



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

Case Reference : CHI/45UC/LSC/2020/0038

Property : GFF, 214 London Road, Bognor Regis
PO21 1AX

Applicant : Mark Sheppard

Representative : E J Moyle LLP

Respondent : Contactreal Limited

Representative : Remus Management

Type of Application : Service charges

Tribunal Member(s) : D Banfield FRICS
Regional Surveyor

Date of Decision : 17 December 2020

DECISION

The Tribunal determines that the application fails and that the service charges the subject of this application are payable as demanded and that the calculation used to determine the respective proportions has been correctly applied.

Background

1. The Applicant asked the Tribunal to determine the amount of service charges for the period 2011 to 2022. The sum at issue was £26,638.89.
2. At a case management hearing on 16 June 2020 I raised the question of the Tribunal's jurisdiction in the light of the County Court judgement dated 20 December 2019 in respect of unpaid service charges from 14 August 2015, any effect of the Limitation Act 1980 and whether the charges are "agreed or admitted" pursuant to section 27A(4)(a).
3. Mr Knight of the Respondent's then representative said that the Limitation Act provision could not be relied upon but following the precedent set by *Cain v Islington LBC* [2015] UKUT 542 (LC) the Applicant is barred from challenging service charges which have been paid without challenge.
4. Mr Nyatanga accepted that although his client was contemplating whether to apply for the County Court judgement to be set aside the Tribunal was currently bound by that decision. With regard to the *Cain* decision he said that the judgement made clear that the outcome of each case would be dependent upon its particular circumstances and that as the service charges had been settled by his client's mortgage lenders it could not be taken that his client had agreed them.
5. It was agreed that the proposed Scott Schedule should cover all of the years challenged with the exception of the period the subject of the County Court judgement.
6. Directions were made following the case management hearing and on 22 July 2020 I determined that the period from 2011 to 2015 be struck out.
7. The application to set aside the County Court judgement was due to be heard on 20 November 2020 and further Directions were made on 17 September 2020 setting out alternative timetables depending on the outcome of the County Court hearing.
8. The Applicant submitted a hearing bundle on 27 November 2020 containing the parties' position statements prepared for the CMH, the application, lease, the Tribunal's Directions and a completed Scott Schedule.
9. Also submitted was a document entitled Applicant's Paper Submissions (APS). The document confirmed that the County Court judgement was upheld and that the only issue for the tribunal to determine was the service charges for 2020 and the rate of service charge for the future. The document then went on to

challenge the reasonableness of the service charge based on a rateable value proportion (the RV issue) suggesting that following the abandonment of the rating system based on rental values the proportions should be calculated as a proportion of capital values.

10. By an application dated 1 December 2020 the Respondent requested that the submissions contained in the APS should be debarred on the grounds that they did not form part of the FTT proceedings previously and were not in the Scott Schedule in the alternative they requested the opportunity to respond.
11. In considering the application to debar the RV issue the tribunal is mindful that this is not a matter that has arisen since the application was submitted and could and should have been included in the original claim or at the very least raised at an earlier stage in the proceedings.
12. Given that the APS is the sole source of information regarding the outcome of the County Court challenge it will not be barred and by Further Directions dated on 14 December 2020 the Respondent was invited to reply.
13. In a response it was explained that the County Court judge had considered the RV argument and had rejected it. It was also explained that the subject flat had a RV of £123 and the upper floor which confusingly has an address of Pembury, Richmond Road North has an RV of £127. These are used to calculate the lower flat's proportion in accordance with clause 2(18) (1) of the lease.
14. A copy of the County Court judgement was attached and a copy of Land Registry certificate and lease for Pembury indicating that it did indeed comprise the first floor flat in the same building.

Determination

15. The issue remaining for the Tribunal to determine was the service charges for 2020 – 2022. No challenges had been made to any of the expenditure in that period save that the applicant's proportion of the service charge had been incorrectly calculated.
16. I am satisfied that the leases of both flats required the proportions to be calculated using rateable values and I am further satisfied that the appropriate RVs to apply are 123 and 127.
17. **Given this finding the Tribunal determines that the application fails and that the service charges the subject of the application are payable as demanded and that the calculation used to determine the respective proportions has been correctly applied.**