



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

**Case Reference** : **MAN/30UH/PHI/2013/0004 &  
MAN/30UH/PHI/2013/0010**

**Site** : **Broadfields Park, Morecambe,  
Lancashire LA3 3EH**

**Applicants** : **Mr Alan Thorpe and other  
Park Home occupiers**

**Respondent** : **Britaniacrest Limited**

**Type of Application** : **Section 4 Mobile Homes Act 1983  
Respondent's Cost Application**

**Tribunal Members** : **Laurence Bennett (Tribunal Judge)  
Jean Howell**

**Date of determination** : **11 February 2016**

**Date of Decision** : **25 February 2016**

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**DECISION**

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## **Background**

1. The Tribunal issued a determination in respect of validity of site agreements and pitch fees.
2. The decision provided for further submissions in relation an application for costs made by the Respondent.
3. The Respondent has made submissions in the form of a note, further note and schedule and the Applicants have provided a response.
4. It is noted that the Respondent seeks an order for costs “unreasonably incurred in the preparation and consideration and disposal of the forgery defence.” This was a major part of the case made by the Applicants which was determined in the Respondent’s favour.
5. The Respondent engaged Counsel direct. A schedule of Counsel’s fees totaling £6,620 including VAT has been submitted. The Respondent seeks payment from the Applicants.
6. The Applicants’ response gives details of the history of events at the time of the sale of the site to the Respondent in 2008, which gave rise to the disputes determined in the substantive application. Comments are made on the nature and duration of Tribunal proceedings and that complications were caused by the Respondent. They state that the Applicants are blameless and have complied with all directions conducting themselves with decorum. Submissions include “We have relied on the truth in all submissions and witness statements to the Tribunal ....”

## **The Regulations**

7. The Tribunal’s authority to make an order for costs derives from Paragraph 13 of The Tribunal Procedure (First-Tier Tribunal) (Property Chamber) Rules 2013 which states at Paragraph 1 that the Tribunal may make an order in respect of costs ... if the tribunal considers that a person has acted unreasonably in bringing, defending or conducting proceedings.
8. By Rule 13(6), the Tribunal may not make an order for costs against a person without first giving that person an opportunity to make representations.
9. The meaning of “unreasonable” was discussed by the Court of Appeal in *Ridehalgh v Horsefield* [1994] Ch 205 at 232: “Unreasonable” also means what it has been understood to mean in this context for at least half a century. The expression aptly describes conduct which is vexatious, designed to harass the other side rather than advance the resolution of the case, and it makes no difference that the conduct is the product of excessive zeal and not improper motive. But conduct cannot be described as unreasonable simply because it leads in the event to an unsuccessful result or because other more cautious legal representatives would have acted differently. The acid test is whether the conduct permits of a reasonable explanation. If so, the course adopted may be regarded as optimistic and as reflecting on a practitioner's judgment, but it is not unreasonable.” This has been followed in decisions of the Upper Tribunal.

## **Tribunal's conclusions**

10. The Tribunal accepts that there was a longstanding dispute between the Applicants and Respondent. The foundations of the dispute lie in the creation of site agreements contracted with the Respondent's predecessors prior to its acquisition of the site. The Tribunal notes from evidence given at the hearings that there appears to have been a complex relationship between the previous site owner and the Applicants which may have given rise to assumptions about management arrangements and practices.
11. The Tribunal has determined for the reasons set out in its preliminary and final decisions that the site agreements were signed and entered into by the Applicants and are binding. It followed that pitch fee increases are payable. The Tribunal's determinations show it took into account that the Applicants had relied upon the agreements in earlier separate proceedings relating to administration charges.
12. The Tribunal has noted the successive arguments made by the Applicants in these proceedings. Firstly, their strong contention that signatures to agreements were forged and they were not binding. Following its preliminary conclusion, the contention became signature under duress. The Respondent has limited its request for costs for what it succinctly referred to as "The Forgery." Although the Tribunal decided against the Applicants in this issue, it is necessary for us to determine whether the Applicants acted unreasonably in bringing, defending or conducting proceedings in that respect.
13. Counsel for Respondent submits that such a serious allegation requiring determination at a hearing was unreasonable conduct particularly as he considers it was effectively abandoned on the day of the hearing 28 July 2014. The Tribunal has recorded contradictory witness evidence of such an acknowledgement although the Applicant's position moved towards an allegation of duress.
14. We accept that the issue was of fundamental importance in the proceedings and as an allegation of forgery or dishonesty, went beyond issues of disagreement or interpretation. Although raised by the Applicants in what to them was good faith perhaps failing to take into account the difficulty of coordinating the recollections of so many residents after such a period, the allegation was of the most serious nature. It was not invited by actions of the Respondent. We find it falls within conduct that must be regarded as unreasonable.
15. Following 14 we conclude that an order for the Respondent's costs in respect for this aspect of the proceedings should be made.

## **Costs schedule**

16. We have noted the Respondent's schedule of costs and find that recovery of costs is appropriate in each of the 5 elements mentioned.
17. When considering the appropriate amounts for the work involved we are not assisted by the lack of detail such as method of calculation, hourly rates and whether an administrative or professionally required task.
18. The initial attendance of the case management conference on 10 January 2014 related to a case management conference and not a substantive hearing. The outcome of such

attendance would have been directions. We find the amount for preparation at that stage disproportionate and outside the reasonable range.

19. Counsel assisted in preparation of witness statements, the point in contention was concise. We find the costs requested for putting the statements in order outside the range we consider reasonable. There is no further detail beyond “assistance.” We have reached a conclusion as to reasonable cost noting the statements and relying on our knowledge and experience of legal professional’s costs for such work.
20. For similar reasons in respect of the charge for advice to the Respondent, consideration of the Applicants’ statements and administrative tasks such as preparation of bundles which we find unusual work for Counsel, together with the cost of attendance and preparation of skeleton arguments at the hearing on 28 July 2015, we find the schedule sum excessive.
21. Noting the contents of the costs application which relies on relatively narrow points and the lack of detail of the calculation within the schedule, we conclude the charge for preparation does not reasonably reflect the likely work involved.
22. We conclude the following costs are reasonable and payable by the Applicants to the Respondent. Using the numbering within the schedule summary:

- i. £500
- ii. £1,000
- iii/iv £2,000
- iii. £250

Total: £3,750 + VAT of £750: Sum payable £4,500.

### **Order**

23. The Applicants shall pay to the Respondent £4,500 in respect of its costs in these proceedings.

**L J Bennett**  
**Tribunal Judge**  
**12 February 2016**