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HM Courts & Tribunals Service

Residential Property TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION FPOR COSTS UNDER PARAGRAPH 10 OF SCHEDULE 12 TO THE COMMONHOLD AND LEASEHOLD REFORM ACT 2002

Case Reference: LON/00AC/OLR/2012/0832

Premises: 239 SHURLAND AVENUE, BARNET, HERTFORDSHIRE EN4 8DG

Applicant: Mr Bob Jack Bellinger

Representative: Braikenridge & Edwards, solicitors

Respondent: Tulsesense Limited

Representative: SA Law LLP, Solicitors

Date of hearing: 12 September 2012

Appearance for Applicants: None

Appearance for Respondent: None

Leasehold Valuation Tribunal: Mr Martin Rodger QC,

Mr N Martindale

Date of decision: 12 September 2012

Decisions of the Tribunal

In the opinion of the Tribunal the Applicant did not act frivolously, vexatiously, abusively or otherwise unreasonably in connection with his application commenced on 11 July 2012 and accordingly the Tribunal has no jurisdiction to order him to pay the costs incurred by the Respondent under paragraph 10 of Schedule 12 of the Commonhold and Leasehold Reform Act 2002.

The Application

1. By written submission dated 3 September 2012 the Respondent applies to the Tribunal for an order that the Applicant pay the sum of £500 as a contribution towards costs incurred by the Respondent following the withdrawal of an application made by the Applicant on 11 July 2012 under section 48(1) of the Leasehold Reform Housing and Urban Development Act 1993 ("the 1993 Act") for the determination of the premium to be paid on the acquisition of a new lease of the subject property.

The Facts

2. The Applicant is the long lessee of the subject property under a lease granted on 2 December 1983 for a term of 99 years; the Applicant acquired his interest in the lease on 9 June 2006.

3. The Respondent is the lessor of the subject property.

4. The Applicant first made a claim to acquire an extended lease of the subject property under the 1993 Act by notice under s. 42 served by his current solicitors on 2 October 2009. Following a counter notice given by the Respondent an application was made to the Tribunal on 14 May 2010 to determine the price payable and other terms in dispute. The Applicant was represented by his solicitors in connection with that application.

5. Negotiations took place which appeared to have resulted in an agreement and on 19 November 2010 the Tribunal was informed by the Respondent's solicitors that terms had been agreed and requesting that the "*proceedings in this matter be disposed of*". On 22 November 2010 the Applicant's own solicitors wrote to the Tribunal in identical terms.

6. Despite the apparent belief of the parties that agreement had been reached by 22 November 2010, it subsequently became clear that certain terms of the proposed new lease remained in dispute. On 21 January 2011 the Applicant informed the Tribunal that there were matters which remained to be determined and requested that the Tribunal re-open the application.

7. By a decision dated 14 April 2011 the Tribunal decided that it had no power to accede to the Applicant's request to re-open his original application. The

Applicant's confirmation to the Tribunal that terms had been agreed entitled the Tribunal to dispose of the proceedings as requested.

8. On 27 February 2012 the Applicant, by his current solicitors, served a further notice under s. 42 of the 1993 Act making a new claim to acquire an extended lease of the subject property.

9. The Respondent's solicitors served a counter notice on 29 March 2012. We have been provided with a copy of the counter notice but not with any covering letter, so the Tribunal does not know whether any specific point was taken on the entitlement of the Applicant to make a further claim at that time.

10. The Applicant issued a new application for the grant of an extended lease on 11 July 2012. It was in response to that application that, on 10 August 2012, the Respondent seem first to have raised the issue of the Applicant's entitlement to give a further notice. The Respondent pointed out that lease terms had been agreed in response to the original notice of claim but that no lease had been completed within the period of two months of the date of agreement (which was taken to be 22 November 2010). Nor had the Applicant applied to the Court under s. 48(3) of the 1993 Act for an order enforcing his entitlement to a lease on the agreed terms. In those circumstances, the Respondent contended, the original notice of claim was deemed to have been withdrawn by virtue of s. 53(1)(b) of the1993 Act.

11. The consequence of a deemed withdrawal of a notice of claim, as the Respondent's solicitors pointed out in their letter of 10 August 2012, is that no further notice of claim could be given with respect to the subject property for a period of twelve months from the date of deemed withdrawal. The Respondent asserted that deemed withdrawal occurred on 22 March 2011.

12. In their written submissions in response to the Application dated 3 September 2012, the Respondent's solicitors reiterated their contention that the second notice of claim was premature. The Tribunal was requested to dismiss the application and to make an award of costs in favour of the Respondent on the ground that the proceedings were *"demonstrably groundless, frivolous and vexatious".*

13. On 5 September 2012 the Applicant's solicitors wrote to the Tribunal agreeing that they had made an error and that their service of the further notice was premature. The Tribunal reads the letter as an acceptance of the assertions concerning agreement, deemed withdrawal and timing which had been made by the Respondent. The complaint that the application was frivolous or vexatious was however disputed.

The hearing

14. The Tribunal treated the Applicant's solicitor's letter of 5 September as a withdrawal of the application and proceeded to determine the Respondent's application for costs on the basis of the representations received.

The Tribunal's decision

15. The Tribunal's jurisdiction to award costs in favour of a party to an application before it is extremely limited. It is conferred by paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act"), which identifies two circumstances where costs may be awarded. The first arises on a dismissal of an application under paragraph 7, which does not apply in this case as the application has been withdrawn. The second arises where in the opinion of the tribunal the party against whom the application for costs is made has acted "*frivolously, vexatiously, abusively or otherwise unreasonably*" in connection with his application.

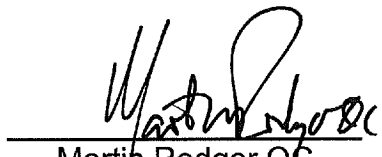
16. The Tribunal considered the sequence of events set out above and asked itself whether the conduct of the Applicant, by his solicitors, could be described as *frivolous, vexatious, abusive or otherwise unreasonable.* We concluded that it could not.

17. The common characteristic of each of the types of behaviour listed is that they are extreme and fall outside the normal boundaries of the conduct of proceedings before tribunals. Behaviour which is merely incompetent, thoughtless, mistaken or even negligent is not sufficient to confer jurisdiction on the Tribunal to make an award of costs.

18. The Tribunal had no evidence before it that, at the time the second application was made, the Applicant or his solicitors appreciated (as they now concede) that it was premature. The first occasion on which that point appears to have been made to them was in the Respondent's solicitor's letter of 10 August 2012. The calculation of the earliest date on which a further application could be made is a matter of some technicality and, without evidence to the contrary, the Tribunal can only conclude that a genuine mistake was made by the Applicant's solicitors.

19. The mistake having been made and pointed out, the Applicant waited a further three weeks before withdrawing the application, no doubt in response to the further explanation contained in the Respondent's written submissions. Although the application could have been withdrawn more promptly (which might have avoided some of the costs incurred by the Respondent) the Tribunal does not consider that the withdrawal of the application on 5 September reaches the required standard of abusive behaviour necessary to give the Tribunal jurisdiction to make an award of costs in the Respondent's favour.

20. Accordingly the application for costs is dismissed.

Chairman: 

Martin Rodger QC

Date: 12 September 2012