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

Case reference : LON/00BD/0CE/2016/0301

Property : North Lodge, 2 Admiralty Road,
Teddington, Middlesex TW11 0NP
("North Lodge")

Applicant : North Lodge Owners Limited ("the
tenant")

Representative : Stone Rowe Brewer LLP

Respondent : Grangepost Limited ("the
landlord")

Representatives : Fladgate LLP

Type of application : Rule 13 costs

Tribunal members : Angus Andrew
Richard Shaw FRICS

**Date and venue of
hearing** : 25 January 2017
10 Alfred Place, London WC1E 7LR

Date of decision : 15 February 2017

DECISION

Decision

1. We decline to order the tenant to pay the landlord's costs pursuant to Rule 13(1) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("rule 13 (1)").

Application and hearing

2. At a postponement hearing on 18 January 2017 the landlord made an oral application for costs under rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 on the grounds of the tenant's asserted failure to comply with the tribunal's directions of 27 October 2016 and the tribunal directed that the application should be heard on 25 January 2017. By an undated statement of costs the landlord claimed total costs of £5,688.30.
3. At the hearing on 25 January 2017 the landlord was represented by Emily Betts and the tenant by Katie Gray, both of whom are barristers.

Background

4. North Lodge is a block of 6 flats that have all been sold on long leases. It sits within extensive garden ground that includes 6 parking spaces each of which is demised by one of the 6 leases
5. By an initial notice dated the 9 February 2016 three lessees claimed the right to acquire the freehold interest in both North Lodge and the surrounding garden ground and they appointed the tenant to act as their nominee purchaser. The notice proposed a price of £15,375 for North Lodge and £500 for the garden ground.
6. By a counter-notice dated 18 April 2016 the landlord admitted the claim without prejudice to its assertion that the initial notice was invalid. The counter-notice proposed a price of £30,000 for North Lodge and £200,000 for the garden ground. The counter-notice also proposed that instead of transferring the garden ground the landlord would grant extensive rights over it that, it was said, would satisfy the requirements of section 1(4) of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act"). The counter-notice also set out extensive rights that the landlord proposed to retain over North Lodge and a number of covenants that it proposed should be included in the eventual transfer.
7. By an application dated 11 October 2016 the tenant applied to the tribunal to determine the price for North Lodge and the garden ground. The application from does not suggest that any other terms of acquisition are in dispute.

8. On 27 October 2016 the tribunal issued standard directions. They provided amongst other things that:-
 - a. The landlord must submit a draft transfer by 10 November 2016
 - b. The tenant must return the transfer amended in red by 24 November 2016
 - c. The landlord must provide the tenant with a list of the transfer terms in dispute by 8 February 2017.
 - d. The parties to return listing questionnaires between 12 December and 16 December 2016 on the basis of a hearing window of 16 January to 24 February 2017.
9. On 10 November 2016 the landlord sent a 10 page draft transfer to the tenant. The letter referred to the application and thanked the tenant for “*agreeing all of the counter-proposals in our client’s notice (other than the premium)*”.
10. On 22 November 2016 the tenant requested the tribunal to grant a “*short stay*” on compliance with the directions to enable it to apply to amend its application of 11 October 2016 to make it clear that terms other than the premium were in dispute.
11. On 1 December 2016 the landlord wrote to the tenant. In the letter the landlord “*assumes*” that the transfer is agreed and confirms that only the premium is in dispute.
12. Neither party sent completed listing questionnaires to the tribunal and on 23 December 2016 the tribunal gave notice to the parties that the application would be heard on 24 and 25 January 2017.
13. By letter of 10 January 2017 the tenant wrote to the tribunal and requested a postponement of the listed hearing. In accordance with the tribunal’s standard practice the postponement request was listed for an oral hearing on 18 January 2017 and the parties were directed to give their dates to avoid for the 6 weeks following the hearing and both did so.
14. At the hearing on 18 January 2017 tribunal judge Andrew by agreement directed the tenant to lodge its application to amend by 5 pm on that day. He also limited the scope of the listed hearing on 25 January 2017. Amongst other things he directed that at the hearing the tribunal would consider both the tenant’s application to amend and also the landlord’s rule 13 cost application.

15. The application to amend was indeed made on 18 January 2017. The application listed four issues, other than the premium, that were in dispute. These included the rights to be granted and reserved and the other terms of proposed transfer.
16. On 20 January 2017 the tenant sent the amended draft transfer to the landlord with a revised transfer plan. Although the tenant made a number of detailed amendments it is fair to say that in summary and with the exception of the six parking spaces the tenant accepted the rights proposed by the landlord in lieu of the garden ground.
17. Following the hearing on 25 January 2017 we issued a decision and further directions to bring the substantive application to a hearing on 25 and 26 April 2017. In our decision we rejected the tenant's application to amend for the following reasons:-

"The applicant's application to amend its application of 11 October 2016 is unnecessary. The tribunal application forms used in enfranchisement cases have no statutory basis and they are not pleadings. They are published by the tribunal to assist in the case management of enfranchisement cases. The disputed terms of acquisition are identified from the claim and counter-notices and no further pleadings are required. In this case the disputed terms are clear and have been clear since the service of the counter-notice".

18. The decision and further directions concluded with the observation that we would issue this decision within the following five weeks.

Reasons for our decision

19. We are mindful of the Upper Tribunal's guidance at paragraph 43 of the Willow Court decision. In particular that rule 13 cost applications "*should not be allowed to become major disputes in their own right*".
20. On the basis of the Willow Court decision we must first decide whether the tenant has acted unreasonably. If we decide that the tenant has acted unreasonably we may then exercise our discretion in deciding whether to award costs. Finally, if we do decide to award costs we must then decide what order to make.
21. In deciding whether a party's behaviour is unreasonable the Upper Tribunal in Willow Court cites with approval the judgement of Sir Thomas Bingham MR in *Ridehalgh v Horsefield* [1994] Ch 2005. It does so at paragraph 24 of its decision in these terms:

"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": is there a reasonable explanation for the conduct complained of?"

22. Essentially the behaviour on which the landlord relies is the tenant's failure, in its application of 11 October 2016, to specify the other terms of acquisition (apart from the premium) that were in dispute and also its failure to return the draft transfer amended in red by 24 November 2016: it will be recalled that in breach of that direction the amended transfer was not returned until 20 January 2017.
23. As far as the application is concerned the tenant should have specified the other proposals in the counter-notice to which it objected. Its failure to do that was a mistake but it falls well short of the conduct described by the Upper Tribunal in Willow Court. It was certainly neither vexatious nor intended to harass the landlord. Furthermore the mistake was of little consequence. As explained in our previous decision the application form was not a pleading and the disputed issues were identified by the claim and counter-notices.
24. Turning to the failure to send the amended transfer by 24 November 2016 it is apparent from reading the correspondence in the hearing bundle that the tenant and its solicitors were wrong-footed by the landlord's draft transfer and the landlord's assertion that by reason of the application the tenant had agreed all the landlord's proposals in its counter-notice. They needed time to consider their client's position and to instruct counsel. That is not surprising because a landlord's reliance on section 1(4) of the Act is a relatively unusual occurrence.
25. The tenant applied for a stay of the directions 2 days before its time for returning the amended draft transfer expired. The letter was copied to the landlord who knew that the tenant wanted further time. It seems that the tenant's request for a stay was not dealt with by the tribunal but the tenant cannot be criticised for that. Again we do not detect any unreasonable behaviour on the part of the tenant.
26. Even if we had concluded that the tenant had acted unreasonably we would not have made a cost award. The landlord is itself not above criticism. In terms of compliance with tribunal's directions it also failed to complete and return the first listing questionnaire. Had it done so and had it explained that the directions had not been complied with the case may not have been listed for hearing.
27. The landlord's assertions that the tenant had agreed both the proposals in the counter-notice and the terms of the draft transfer were at best mischievous. On any objective assessment the landlord must have known that there was no agreement. Indeed it was the landlord's reliance on the tenant's application that set "a hare running" that was only resolved by our

decision following the hearing on 25 January 2017. As we commented at the hearing the landlord's correspondence seems intent on "*point scoring*" rather than seeking a speedy resolution of the issues relating to the garden ground.

28. Consequently and for each of the above reasons we decline to order the tenant to pay the landlord's costs.

29. As an aside we add that any criticism of the landlord in this decision should not be regarded as an encouragement to the tenant to make its own rule 13 cost application. The parties should concentrate on negotiating such terms as remain in dispute to avoid the cost of a contested hearing in April.

Name: Angus Andrew

Date: 15 February 2017