : **Mr Howard Edmunds**

Representative : **In person**

Respondent/defendant : **Ms Kiki Kendrick**

Representative : **In person**

Type of application : **Claim for costs following discontinuance of proceedings**

Tribunal members : **Judge Sonya O’Sullivan**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **30 January 2018**

DECISION

Decisions of the tribunal

The tribunal determines that the sum of £300 plus Vat is payable by the applicant to the respondent in respect of her legal costs further to the notice of discontinuance served on 22 May 2017.

The application

1. On 10 April 2017 Mr Howard Edmunds issued county court proceedings under claim no D3QZ29K7 against Ms Kiki Kendrick, claiming alleged arrears of service charge and insurance contributions in respect of Ms Kendrick's ground floor flat at 32 Mackeson Road, London NW3 2Lt. The total claim including interest and the court fee came to £1,896.54.
2. Ms Kendrick filed a defence in the County Court proceedings claiming that Mr Edmunds had no status to bring the proceedings as he was not her landlord but rather one of three directors of the freehold company.
3. On 22 May 2017 Mr Edmunds discontinued his claim although on the same date he issued fresh proceedings in respect of the same amounts in the name of the freehold company. Those proceedings are not the subject of this decision.
4. By an application issued on 8 August 2017 Ms Kendrick seeks an order for her costs arising from those proceedings pursuant to Part 38.6 of the Civil Procedure Rules 1998, which provides that "Unless the court orders otherwise, a claimant who discontinues is liable for the costs which a defendant against whom the claimant discontinues incurred or before the date on which the notice of discontinuance was served on the defendant." It is noted that this rule does not apply to cases which have been allocated to the small claims track; however it does not appear that this case had been allocated to the small claims track before it was discontinued.
5. By order of District Judge Avent sitting at the County Court at Central London the matter was transferred to the First-tier tribunal on 9 October 2017. As Mr Edmunds was claimant before the court, he is named as applicant before the tribunal and as Mr Kendrick was defendant she is named as respondent.
6. Costs and fees are ordinarily matters for the court but as the court transferred the whole case the tribunal intends to deal with the application for costs following the discontinuance. It is empowered to do so as a result of amendments to the County Courts Act 1984 by which judges of the First-tier tribunal are also judges of the county court. As a result in suitable cases the tribunal may decide issues that would otherwise have to be separately decided in the county court; this may well result in savings in time, costs and resources.

7. Directions were made dated 17 November 2017 which set out the steps to be taken by the parties. As neither party requested an oral hearing the application was considered on the basis of the written representations received on 30 January 2018.

Ms Kendrick's case

8. The costs sought by the respondent are £720 in relation to the legal costs of Derwan Hogan solicitors. The solicitor involved was a B grade solicitor who qualified in 2010. A breakdown of the charges is provided which shows total costs incurred of £1,936. A copy of the invoice is provided and the narrative describes the work as "advising you in relation to the above property; to include preparing for and advising you in a meeting –as agreed".
9. Ms Kendrick says that she paid for legal advice on 3 May 2017 and filed her defence on 15 May 2017. A Notice of Proposed Allocation to the Small Claims Track was sent on 16 May 2017. On 22 May 2017 the claim was discontinued by Mr Edmunds before being allocated to the small claims court. The Notice of Discontinuance was served on 24 July 2017.
10. Ms Kendrick says that the claim was wrongly issued in the name of Mr Edmunds as company secretary of the freehold company rather than in the name of the freehold company itself. She says it is "common sense" that she does not owe Mr Edmunds any money.
11. The respondent seeks payment of an invoice from Dewar Hogan Solicitors in the sum of £600 plus Vat. Copies of this invoice were sent to the applicant by email and post on 31 May 2017 and 20 July 2017 before the issue of the costs application but it is said he refused to pay.
12. It is also submitted that the points raised by Mr Edmunds (matters raised in relation to past events, how the claim came about and so on) are not relevant.
13. Ms Kendrick also says that the claim cost her more than the £720 and she seeks to recover having lost work spending time dealing with this matter. She says that even if this were an honest mistake she should not have to pay for this.
14. Ms Kendrick also asks for interest on the costs under section 69 of the County Courts Act 1984 from 3 May 2017 to the date of payment.

Mr Edmunds' case

15. Mr Edmunds set out his response in a statement dated 22 December 2017.

16. Mr Edmunds says that the matter arises from the respondent's failure to pay her service charges. It is said that she has regularly paid her charges late. It is said that when it became clear that legal action was imminent the respondent removed Mr Edmunds as company secretary. Mr Edmunds says that following consultation with a co-director the decision was made to issue proceedings acting in the best interests of the freehold company. A decision was made to act as a litigant in person in order to save the respondent legal costs. It is said that he made an honest mistake in issuing legal proceedings in his own name rather than the freehold company's name. As soon as this was brought to his attention he discontinued the proceedings and issued legal proceedings on behalf of the freehold company.
17. Mr Edmunds says that the respondent was not aware of his mistake until she sought legal advice in May 2017, she was also said to have been advised that she had no defence to the sums being demanded by way of service charge.
18. Mr Edmunds also alleges that he was wrongly removed as a director of the company together with Susan Wright and had no *locus standi* to conduct the proceedings. It is said that the respondent then took control of the proceedings paying all her service charges before discontinuing the proceedings. This was said to be an abuse of process. He also submits that certain paragraphs of the respondent's statement are untrue, in particular her service charges are said to have been paid in full when she made the application.
19. As far as the costs themselves are concerned Mr Edmunds suggests that the legal advice which was obtained enabled Ms Kendrick to settle the second case and the costs therefore represented good value for money. He also asks the tribunal to take into account the fact that he is a litigant in person who made an honest mistake. He suggests that the tribunal finds that the respondent has misled the tribunal by not disclosing all the facts.
20. Mr Edmunds also says her costs are disproportionate in the sum of £720 compared to a total claim of £1650 plus interest.

The tribunal's decision

21. The tribunal finds that the reasonable costs are £300 plus Vat.

Reasons for the tribunal's decision

22. Rule 38.6 provides that;

(1) Unless the court orders otherwise, a claimant who discontinues is liable for the costs which a defendant against whom the claimant discontinues incurred on or before the date on which notice of discontinuance was served on the defendant.

(2) If proceedings are only partly discontinued -

(a) the claimant is liable under paragraph (1) for costs relating only to the part of the proceedings which he is discontinuing; and

(b) unless the court orders otherwise, the costs which the claimant is liable to pay must not be assessed until the conclusion of the rest of the proceedings.

(3) This rule does not apply to claims allocated to the small claims track.

23. The tribunal is satisfied that the claim had not been allocated to the small claims court and that it has the jurisdiction to make an order under Rule 38.6.
24. When a claim is discontinued under Rule 38.6 this triggers an automatic entitlement on the part of the defendant. It is somewhat unfortunate that the applicant did not make an application to vary the parties to the proceedings substituting the freehold company rather than discontinuing and re-issuing the proceedings in the correct name.
25. It is clear that the costs themselves are to be assessed. The tribunal has been provided with a copy of the solicitor's invoice and breakdown and is satisfied they have been incurred. It does not however have a narrative which is sufficiently detailed to enable it to understand in relation to what matters legal advice was given. It is clear that the applicant and respondent have been engaged in a long standing dispute and that the legal advice may well have covered many issues.
26. The tribunal has also considered the defence filed in the county court. The defence was made primarily on the basis that the claimant had no cause of action and does not state any further legal basis upon which the charges will be defended although it gives background details of the dispute. This was not a difficult point of law. The defence was drafted by the respondent in person. The tribunal therefore considers that the costs allowed should primarily be confined to the cost of legal advice in relation to the *locus standi* of the claimant. It also notes that the respondent would have had the benefit of that advice in the second claim issued against her and considers this is a factor which should be taken into account. On this basis I allow costs of £300 plus Vat.
27. The respondent has also made a claim for interest under the County Court Act 1984. The power to order the payment of interest is a discretionary one and I do not consider that I should exercise that

discretion given the low sums in issue and the wider circumstances of this case.

Name: Judge Sonya O'Sullivan **Date:** 30 January 2018

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).