



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

Tribunal Case Ref : CAM/22UF/LSC/2018/0027
County Court Claim No: E8QZ7089

Property : Flat 4, Springbok House, Heycroft Way, Gt Baddow, Chelmsford CM2 8JH

Applicant/Claimant : Newmace Properties Limited, 5 Woodham Drive, Hatfield Peverel, Chelmsford CM3 2RR
representative : Mr Barry White (director)

Respondent/Defendant: Paul Hugh Davies, Flat 4, Heycroft Way, Gt Baddow, Chelmsford CM2 8JH
representative : [in person]

Type of Application : For determination of reasonableness and payability of service charges for the year 2017
[LTA 1985, s.27A]

Court/Tribunal : G K Sinclair

Date and venue of hearing : 11th June 2018 at Chelmsford Magistrates Court

Date of decision : 11th June 2018

DECISION REACHED AT A CASE MANAGEMENT HEARING

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1. The claim is struck out and dismissed for the following reasons.
2. This case commenced as a County Court money claim seeking payment of the sum of £1 416.80 alleged to be due to the claimant management company by the defendant lessee in respect of service charge and ground rent for the 2017 calendar year, interest, fees and court fees. A Defence was filed, alleging that the ground rent was due to a separate landlord and that no annual service charge accounts had been received, and the case was transferred to Chelmsford for the

issue of directions for trial.

3. By Order dated 3rd April 2018 (issued 9th April) District Judge Foss, sitting at the County Court at Chelmsford :
 - a. Allocated the case to the Small Claims Track, and
 - b. Transferred it to this tribunal for determination.
4. Pursuant to a report by the Civil Justice Council (May 2016) on the distribution of property cases between the Courts and the Property Chamber of the First-tier Tribunal judges are now deployed in such a way as to ensure that litigants are able to resolve all the issues in a dispute in one forum. The premise for the idea is that in many cases litigants might otherwise be required to have part of their dispute resolved in the County Court and part in the Property Chamber. Since all First-tier Tribunal judges are now also judges of the County Court (and vice versa), a Tribunal judge or a Court judge is appointed to decide all aspects of multi-faceted cases in one place and at one hearing. This has become known as “double hatting”.
5. Concerned that certain fundamental legal issues needed to be addressed at an early stage, as they could potentially halt the progress of the claim in its tracks, the tribunal ordered the convening of a directions/case management hearing and that the claimant management company must by Friday 4th May 2018 file with the tribunal office and serve upon the respondent/defendant :
 - a. A complete copy of the service charge demand sued upon, as served on the respondent
 - b. A copy of the final service charge account for the accounting period 2016, showing the costs incurred in providing the services provided for in the First Schedule to the respondent’s lease dated 1st February 1974 and whether the respondent was in credit or debit with his payments
 - c. a copy of the final service charge account for the accounting period 2017.
6. The reasons for requesting this information were twofold :
 - a. Because paragraph 6 of the First Schedule to the lease requires that an account be provided to lessees at the end of each financial year of sums expended, and by clause 6 that any surplus payment of service charge be retained for the credit of the demised premises (and the evidence so far disclosed suggested that this was not the approach being adopted); and
 - b. Because the service charge demands upon which the claimant was suing did not appear to comply with section 21B of the Landlord and Tenant Act 1985 as they were not accompanied by the prescribed summary of the rights and obligations of tenants of dwellings in relation to service charges, as required by the Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007.¹
7. The consequence of the second of the above points is that unless the prescribed summary is provided with the demand then the lessee may withhold payment of a service charge which has been demanded from him and, where he does so under that section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so

¹ SI 2007/1257

withholds it.

8. The directions issued by the tribunal on 17th April 2018 further informed the parties that at today's hearing the judge, sitting both as a judge of the County Court and as a tribunal judge, may strike out a party's case (or parts of it) if any of the factors mentioned in rule 9 apply and/or issue directions for the trial of the application.
9. The reference to rule 9 is to rule 9 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. Rule 9(3) lists various circumstances when the tribunal "may" strike out a case. Of these the relevant sub-paragraphs are (a) and (e) :
 - (a) the applicant has failed to comply with a direction which stated that failure by the applicant to comply with the direction could lead to the striking out of the proceedings or case or that part of it; ...
 - (e) the tribunal considers there is no reasonable prospect of the applicant's proceedings or case, or part of it, succeeding.
10. However, rule 9(4) provides that the tribunal may not strike out the whole or a part of the proceedings or case under paragraph (3)(b) to (e) without first giving the parties an opportunity to make representations in relation to the proposed striking out.
11. At today's hearing the claimant management company, appearing by its director and secretary, Mr Barry White, conceded that the £20 ground rent was payable to the freeholder, a company with which he was also concerned. It was explained to him that the claimant could not therefore sue for its recovery. That aspect of the claim must fail.
12. Although Mr White denied receiving a copy of the directions the defendant, Mr Davies, showed by waving a copy that he had received them, and the tribunal is satisfied from a letter on the file that a copy was sent to the claimant. This may explain the claimant's non-compliance with the directions to produce essential documentation. However, when asked whether the written demands provided to the tribunal by the claimant were the entirety of what was sent to lessees Mr White confirmed that they were. At the outset of the hearing the parties were asked whether, as urged upon them in the April directions, they had sought any legal advice. Each confirmed that they had not. Mr White admitted that he was completely unaware of section 21B and the need to serve prescribed information on the lessee when serving a demand. None of the other lessees (and he and his wife held a majority of the leases) ever complained and, he said while holding up a thick file of what he said were County Court judgments obtained against the defendant, Mr Davies was the only one who never paid.
13. While noting Mr Davies' odd and non-cooperative behaviour by refusing to pay while then letting his mortgagee pay the service charges in order to protect its security (and no doubt adding its own fees or charges for doing so), and refusing to join in with the collective purchase of the freehold and extension of the 99 year leases to 999 years (with the result that his lease now had only 55 years unexpired and was thus unmortgageable, which did not seem to concern him at all – as the lease would "see me out"), and the frustration that this must cause the claimant

management company, the fact remains that the claimant has not complied either with the terms of the lease or the statutory overlay of provisions such as section 21B concerning the levying of service charges.

14. As section 21B has not been complied with the defendant, Mr Davies, is entitled to refuse payment and no amount can therefore be said to be due and owing. The claim for payment cannot be sustained and this aspect must also be struck out under rule 9(3)(e).
15. The entire claim is therefore struck out. As the claim is for only £1346.80 plus the court fee of £70 it was rightly allocated to the small claims track and party and party costs are not therefore an issue.

Dated 11th June 2018

Graham Sinclair

Graham Sinclair

A judge of the First-tier Tribunal, also sitting as a judge of the County Court pursuant to section 5(1)(c) and (2)(u) of the County Courts Act 1984

IN THE COUNTY COURT AT CHELMSFORD

Claim No E8QZ7089

Between :

NEWMACE PROPERTIES LIMITED



Claimant

and

Paul Hugh DAVIES

Defendant

Before Tribunal Judge G K Sinclair, also sitting as a judge of the County Court pursuant to section 5(1)(c) and (2)(u) of the County Courts Act 1984, at Chelmsford Magistrates Court on Monday 11th June 2018

UPON HEARING Mr Barry White (company director and secretary) on behalf of the claimant and the defendant in person

AND UPON the holding of a case management/directions hearing

IT IS ORDERED THAT :

1. The ground rent is properly due to the freeholder and not the claimant management company, and this aspect of the claim must be struck out as there is no reasonable prospect of it succeeding.
2. The claimant having admitted that the service charge demands sued upon do not comply with the requirement in section 21B of the Landlord and Tenant Act 1985 that they be accompanied by the prescribed summary of rights and obligations of tenants of dwellings in relation to service charges, this aspect of the claim must also be struck out as there is no debt presently outstanding or reasonable prospect of the claim succeeding.

Dated 11th June 2018

