FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**BIR/00FN/LIS/2021/0002** **BIR/00FN/LLD/2021/0004** **BIR/00FN/LLC/2021/0005**
Court Reference	**:**	**F1QZ12NW (Leicester County Court)**
Subject Property	**:**	**Flat 1** **Granby Buildings** **41 Granby Street** **Leicester LE1 6EH**
Claimant	**:**	**Sangha Developments Limited**
Representative	**:**	**Ms Sue Pedley,** **Manager of Applicant**
Defendant	**:**	**Siris Capital Limited**
Representative	**:**	**Mr Suresh Patel,** **Director of Respondent**
Type of Application	**:**	**(1) Liability to pay service charges** **(2) Liability to pay administration** **(3) Liability to pay costs** **(All on transfer from the County Court)**
Tribunal Members	**:**	**Judge Anthony Verduyn** **Mr Vivek Chadha MRICS**
Date of Decision	**:**	**13th August 2021**
Date Decision issued	**:**	**17th August 2021**

DECISIONS

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1 In December 2019 the Claimant issued proceedings against the Defendant in the County Court, claiming –

(i) arrears of service charges in the sum of £1230.73;
(ii) administration charges in the sum of £125.00;
(iii) court fees in the sum of £70.00.

2 By Order dated 15 April 2020 the case was allocated to the small claims track under the Civil Procedure Rules 1998.

3 By Order dated 18 November 2020, District Judge Severn transferred matters to the First-tier Tribunal.

4 In accordance with the Civil Justice Council flexible judicial deployment pilot scheme, the claims relating to service charges and administration charges are determined by the First-tier Tribunal, comprising the Tribunal Judge and Valuer Member; and the remaining matters are determined by the Tribunal Judge sitting as a Judge of the County Court exercising the jurisdiction of a District Judge (under section 5(2)(t) and (u) of the County Court Act 1984, as amended by Schedule 9 to the Crime and Courts Act 2013).

5 To avoid confusion, the description of Claimant and Defendant will be maintained in this decision, since applications made by the Defendant for certain forms of relief may lead to the terms "Applicant" and "Respondent" causing confusion.

SERVICE CHARGES AND ADMINISTRATION CHARGES PROCEEDINGS BEFORE THE TRIBUNAL

6 Granby Buildings comprise a mixed use development, including 9 flats. The freeholder is Keythorpe Properties Limited and its managing agent is Philip Fisher LLP. The freeholder is the direct landlord of the commercial units at ground floor level. The upper floors are leased to the Applicant (following an assignment) and it employs no managing agent. The individual flats are each subject of an underlease. Flat 1 is just such an underlease, and the Defendant lets Flat 1 to occupation tenants under tenancies governed by the Housing Act 1988 (as amended).

7 The Headlease is dated 11 April 2006 and contains provisions for the payment of service charges in clause 5(a) as set out in the Second Schedule 2nd Schedule, which are typically broadly and comprehensively drawn to include maintenance of all common parts, defined as meaning all parts not let nor intended to be let, and including all structural elements.

8 The Underlease for Flat 1 is dated 29th August 2006 and is tripartite between the Head Lessor (now the Claimant), its then management company, and the tenant, Universal Homes Limited, the interest of which was assigned to the Defendant on 27th July 2018. The Defendant covenants to pay the "service charge" for the upkeep of the common parts and the provision of services in accordance with the Fourth Schedule. That schedule includes expenditure under Clause 5 of the Underlease, which is comprehensive as to obligations for upkeep and insurance of the common parts. Liability in accordance with the terms of the underlease for matters appearing in the Schedules to this decision was uncontested, save as to a "sinking fund".

9 The Defendant's proportion of the service charge in the underlease is a "fair and reasonable proportion" of the expenditure, but with the Claimant can "in the interests of good estate management … recalculate the Tenant's Proportion as appropriate to take account of the differences in the insurance costs of and/or the

repairs services and facilities provided or supplied to any person within the building or on the Development or adopt such other method of calculation of the Tenants proportion as shall be fair and reasonable in the circumstances"

10 The service charge year is in respect of the underlease is the period from 29th September to 28th September.

11 In the originating Court proceedings the claim was issued in respect of an outstanding invoice dated 24th September 2019 for "on account" service charges of £702.76 for 2019/20 and building insurance premium of 29th September 2019 of £527.97, with a charge imposed for late payment of £25 and an administration charge for proceedings of £100, hence a total of £1,355.73. It was then defended on the basis that the service charge as an annual sum had increased from £1,895.04 to £2,811.04, without proof of increased expense and for a poorly maintained building. This increase has now been sustained in the following year. Insurance was stated to be undisputed and payment to have been maintained at the previous year's rate.

12 The directions of the Tribunal given on 6th January 2021 ordered schedules to be drawn up for the service charges, with the parties providing their commentary on each item as to reasonableness, and a similar list for administration charges. Whilst attempting to fulfil these requirements the Defendant completed an application form in respect of Administration Charges under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002, which then referred to "emergency work", to which he attributed a 48% increase in service charges, and referred to service charges for 2020-21 increasing over the previous year from £2,811.04 to £2,907.08. By email the Respondent also sought an Order in respect of costs of proceedings under Section 20C of the Landlord and Tenant Act 1985.

13 The Schedule provided for 1 April 2021 hearing were in very general terms, essentially because they were prepared by the Defendant without the benefit of the detailed breakdown of service charges in the possession of the Claimant. Responses of the Claimant were in general terms, also, albeit supported by disclosure of documents. There was reference by the Defendant to the charges for 2018-19 at £1,895.04 as a base figure for the description of the rise for 2019-20 to £2,811.04 and then for 2020-21 to £2,907.08.

14 By reason of the schedules being too general to allow for a proper analysis of the charges, the Tribunal on 1 April 2021 issued further directions for itemised schedules for 2019/20 and 2020/21. In fact, schedules were produced for 2018/19 and 2019/20, due to a misunderstanding or misreading of the Order; and because 2020/21 was billed on account and with less detail.

15 On proper analysis, the Tribunal had not had referred to it from the Court anything from the year 2018/19 and the Tribunal treated the references to 2018/19 as for comparative purposes only. Indeed, there was reference to emergency works in 2018/19 of a substantial nature which could require participation from the freeholder. This also made it inappropriate for the current proceedings to be extended back to that year. If the Defendant wishes to challenge any of the sums charged for 2018/19, then a fresh application would be required.

THE LAW ON SERVICE CHARGES

16 The powers of the Tribunal to consider service charges are contained in sections 18 to 30 of the Landlord & Tenant Act 1985 ("the Act").

17 Under Section 27A(1) of the Act, the Tribunal has jurisdiction to decide whether a service charge is or would be payable and if it is or would be, the Tribunal may also decide:-

a. The person by whom it is or would be payable,
b. The person to whom it is or would be payable,
c. The amount, which is or would be payable,
d. The date at or by which it is or would be payable, and
e. The manner in which it is or would be payable.

18 Section 18 defines "service charge" and "relevant costs" and provides as follows:

18.— Meaning of "service charge" and "relevant costs".

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a [dwelling] as part of or in addition to the rent—

(a) which is payable, directly or indirectly, for services, repairs, maintenance [, improvements] or insurance or the landlord's costs of management, and

(b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose—

(a) "costs" includes overheads, and

(b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

19 Section 19(1) of the Act provides that:

"Relevant costs shall be taken into account in determining the amount of the service charge payable for a period –

a. Only to the extent that they are reasonably incurred, and

b. Where they are incurred on the provision of services and the carrying out of works, only if the services or works are of a reasonable standard:

and the amount payable shall be limited accordingly."

20 A service charge is only payable if the terms of the lease permit the lessor to charge for the specific service. The general rule is that service charge clauses in a lease are to be construed restrictively, and only those items clearly included in the

lease can be recovered as a charge (Gilje v Charlgrove Securities [2002] 1EGLR41).

21 The construction of the lease is a matter of law, whilst the reasonableness of the service charge is a matter of fact. On the question of burden of proof, there is no presumption either way in deciding the reasonableness of a service charge. Essentially the Tribunal will decide reasonableness on the evidence presented to it (Yorkbrook Investments Ltd v Batten [1985] 2EGLR100).

22 In relation to the test of establishing whether a cost was reasonably incurred, in Forcelux v Sweetman [2001] 2 EGLR 173, the Lands Tribunal (as it then was) (Mr P R Francis) FRICS said:

> "39. ...The question I have to answer is not whether the expenditure for any particular service charge item was necessarily the cheapest available, but whether the charge that was made was reasonably incurred.
>
> 40. But to answer that question, there are, in my judgement, two distinctly separate matters I have to consider. Firstly, the evidence, and from that whether the landlord's actions were appropriate, and properly effected in accordance with the requirements of the lease, the RICS Code and the 1985 Act. Secondly, whether the amount charged was reasonable in the light of that evidence..."

23 In Veena v Cheong [2003] 1 EGLR 175, the Lands Tribunal (Mr P H Clarke FRICS) said:

> "103. ...The question is not solely whether costs are 'reasonable' but whether they were 'reasonably incurred', that is to say whether the action taken in incurring the costs and the amount of those costs were both reasonable."

24 And further clarification of the meaning of "reasonably incurred" has been provided by the Upper Tribunal in London Borough of Lewisham v Luis Rey-Ordieres and others [2013] UKUT 014 which said (at para 43):

> "...there are two criteria that must be satisfied before the relevant costs can be said to have been reasonably incurred: the works to which the costs relate must have been reasonably necessary; and the costs incurred in carrying out the works must have been reasonable in amount."

THE HEARING

25 At the hearing, the Tribunal considered the Schedule for 2019/20 in detail. Inspection was not possible, because of the Covid-19 pandemic, but the Tribunal viewed video materials from the parties. Granby Buildings comprises a ground floor lobby leading to stairs and 3 floors at first floor and above. There is an outdoor area for refuse bins. The ground floor is predominantly occupied by commercial units.

26 Evidence and submissions were received from Ms Pedley for the Claimant and Mr Patel for the Defendant on an item by item basis. Where relevant, this has been added to the Schedule as provided by the parties. The decisions on each item

appear in the Schedule, also; the Tribunal having considered the submissions after the conclusion of the hearing. The Schedule for 2019/20 records the decision of the Tribunal in the final column in red and underlined.

27 For 2020/21 estimates were provided in a tabular form, but with comparisons to former estimates, rather than outcomes. An adapted Schedule is annotated with the decisions of the Tribunal again in red and underlined.

28 In respect of liability for Administration Fees under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 and costs of proceedings under Section 20C of the Landlord and Tenant Act 1985, the Tribunal considers that there was a general want of detail in the Claimant's response to issues raised by the Defendant, which were only fully resolved after the first hearing was listed on 1st April 2021 and new direction given. In addition, the Defendant succeeded in part in respect of the issues he raised as set out in the Schedules. Having regard to those circumstances, the Tribunal determines that any costs incurred by the Claimant in connection with proceedings before it should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Defendant. Likewise and for the same reasons the Tribunal extinguishes the Administration fees in so far as they relate to the litigation costs of the proceedings before it.

29 The Tribunal accordingly determines the service charges in the sums appearing in the Schedules in respect of the service charge year 2019/2020 and the estimate in respect of the service charge year 2020/2021.

Dr Anthony Verduyn

Tribunal Judge

THE DECISION OF THE COURT

30 Consequent upon the foregoing findings of the Tribunal, the arrears of service charges claimed in the sum of £1,230.73 fall to be considered in my capacity as a judge of the County Court and without the involvement of Mr Chadha in the decision making process. The Particulars of Claim break this claim down into two elements: insurance for the year £527.97; and, on account service charges of £702.76.

31 The matter is considerably complicated by payments being made by the Defendant on the basis of 2018/19 figures, but apportioned by the Claimant to the oldest outstanding sum (rather than against the corresponding invoice). Furthermore, the accounting year in question is now over. Put crudely, the findings of the Tribunal in the schedule for 2019/20 (excluding the insurance line) represents 59% of the sums asserted by the Claimant, and only 44% of the comparable estimate for the year. Whilst applying out-turn figure after Tribunal consideration to the estimates for the year is not entirely satisfactory, a broad assessment having regard to these figures would suggest that on account payment should have been broadly half what was demanded and the justice of the situation would warrant £350.

32 The sum for the insurance can be shortly disposed of, as the Tribunal did not adjust that figure at all and so it falls to be paid.

33 Judgment, therefore, shall be given in the sum of £877.97.

34 Adopting the reasoning of the Tribunal in respect of liability for Administration Fees under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 and costs of proceedings under Section 20C of the Landlord and Tenant Act 1985, the Court also disallows administration fees and legal costs in respect of the Court proceedings. It further considers in this respect that small claims costs ought also not to be awarded in favour of the Claimant and there should be no order as to costs. In one sense this may seem unsatisfactory when the Claimant has obtained a judgment sum, but the thrust of this case was an analysis of the reasonableness of demands which can, of course, be dealt with by the Tribunal without Court proceedings and any Court costs being recoverable at all. Given the extent of deductions identified, no order as to costs is appropriate and I exercise my costs jurisdiction accordingly.

35 It follows that the claims for administration charges in the sum of £125.00 and court fees in the sum of £70.00 are each dismissed.

Dr Anthony Verduyn

Sitting as a District Judge

APPEAL RIGHTS

APPEALING AGAINST THE TRIBUNAL'S DECISIONS (Paragraphs 1 to 34 above)

1. A written application for permission must be made to the First-tier Tribunal at the Regional tribunal office which has been dealing with the case.

2. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.

3. If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

4. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers

5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.

APPEALING AGAINST A RESERVED JUDGMENT MADE BY THE JUDGE IN HIS CAPACITY AS A JUDGE OF THE COUNTY COURT (Paragraphs 30 to 36 above)

1. A written application for permission must be made to the court at the Regional tribunal office which has been dealing with the case.

2. The date that the judgment is sent to the parties is the hand-down date.

3. From the date when the judgment is sent to the parties (the hand-down date), the consideration of any application for permission to appeal is hereby adjourned for 28 days.

4. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.

5. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers.

6. If an application is made for permission to appeal and that application is refused, and a party wants to pursue an appeal, then the time to do so will be extended and that party must file an Appellant's Notice at the Leicester County Court office within 14 days after the date the refusal of permission decision is sent to the parties.

7. Any application to stay the effect of the order must be made at the same time as the application for permission to appeal.

APPEALING AGAINST THE DECISIONS OF THE TRIBUNAL AND THE DECISIONS OF THE JUDGE IN HIS CAPACITY AS A JUDGE OF THE COUNTY COURT

8. In this case, both the above routes should be followed.