



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

Case Reference	:	CHI/29UQ/OCE/2018/0024
Property	:	7 Montacute Gardens, Tunbridge Wells, Kent, TN4 8HG
Applicant	:	7 Montacute Ltd
Representative	:	Collins Benson Goldhill LLP
Respondent	:	42 Leisure Estates Ltd
Representative	:	Wedlake Bell LLP
Type of Application	:	Determination of Rule 13 Costs
Tribunal Members	:	Judge S Lal LLM
Date and venue of Hearing	:	7 May 2019, Judge's home
Date of Decision	:	7 May 2019

DECISION

Application

1. The Respondent applies for an Order under Rule 13(1)(b)(ii) of the Tribunal (First Tier Tribunal) (Property Chamber) Rules 2013 that the Applicant pays costs of the proceedings on the grounds that it has acted unreasonably. For the purposes of this application the parties remain as set out above.

2. The application is set out in greater detail in the statement of truth dated 22 March 2019 drafted by Mr John Muncey of Wedlake Bell LLP on behalf of the Respondent. In summary, this states the premises comprise a house on 4 floors divided into 3 flats. The freehold to two of the flats was transferred on 8 June 2015. It is stated that three additional notices of claim were served in respect of additional freeholds. The Respondent is the owner of the additional freehold. It is submitted that the claim for the additional freeholds is being pursued solely for financial gain.
3. In respect of the conduct of the proceedings, it is submitted that the Tribunal made directions in respect of preliminary matters including the validity of the 2017 Notice of Claim. The Respondent filed these on 17 December 2018. It is submitted that the Applicant failed to make submissions as to validity. Pending determination, it is submitted that the Applicant conceded the November 2017 notice point and requested that the proceedings be withdrawn. It is now submitted that although the Applicant accepts liability of statutory costs, this will not cover the costs of the proceedings.
4. It is submitted that the Applicant has acted unreasonably in conceding the issue and that the costs spent in dealing with the preliminary issue have been entirely wasted as a result of the Applicant's conduct. The Respondent argues for an Order that the Applicant pay its costs on the standard basis to be assessed by the Tribunal if not agreed. The Tribunal is invited to summarily assess costs in the sum of £3723, which includes Counsels costs.
5. The Tribunal has also received counter submissions on behalf of the Applicant drafted by Chi Collins of Collins Benson Goldhill LLP dated 24 April 2019. Paragraphs 1-5 of Mr Muncey's statement are accepted. However, the motive for acquiring the land and property is disputed. It is submitted that the November 2017 notice was submitted because the Applicant was of the opinion that the June 2017 Notice was no longer subsisting. It did not agree with the legal interpretation. It is submitted that no submissions were filed in respect of the Respondent's submissions as that would have been inconsistent with the belief that the Tribunal lacked jurisdiction and that the decision to make such submissions was entirely of the Respondent's own doing. It is submitted that a party is entitled to withdraw its application at any time and that withdrawals are commonplace. The actual costs are disputed for the reasons set out.
6. Under Rule 13(1), where a Tribunal finds that:
 - (a) costs have been incurred as a result of any "improper, unreasonable or negligent act or omission on part of any legal or other representative which is unreasonable to expect that party to pay", the Tribunal may order payment of wasted costs.
 - (b) a person who has acted: "unreasonably in bringing, defending or conducting proceedings", the Tribunal may order payment of unreasonable conduct costs.

7. The Upper Tribunal's determination of **Willow Court Management (1985) Ltd v Alexander [2016] 0290 UKUT (LC)** sets out a three stage approach:
 - i. "Has the person acted unreasonably"? The Upper Tribunal said that "*if there is no reasonable explanation for the conduct complained of, the behaviour will be adjudged to be unreasonable, and the threshold for making of an order will have been crossed*".
 - ii. "Should an Order be made?" If the party has acted unreasonably, the Tribunal has discretion whether to make an order or not. There would be focus on the nature, seriousness and effect of the unreasonable conduct, which will be an important part of the material to be taken into account.
 - iii. "What should the order be?" If the above two stages above are satisfied, it does not necessarily follow there will be an order for costs. Importantly, the order need not be confined to "*attributable to the unreasonable conduct*"
8. The Tribunal has applied the above principles to the facts before it. It notes that the central area of dispute turns on the withdrawal by the Applicant in respect of the validity of the November 2017 Notice rather than to await the determination of the Tribunal, which it is still maintains was procedurally and jurisdictionally wrong. The Applicant is of the view that it would have generated greater costs to have then appealed the matter on those grounds.
9. The Tribunal determines that there was a reasonable explanation for the decision taken to withdraw. It is clear from the correspondence that this was in response to a request to have the matter determined in this way by the Respondent. In the context therefore where the Applicant has taken the decision to withdraw on the basis of legal advice (arguments as to jurisdiction remained according to that legal advice) and commercial consideration, such a decision could not be described as unreasonable in the overall context of litigation conducted with the benefit of such professional advice. The Tribunal is satisfied that following the reasoning in the Willow Court decision cited above, the actions of the Applicant could not be described as unreasonable. To find to the contrary would fetter the ability of a party to withdraw from proceedings upon the basis of legal and/or commercial advice; the Tribunal being of the view that it would be perverse and contrary to the overriding objective to fetter such discretion.
10. Following the above the Tribunal refuses the Order for Rule 13 Costs.
11. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office, which has been dealing with the case. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

12. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
13. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Judge S. Lal

Date 7 May 2019