



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

Case Reference : CHI/29UN/LIS/2019/0041

Property : Flat 3B, 8 Ethelbert Road, Birchington,
Kent CT7 9PY

Applicant : Mr Sean Powell

Representative :

Respondents : Mr David Ruffell

Representative :

Type of Application : Transferred Proceedings from County
Court in relation to service charges and
administration charges

Tribunal Member(s) : Judge D. R. Whitney

**Date and Venue of
Hearing** : 9th October 2019 at Margate Magistrates
Court

Date of Decision : 9th October 2019

DECISION

REFEENCES IN [] ARE TO PAGES WITHIN THE HEARING BUNDLE

The Application

1. The Applicant issued proceedings in the County Court seeking recovery of service charges [30 and 31]. The Respondent is the owner of leasehold interest in Flat 3B, 8 Ethelbert Road, Birchington CT7 9PY. The application concerns 8 Ethelbert Road, Birchington (“the Property”).
2. The Respondent filed a defence and set off dated 14th March 2019 [45-48].
3. By Order of Deputy District Judge Adams in the County Court at Thanet dated 14th June 2019 the claim was transferred to the Tribunal [63]. The Tribunal issued directions dated 21st June 2019 [19-23]. The directions provided that at the final hearing the Tribunal Judge would also sit as a Judge of the county court to determine all issues.
4. The dates for compliance with the directions were amended on two occasions prior to the matter coming to hearing. The directions were substantially complied with by the parties. The Applicant had filed a bundle consisting of two lever arch files of documents running to some 710 pages.

Inspection

5. Immediately prior to the hearing the Tribunal inspected the Property. Present were Mr Powell together with a surveyor, Mr M Belcher, and Mr Ruffell.
6. Mr Powell suggested Mr Ruffell may wish to show the Property to the Tribunal as Mr Powell had little personal knowledge of the same.
7. The Property is mid-terrace on a road leading to the seafront. The tribunal estimates that it dates back to the 1900’s. It is a brick built property with pitched tiled roofs. To the front are wooden balconies from which all the paint is peeling. It is apparent that the whole of the Property is in need of repair and maintenance.
8. Looking from the road to the left hand side is a concrete exposed stairway leading to the upper floors. This stairway was covered with bird droppings so that the same was unsafe. A hand rail on the left hand side of the stairway was seen to be broken at various points and insecure. At the top (on the third storey) the Tribunal was shown some anti bird spikes attached by plastic cable ties. On going up the stairway certain areas were observed including a doorway into what the Tribunal was told was a communal area all of which required repair and redecoration.

9. To the rear the Tribunal viewed the Property from car parking areas belonging to adjacent houses. It was apparent the Property was in dire need to repair and maintenance. The roof to an extension on the rear ground floor could be seen to be in very poor order. The window frames in all of the flats were obviously rotten with little or no paint on the same. The Tribunal observed that some of the pointing was missing to parts of the rear elevations.
10. Mr Ruffell pointed out an area where there was water staining. It appeared a new hopper had been fitted to one of the down pipes in the area of this staining.
11. Overall the impression was a of a building requiring substantial works to be undertaken urgently.

Hearing

12. The hearing commenced at 11.12am. At the commencement Mr Ruffell was not present. Mr Powell was present, accompanied by Mr Belcher.
13. Mr Powell had provided a copy of the lease for flat 1B, being a flat he owned as he suggested the lease contained within the bundle [1-18] appeared to be missing certain pages which contained various schedules. He stated that he had been unable to obtain a complete copy of the original lease for the Respondents flat.
14. Mr Powell confirmed that he believed Mr Ruffell was going to attend the hearing.
15. The Tribunal explained to those present that its role was to initially sit as a Tribunal to determine matters within that jurisdiction and that the Judge would then sit as a County Court judge to determine all remaining issues including costs.
16. The Tribunal highlighted that as a preliminary matter it was concerned as to whether or not Mr Sean Powell was able to bring the proceedings? The Tribunal referred to paragraph 28 of Mr Ruffells statement [498] in which he challenged Mr Powell's right to bring the proceedings. Mr Powell in his reply [703] had stated that as the freeholder he could do so. The Tribunal invited Mr Powell to address it on this point.
17. Mr Powell explained he had owned a flat within the building for a number of years. Originally the Respondent had been the freeholder. A Right to Manage Company had been set up, 8 Ethelbert Road RTM Company Limited ("the RTM Co."). The RTM Co. collected the standard service charge and the administration for this company is dealt with by a lady called Christine Gray who had given a statement [475].

18. A number of years ago Mr Powell became the joint freeholder (office copy entries showing the freeholder as Ian David Mather and Sean Powell were in the bundle [19-21]). Mr Powell stated the RTM Co. wished to get the building sorted out. Payments on behalf of the Respondent had only ever been received from his mortgage lender.
19. Mr Powell stated with the co-operation of the RTM Co. he had employed a surveyor. He stated that he was taking this action as the freeholder. All action is with the co-operation of the RTM Co. and the agreement of Mr Mather. Mr Mather does not get involved with the day to day running.
20. Mr Powell suggested that as the RTM Co. cannot forfeit leases he bought the action. Initially he suggested he was a director but on questioning by the Tribunal stated the director of the RTM Co. was his sister.
21. The Tribunal asked what consents Mr Powell had?
22. He referred to the statement of Christine Gray [475] further he suggested that he is a property investor and Powell & Co Management Limited (“Powell & Co”) is a company of which he is the sole director and shareholder. Ms Gray refers to the RTM Co. having appointed Powell & Co as its agent.
23. Previous tribunal proceedings against another leaseholder were brought in the name of the RTM Co. as these related to what were termed standard service charges and not major works. Mr Powell stated that with the agreement of the RTM Co. he as joint freeholder dealt with matters relating to major works at the Property.
24. Mr Powell made an oral application to join Powell & Co as a joint claimant in the action.
25. The Tribunal offered Mr Powell a short adjournment to allow him to consider what if any further submissions he wished to make. Mr Powell declined the proposed adjournment.
26. Mr Powell submitted he is not a lawyer and has done his best to bring this to court. The building needs urgent attention. He believes he can easily get permission from the RTM Co. for them to be joined, likewise from Mr Mather.
27. The Tribunal drew Mr Powell’s attention to the “section 20 invoice” [32] which referred to the landlord as Powell & Co. He stated this was an error. He accepted this could be said to be a fundamental error. He invited the Tribunal to determine the value of the work and then he could amend this to the correct name. He has been asked by the RTM Co. to recover these monies. In his submission it was right to pursue the standard service charges which the RTM Co invoiced for and the

section 20 works which he invoiced for as joint freeholder in one action.

28. In his submission it would be unjust to dismiss the claim and make them start again because of a mistake. Mr Powell confirmed he had nothing further he wished the Tribunal to take account of.
29. The Tribunal adjourned at 11.40am to consider the submissions. At 11.42am it appeared Mr Ruffell had arrived to attend the hearing.
30. The parties, including Mr Ruffell were called back to court at 11.44am. Mr Ruffell explained that when he arrived at the court building he had been directed to the floor above (being where the county court usually sits). A clerk advised him they had no record of the proceedings and he had returned home to get the letter. He had then returned to the court but had not arrived until 11.42am.
31. The Judge explained what had taken place in Mr Ruffell's absence including the submissions made by Mr Powell. Mr Powell confirmed that he agreed with the precis given by the Judge.
32. Mr Ruffell was asked if he wished to make any submissions on this preliminary point. He stated that he did not believe Mr Powell is a freeholder as he had not been served with any notices of first refusal when a share of the freehold was transferred by Mr Mather to Mr Powell.
33. The Tribunal referred Mr Ruffell to his statement [498]. It appeared Mr Ruffell did not have with him a complete copy of the bundle and he was provided with the Tribunal's witness bundle.
34. Mr Ruffell explained he had received help in preparing his statement and he had read the same. He referred to Mr Powell signing off accounts and he felt this was incorrect as Mr Powell was not a director of the RTM Co.
35. On questioning by the Tribunal he confirmed his position was that Mr Powell was not entitled to bring these proceedings.
36. Before adjourning the Tribunal asked both parties whether if it determined that the proceedings were brought by the wrong party would they wish the Tribunal to consider the reasonableness of the charges. Both parties agreed they would.
37. The Tribunal adjourned to consider the matter.

Determination

38. The hearing resumed and the Tribunal gave its oral decision to the parties.

39. The Tribunal accepts that the building as a whole is in urgent need of work being undertaken.
40. Mr Powell is not a director of the RTM Co. and no one is here from the RTM Co.
41. Turning to Mr Powell's oral application to join Powell & Co this is refused. The application has only been made orally on the day of the hearing. Further even if the application was allowed Powell & Co is simply the managing agent for the RTM Co. and is not entitled itself as their agent to bring court proceedings. If the application was allowed it would not fundamentally change the issue as to whether or not the proceedings have been instituted by the correct party.
42. Turning to the claim itself the Tribunal accepts Mr Powell is a joint freeholder with Mr Mather. There is no evidence before the Tribunal that Mr Mather consents to Mr Powell bringing this claim in his sole name and they own the freehold jointly.
43. It is the case advanced by Mr Powell that there is an RTM Co. who manages the building in accordance with the right to manage legislation. The right to manage legislation provides that the RTM Co. steps into the landlord's shoes and is entitled to manage the Property, demand service charges and recover the same. Right to manage companies are entitled to appoint agents to act on their behalf in carrying out the functions which are the right to manage companies' responsibility. The RTM Co. has appointed Powell & Co to act as its managing agent but Powell & Co is a separate legal entity from Mr Sean Powell. They are not one and the same.
44. Mr Powell relies on the statement of Christine Gray [475]. Nothing within this statement gives any indication that the RTM Co. has agreed to return to the freeholders or Mr Powell personally the right to pursue any aspect of the service charges. In fact it is the case that Mr Powell relies upon demands issued in the name of the RTM Co. [35] to pursue what has been referred to as the standard service charge.
45. The Section 20 invoice [32] refers to Powell & Co as the Landlord. No one suggests that Powell & Co are the freeholder and Mr Powell conceded this was an error. Once again the Tribunal reminds itself that whilst Mr Powell may be the sole director and shareholder of Powell & Co this is a different entity.
46. Powell & Co are the RTM Co.'s managing agent. This is what Christine Gray states in her statement. This Tribunal is satisfied that this arrangement does not give Mr Powell personally any rights to pursue claims in his own name.

47. The issue as to the correct identity of the Claimant has been raised by Mr Ruffell in his statement and addressed by Mr Powell in his reply. It was plainly an issue that had been raised in advance of the hearing.
48. The Tribunal has considered the bundle generally. It notes that the section 20 notices relied upon by the Applicant state Powell & Co are the landlord [121 & 122]. This is not correct, even on Mr Powell's case that he personally is entitled to pursue recovery of amounts relating to major works.
49. The Tribunal finds the claim was not issued by a person entitled to recover any of the service charges claimed whether for major works or the normal day to day service charges and the claim must therefore be dismissed.
50. The Tribunal had considered carefully whether notwithstanding this determination it could determine what amounts would be reasonable. The Tribunal is mindful that on its own inspection the Property requires urgent substantial works to be undertaken.
51. The Tribunal determines that it cannot do so. On the evidence before it today it is the RTM Co. who appears to be entitled to demand and recover service charges. That is the case advanced by Mr Powell in respect of the usual annual service charges. This Tribunal has found as a matter of fact that it is the RTM Co. who can and should demand all service charges. No officers of the RTM Co. were present at court. The Tribunal was not satisfied that it would be equitable to proceed without providing them an opportunity to make submissions on the sums claimed. It may be the RTM Co. would advance different points to those currently made by Mr Powell.
52. The Tribunal confirmed that it dismissed the claim.
53. Each party was invited to make any further submissions on costs to the Judge sitting as a Judge of the County Court. Mr Powell confirmed he had no submissions to make. Mr Ruffell stated he had spent a lot of time on the matter but had no schedule of time spent.
54. The Judge made no order as to costs.
55. Mr Powell indicated at the end of the hearing he would arrange for the RTM Co. to issue a claim. The Judge advised Mr Powell he should take legal advice and urged both parties to try and work together to undertake the works obviously required to the building.

Judge D. R. Whitney

RIGHTS OF APPEAL

1. 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.
2. 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.
3. 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.
4. 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