



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

- Case Reference** : CHI/18UE/LIS/2021/0004/JG
- Property** : Ilfracombe Holiday Park, Marlborough Road,
Ilfracombe EX34 8PF
- Applicant** : G P Ilfracombe Management Company
Limited
- Representative** :
- Respondent** : (1) 195 leaseholders as set out in attached
schedule
(2) Mr Roy Shankland (155)
(3) Spark Marketing Investments Limited
(26T) and (64S)
(4) Chen Bi Fen (108)
(5) Jeffrey Harold Streeton (116)
(6) James Lee (34G)
(7) Yasser Mohamed Al Lawati & Saleh
Mohamed Al Lawati (64M)
(8) Claire Blundell (241)
(9) Daniel Marcus Fisk (263)
(10) A1 Properties (Sunderland)
Limited (9m, 14G, 15G, 16G, 16M, 17G,
17M, 20T, 41M, 63G)
(11) Green Park Holdings
(Ilfracombe) Limited (7G, 223, 229,
231, 233, 235, 237, 239 and 261)
- Representative** : (1) Trowers and Hamlin Solicitors
- Type of Application** : To determine the reasonableness and liability
to pay service charges
- Tribunal Member(s)** : Judge D. R. Whitney

Mr M J F Donaldson FRICS
Mr E Shaylor

Date of Hearing : 30th September and 1st October 2021

Date of Decision : 29th November 2021

DETERMINATION

Background

1. The Applicant is the management company referred to within the leases of the development. The Property has 273 residential leasehold units and associated commercial and common areas.
2. The Respondents are all residential leaseholders of the Property.
3. Various sets of directions have been issued. These included a determination of an application to withdraw the claim made by the Applicant which it then subsequently sought to withdraw. Judge Whitney determined on 9th September 2021 that the application should proceed to be heard.
4. Originally it was for the Applicant to prepare the hearing bundle. The Applicant failed to do so and so the solicitors for the First Respondent prepared the bundle. Judge Whitney made an order that the Applicant would be liable to pay the costs of the preparation by the solicitors. References in [] are to pages within the bundle supplied.
5. We highlight that there are separate High Court proceedings involving those leaseholders for whom Trowers and Hamlin LLP act, the Applicant and its directors Mr Spence and Mr Kewley. The Tribunal has acknowledged that the First Respondents are taking part in these proceedings without prejudice to their claim that their leases should be rescinded. All parties have proceeded on that basis.

The Law

6. The relevant law is that contained within sections 19 and 27A of the Landlord and Tenant Act 1985 which are set out in Annex A.
7. The Tribunal also received skeleton arguments from the Applicant's representative, counsel for the First Respondent and Mr Brooks, director of the Third Respondent. The First Respondent, in particular, referred the Tribunal to various authorities and provided a bundle all of which were considered by the Tribunal.

The Hearing

8. The hearing took place over two days at Havant Justice Centre. The hearing took place in person with various observers attending remotely.
9. We record that at the start of the first day the following people were in attendance within the Tribunal room:

Applicant: Mr Gubbay assisted by Mr Rowell

First Respondent: Mr Verduyn, Counsel; Mr Green and Ms Medvani, Trowers and Hamlin LLP; Ms Sperduto, Leaseholder; Messrs Vyas and Sharma witnesses;

Third Respondent: Mr Brooks, director of Spark Marketing Investments Limited.

10. A number of people had requested and were provided with a remote link to attend and observe. We note that at certain parts of the hearing it appeared that Mr Kewley and Mr Spence were observing, although they took no part in the proceedings.
11. The proceedings were recorded. This decision is not a verbatim record of all that was said or took place but records the matters which the Tribunal considered most relevant in reaching its determination.
12. At the start of the hearing Mr Verduyn read a News Release from the Serious Fraud Office dated 29th September 2021 referencing various raids undertaken in connection with an investigation into the Alpha and Green Park Companies. The investigation is said to concern frequently misleading investors to purchase leasehold property, including the leaseholds at the subject Property.
13. Mr Gubbay stated that he remained authorised to represent the Applicant being the management company referred to within the leases. Mr Kewley, as a director of the Applicant, had provided written authority by email dated 10th September 2021 appointing Mr Gubbay.
14. It was agreed by all present that references to fraud would be treated as allegations of fraud as it was agreed and accepted it was not for this Tribunal to adjudicate on that matter.
15. In opening Mr Gubbay suggested he too was a victim of the alleged frauds perpetrated by Messrs. Kewley and Spence. He said he had been induced via an off shore entity he controlled to pay £9,000,000 for a ground rent investment in Ilfracombe Holiday Park. He contended he was entitled to the ground rent income from the leases of the individual units as a passive investment, not having to be involved in the management. He suggested it was for Messrs Kewley and Spence, under the terms of a development leaseback to Green Parks Holdings (Ilfracombe) Limited, to develop the site and then sell the individual units. Mr Gubbay contended the redevelopment of the site had not taken place in accordance with this leaseback.
16. The Tribunal reminded Mr Gubbay that he was here as the representative for the Applicant, being a company controlled by Messrs Kewley and Spence, and yet his position appeared in conflict. He confirmed to the best of his knowledge and belief he remained instructed to represent the Applicant and this had not been rescinded.
17. Mr Gubbay was not currently a director of the Applicant company. Mr Gubbay was reminded by the Tribunal at various points of the hearing that he was present as the representative of the Applicant, not other companies and if he was not happy with that position, he should withdraw from representing the Applicant.

18. Mr Gubbay explained he believed his responsibility was to the leaseholders. He believed that the head lease which his company Tuscola (106) Limited held, allowed it to take control of the Property. He also explained his company had purchased an option to purchase the freehold for £1 and his company was pursuing this. He expects it will shortly be the freeholder.
19. He explained Tuscola (106) Limited acquired three head leases. Phase 1 and Phase 2 being relevant to these proceedings. His company had granted a development lease to Green Parks Holdings (Ilfracombe) Limited. It was this company which granted the underleases to the individual units under tri partite leases naming G P Ilfracombe Management Company Limited. These were the leases that had been granted to each of the Respondents who had then sub-let to Green Park Holidays Limited who were to provide a fixed return for 10 years.
20. Mr Gubbay stated that whilst each of the leaseholders expected a guaranteed rent and return on their investments, given they had entered into long residential leases, it was the Respondents who were responsible for paying ground rent and service charge irrespective of whether or not they were paid their guaranteed returns.
21. Mr Gubbay explained that his company had not been paid the ground rent to which it was entitled. As a result in or about May 2020, following discussions with Messrs. Kewley and Spence, he had intervened in the management. He was appointed as a director of the Applicant company and took control of the service charges. He stated that a budget had been issued to all 277 leaseholders on the park and demands made. Few had paid. In his submission these demands were compliant with the lease.
22. Quantuma LLP were appointed administrators of Green Park Holidays Limited on 1st July 2019. Mr Gubbay explained in or about September 2020 Quantuma disclaimed the Green Park Holidays Limited underleases. Mr Gubbay believed very few leaseholders took control of their units, they ignored all demands and, in his opinion, left the development in peril due to lack of funds.
23. Mr Gubbay explained that for the later part of 2020 the park was closed due to Covid 19. He used the period until January 2021 to assess and form a plan. It was this exercise which led to the 2021 budget which is the subject of this application.
24. Mr Gubbay referred the Tribunal to the specimen lease [38]. It was agreed all leases were in similar form. He suggested the demands had been calculated in accordance with the terms of the lease. He stated that the service charge should be divided by the number of units. A sample demand was in the bundle [22-36]. This included all the information given to the leaseholders to show the amounts claimed.
25. Mr Gubbay explained that the Applicant held a lease of the swimming pool. In his view this was an important facility and the costs of running the same should be charged to the Respondents. He differentiated this from the

commercial venues, creche and the like which he accepted could not be charged for.

26. In respect of the major works he said in his judgment Green Parks Holdings (Ilfracombe) Limited had not properly refurbished or re-built units as was required under the development lease his company had granted to them before selling the leases to the Respondents. Various units were not fit for occupation.
27. Mr Gubbay said he assessed the amounts on the basis of the knowledge he had. He was an investor with 30 years property experience including within the hotel industry. The leases did not allow in year demands and so he carried out an assessment of what he believed the likely expenditure within the year was to be. His intention was to progress the works throughout 2021.
28. Mr Gubbay confirmed that the Applicant's statement of case [113-118] which he had signed was true and accurate. This was accepted as the evidence on behalf of the Applicant.
29. Mr Verduyn then cross-examined Mr Gubbay.
30. We record at this point that during the cross examination of Mr Gubbay Mr Rowell was required to leave the hearing, after he was seen holding up documents in an attempt to assist Mr Gubbay. He had been warned previously that he must not attempt to assist Mr Gubbay in his giving evidence. The Tribunal ruled Mr Rowell could not return to the Tribunal room but he was able to observe via the remote link and it is believed that he did so.
31. Mr Gubbay confirmed he is a director of Epworth SW Limited which has been appointed as the managing agent for the Applicant. He does have a written agreement but he had not disclosed the same. He explained when he was appointed as a director of the Applicant he found things to be shambolic. Prior to his involvement the site was run "like the Wild West". He accepted that it was Messrs. Kewley and Spence who had run the site in this way. He stepped in as his ground rent income was in jeopardy.
32. Mr Gubbay explained he had wanted to work with Mr Sharma who was appointed by Quantuma to manage the site and gave evidence for the First Respondent. In his opinion Mr Sharma was well meaning but was not up to the job of running the holiday lettings. The income achieved was low and the costs were high. He stated in the whole of 2020 £320,000 was earned from holiday lettings. Currently for the year 2021 the earnings were £2,100,000 gross. He confirmed he was operating the site save for some units such as those owned by the Third Respondent. He confirmed he had not accounted to leaseholders for this money and as yet no accounts had been issued. He stated he had service charge accounts for the previous year but they had not been issued. Copies were not within the bundle.
33. He explained that Epworth SW Ltd was originally Mr Rowell's company and managed various developments for Mr Gubbay. He took over the company with the intention being that Whitton & Laing would be appointed as

Managing Agents but given the uncertainty and litigation it had not been possible for this to happen. Whitton & Laing have an operative on site already at least once a week, but without income they cannot operate as the managing agent.

34. Mr Gubbay explained he only became aware he was no longer a director of the Applicants when the solicitors for the First Respondents wrote to the Tribunal pointing this out in July 2021. He confirmed he had no control over Messrs. Kewley and Spence and would prefer they were not directors of the Applicant.
35. Mr Gubbay stated he would not advise anyone to pay any monies to any entity controlled by Messrs. Kewley and Spence. He controlled Epworth and any funds paid to it. He stated that the solicitors for Tuscola were filing papers so that his company would have control and he will encourage Messrs. Kewley and Spence to transfer shares in the Applicant company.
36. Mr Gubbay stated he could have let the park go to “rack and ruin” but did not do so. He did accept his management could be terminated.
37. He again confirmed he had audited accounts for 2020 but these had not been issued. No copies had been included in evidence. He stated he looked at 2020 and had all the receipts etc and used this to construct the budget. In his evidence he said he was not required to give the management figures he worked from. The budget was calculated from the knowledge he had at January 2021.
38. At this point the Tribunal adjourned for lunch on the first day. Mr Gubbay was reminded he must not discuss his evidence with anyone. It was agreed that the First Respondent’s two witnesses would be interposed after lunch.
39. Upon resumption the First Respondent called Mr Hitesh Vyas. He confirmed his witness statement was true [1068-1079]. Mr Vyas is one of the Respondents being the owner of number 52 Ilfracombe Holiday Village.
40. Mr Gubbay cross examined Mr Vyas. He confirmed he was never invited to view the property prior to his purchase of a unit and was given the impression he did not need to. He was just looking at the return he would make and was not expecting a totally unlettable unit.
41. Mr Brooks had no questions for Mr Vyas.
42. Mr Vyas was released.
43. Mr Varun Sharma was then called for the First Respondent. He confirmed his witness statement was true [1068-1078].
44. He was cross examined by Mr Gubbay.
45. He explained how in his opinion everything had been overpromised by Messrs. Kewley and Spence. He thought there was only about 100 units capable of being let. In his words the refurbishment undertaken was “putting

lipstick on a pig". He explained some of the problems he saw and had experience of at the park and within units.

46. Mr Verduyn re-examined briefly and then Mr Sharma was released.
47. The cross examination by Mr Verduyn of Mr Gubbay resumed.
48. Mr Gubbay stated the issuing of the budget was to try and prevent the response he got in 2020 when no one replied to the budget sent out. He wanted in his words to bring people to the table. He did not have years to wait and stated he reached out to the Investor Committee but was blanked by them. He stated the budget was based on various notes, discussions with professionals as explained in the letter sent to all leaseholders [22-30].
49. He accepted the dates of many of the reports in the bundle were after the budget was issued. He referred to a lot of work having been undertaken prior to the reports being produced, notwithstanding the fact that Mr Gubbay said he had relied upon them for the budget figures. He stated he believed the major works could have begun in 2021 if payments had been made. In his view the window for works to be undertaken was between November and March being the period when the Holiday Park was either not functioning or at lower occupancy rates.
50. Mr Gubbay explained that he anticipated being blanked hence he made the application to the Tribunal immediately upon issuing the demands and covering letter explaining the budget. There was a chronic shortage of funds. Certain works and services must be paid for so the park could operate.
51. He stated that in his opinion the car park barrier which had been installed was necessary as a safety feature, so that the managing agent knew who was on the site.
52. In respect of keys for the units and the door locks currently there are manual keys and therefore takes an inordinate amount of time to manage each unit so that he knows if and when a unit is occupied, hence him wanting to change to an electronic locking system
53. Mr Gubbay explained that the management fees are based upon a price per unit. Mr Gubbay explained that in his opinion the work involved in managing a site of this type is far more than a normal residential block manager would undertake. Hence a high calibre manager is required given it is a holiday site. The manger needs to be on call 7 days a week.
54. Mr Gubbay explained the commercial parts are separated out, but repeated this does not include the swimming pool which is run for the benefit of all the residential units.
55. At this point in his cross examination the Tribunal adjourned for the day.
56. On resumption the following morning, the cross examination continued.

57. Mr Gubbay explained he had budgeted to pay office rent to A1 Sunderland Limited a company controlled by Messrs Kewley and Spence. This company owned a lease of the office space which was used Mr Gubbay stated in the management of the Property. It had not been demanded and he would resist payment but felt prudent it was included.
58. Mr Gubbay explained in 2021 the holiday park traded with 180 units. He explained he had run the site since April 2021 when holiday restrictions were raised. Mr Gubbay stated that he believed under clause 7.3 of the lease [43], a forfeiture clause, he could take over the units as Tuscola (106) Limited if payment is not made. He explained that he had spent about £800,000 this year on running the Property. He explained his Tuscola companies had loaned money to the service charge account and not the Applicant company. He stated all monies were in a ring fenced client account in the name of Ilfracombe Resort Limited, but did not produce any evidence by way of support
59. He stated that Tuscola had loaned £600,000 and Ilfracombe Resorts Limited had loaned £800,000.
60. The Tribunal advised all parties that it had looked at Companies House Beta site in respect of the various companies referred to in an attempt to understand how companies were connected given the references being made to common ownership either by Mr Gubbay or Messrs. Kewley and Spence.
61. Mr Brooks then cross examined Mr Gubbay.
62. Mr Gubbay confirmed he had receipt for all expenses and a signed management agreement. He believed the findings of this Tribunal may affect the heads of expenditure, hence he had not issued actual accounts for 2020.
63. He said when he became involved in May 2020 he wished to stabilise the park, and wanted to get the site up and running.
64. Mr Gubbay said he felt he was damned if he did and damned if he didn't. It may be said he was overzealous but the budget is a forecast only.
65. Mr Gubbay stated he believed some of the costs of the major works will be less than forecast but stated that as the figures came from the budget, he is stuck with those figures. In his opinion the lease does not allow the budget to be changed.
66. He stated that he does not agree with all of the technical assessments and the findings and believed, in his professional opinion, that cheaper solutions may be possible
67. He stated when first became involved he was firefighting. He described that as a responsible landlord you "bang the table and get on with matters and you don't wait".

68. Mr Gubbay stated in his opinion the park has a potential to turn over £3-4,000,000 per annum. He believes the park needs to keep trading whilst the litigation is resolved.
69. Mr Gubbay was questioned by the Tribunal.
70. He stated he had been provided a specimen lease as part of Tuscola's purchase of the head lease. He believed the underleases held by the Respondents were poorly drafted from the tenants' point of view.
71. Mr Gubbay stated that he believes there are 273 residential units and 5 commercial units. Initially he thought there were 277 units.
72. The Tribunal adjourned for lunch.
73. On resumption Mr Gubbay summed up his case.
74. He stated he accepts that grey areas exist over the commercial units. In his submission the swimming pool is different as the Applicant has a lease and it is for the benefit of all units and so the costs should be recoverable. He accepted the apportionment within the lease is badly drafted. He stated he had calculated amounts relative to the expenditure on each block and then divided this equally between the units within the respective block. He believes this is fair and reasonable. Estate charges were calculated by floor area.
75. He was saddened by the attitude of the investors. He believes he is holding everything together. He wants dialogue.
76. Mr Gubbay confirmed he had said everything he wished.
77. Mr Verduyn presented the case for the First Respondent. His two witnesses had given evidence and he relied upon his skeleton argument.
78. He stated that the Tribunal was in the dark as to the empirical evidence used to construct the budget as this had not been disclosed. Mr Gubbay places the blame for the problems at the feet of the people who authorised him to attend at this Tribunal.
79. Mr Gubbay is essentially representing himself and Tuscola. He had explained what he intends to do and how he will remove Messrs. Kewley and Spence.
80. Mr Gubbay had explained how he had taken over the running of the estate. The only authority we have seen is the letter authorising him in these proceedings. He has not produced a copy of the agreement with Epworth. In September the Applicants via Messrs. Kewley and Spence applied to withdraw the proceedings and then withdrew that application. It was Mr Gubbay who initiated the proceedings.
81. Mr Verduyn suggested that the budget contained many items not recoverable under the lease. These included various works of improvement which are not recoverable. In his submission all costs which the Applicant seeks to recover

should be spelt out in the lease. The swimming pool is separately let and the lease does not cover recovery of these costs. None of the commercial leases had been disclosed or produced in these proceedings. The management company has totally neglected the site for the past 4 years and none of the sums claimed are recoverable.

82. Mr Brooks then presented his case. He relied upon his statement of case [1361-1412] and his skeleton argument. He confirmed this was true and was his evidence. No party sought to cross examine him.
83. He explained he needs the park to operate to make a return on his two units. He had paid some monies but needed to see that the sums claimed were properly payable. He felt on some costs he was subsidising other units.
84. Mr Gubbay confirmed that the Applicant agreed to pay the First Respondents solicitors costs of preparing the bundle in the sum of £2,439.60.
85. All parties confirmed and agreed that they had nothing further they wished to say.

Decision

86. The Tribunal carefully considered all of the evidence put forward. This included the bundle of 1665 pages, the various skeleton arguments and the oral evidence and submissions made.
87. Whilst we did not hear from the Second Respondent we have taken account of his statement of case filed [1267-1360]. We also have taken account of the email sent by the Sixth Respondent James Lee (34G) in which he indicates that Mr Gubbay has told him he has taken control of his Unit. We would urge Mr Lee to take independent advice.
88. This case was unusual. The Respondents who appeared at the hearing and Mr Gubbay all appeared to state at points they had been victims of an alleged fraud perpetrated by companies controlled by Messrs. Spence and Kewley. Mr Gubbay was supposedly in attendance as a representative for the Applicant having been authorised by Messrs. Spence and Kewley to represent them in their role as directors of the Applicant company. It was the case that Messrs. Spence and Kewley ultimately controlled many of the companies referred to within the proceedings. Mr Gubbay was the ultimate owner of Epworth SW Limited the managing agent. He was also the ultimate owner of Tuscola (106) Limited which held a head lease over all of the units owned by the Respondents.
89. We make clear that this determination is limited to determining the budget figures for this calendar year 2021 as set out in the original application. Our determination is based on the evidence and submissions made as part of the application and at the hearing.

90. We find as a matter of fact that generally in presenting the case Mr Gubbay whilst supposedly representing the Applicants in fact presented a case which reflected his own interests including those of the Tuscola companies and Epworth. This is a finding we have regard to in determining this matter.
91. Our starting point is the lease and the service charge provisions. The parties are familiar with the same. A sample lease was at [35-62]. The Third Schedule requires payment to the Management Company, being the Applicant, the Maintenance Charge. The Maintenance Charge is defined as:
- “means (subject to the Agreement and Declaration in relation to thereto contained in paragraph 8 of the Seventh Schedule) in relation to the Buildings and Common Parts a sum equal to the total amount spent or to be spent by the Management Company on the matters specified in the Fifth Schedule and so far as the same relate the matters specified in Part II of the Sixth Schedule as estimated or adjusted in accordance with Part I of the Sixth Schedule divided by the number of Units within the Development including the Property.”
92. We comment that the leases are far from satisfactory for their supposed purpose. The lease used does not appear to reflect that the Property is intended to be a holiday park with the individual holiday units being let as holiday accommodation and that the site will also comprise facilities such as the swimming pool, bar and restaurant which will be subject to separate leasehold arrangements. In our judgment the leases fail to provide a proper structure for the provision of services and collection of the costs of the same.
93. Mr Gubbay told us that he accepted the lease required service charges to be determined equally between all units. Mr Gubbay and all parties accepted that Phases 1 and 2 had been completed and so the number of units were ascertained.
94. Mr Verduyn for the First Respondent within his skeleton argument contended that the service charge should be apportioned equally between the residential units.
95. Within the budget demands Epworth as managing agent did not divide all amounts equally amongst the number of units. Certain costs appeared to be apportioned on a different basis. For example, the budget calculated certain costs of proposed major works on a block by block basis given different blocks required differing amounts of works to be undertaken.
96. Further there appeared to be discrepancies as to what actually was the number of units. We were far from certain as to the number of units or as to how the commercial elements should be treated.
97. In our judgment a budget service charge may be demanded but the amount payable by all units should be for the same amount. The service charge costs of the development should be apportioned equally between the Units. We do not make any finding as to the number of units as this was not something either party expressly addressed us upon.

98. We are not satisfied on the case advanced by Mr Gubbay that the budget was apportioned properly. In our determination as a result of this failure to properly apportion the estimated service charge the demands are invalid and so currently nothing falls to be paid.
99. In any event even if we are wrong on the method of apportionment we would have determined that the budget was not reasonable in its entirety and not payable.
100. Mr Gubbay in his evidence repeatedly referred to documents such as management accounts and information from professionals who subsequently produced reports. None of this information had been disclosed. Mr Gubbay could not advance, in our determination, any proper reason as to his failure to disclose this information which was plainly within his care and control. Mr Gubbay simply referred to his professional experience.
101. We are mindful that Mr Gubbay in his evidence acknowledged that the budget figures had been produced to elicit dialogue. He also candidly told us that he felt sure much of the major works could ultimately be done in a different manner and for a cheaper cost. In our judgment we find that Mr Gubbay set the budget with no genuine belief that these were the sums required to manage the Property.
102. Mr Gubbay could offer no real explanation as to how the costs of the major works had been calculated or how he divided these between individual blocks. He repeatedly referred to his professional experience. We would certainly have expected some evidence of how this was calculated, perhaps by having some discussions with the professionals assisting, calculations or the like.
103. In our determination on the evidence presented we find that the budget was not calculated having regard to any reasonable cost.
104. Whilst we do not need to, we also comment that in our determination various heads of expenditure are not recoverable under the service charge provisions of the lease. We set out below our findings on certain heads of expenditure to act as examples and to try and inform the parties moving forward.
105. The Applicant seeks to recover the costs of the swimming pool. This is let, we are told, under a lease to the Applicant. The lease for the swimming pool was not produced. Mr Gubbay did not refer to any clauses within the lease which allowed recovery. He stated that it must be for the benefit for all residential unit holders and so costs should be recoverable.
106. Whilst we accept the logic of his statement, as he is well aware as a property professional of many years standing the lease must allow recovery. In our judgment it does not. We find none of the swimming pool costs are recoverable as a service charge item.

107. The First Respondent suggested various items were improvements such as the fitting of a brand new car parking barrier. We agree that this is an improvement. It appears to us the real reason is that Mr Gubbay, in running the letting of units as holiday lets, wishes to control entry to the site.
108. Mr Gubbay seemed to assert that any and all costs he incurred in ensuring that everything possible was done to maximise the revenue of the site as a holiday park was recoverable. We do not agree. The lease does not allow recovery of such costs of improvements and we were not referred to any clause in the lease which would do so.
109. The Applicant seeks to recover the costs of directors' and officers' insurance. The only directors have been Messrs. Spence and Kewley and for a period of time Mr Gubbay. The lease does not refer to the costs of the running of the Applicant company being recoverable under the lease. This is not a residents' management company but is currently owned and controlled by Messrs. Spence and Kewley and so in our judgment it is not reasonable for such costs to be recovered unless expressly provided for within the lease. Mr Gubbay did not suggest anywhere in the lease allowed such costs and we find they are not recoverable or reasonable.
110. The budget contains various management fees and costs of employing staff. We accept that management of a holiday site such as this must be higher than a normal long residential leasehold block of flats. However, we are not satisfied that the management fees as claimed are reasonable and payable.
111. It seems a large part of the management and the roles undertaken by the various employed staff, include matters relating to the day to day management of the park as a holiday site. Mr Gubbay via his own companies appears to have taken it upon himself to effectively take over and let individual units for holiday purposes.
112. Whilst it is not a matter for this Tribunal we have no idea as to the legal basis upon which he has been letting the units as it is clear that very few owners have actually agreed such arrangements. On the face of the evidence before this Tribunal Mr Gubbay and his companies have no right to be acting in the way that they are.
113. In our judgment the management fees and staff costs claimed are far too high. It would be for the Applicant to demonstrate what costs actually relate to management under the lease as distinct from the holiday letting business. We suspect in practice this amount would be a fraction of the total claimed.
114. Mr Gubbay in his evidence talked of having received (since he effectively took over the park in the Summer of 2020) sums in excess of £2.1 million. He agrees he has not accounted to anyone for such sums. Such sums exceed what has to date actually been spent on the park. He in his evidence stated he would pay nothing to any company controlled by Messrs. Spence and Kewley and he has asked this Tribunal to determine that each Respondent should do just that. If we made a determination that even 1p was due and

owing, the Applicant could direct to whom this was paid. This is a company owned by Messrs. Spence and Kewley. It may be that at some point in the future the Applicant company will come under Mr Gubbay's control or the control of others, but that is not the position at the date of this determination.

115. It is unusual for a Tribunal to determine that nothing within a budgeted amount should be reasonably due. On occasion we may reduce the figures, but would still agree some money should be paid. As we have said this case is unusual. The evidence and submissions on behalf of the Applicant were far from satisfactory. Mr Gubbay could not properly explain the basis upon which he, via his various entities, had taken over and was running the site and units. Yet he had received significant sums of money from lettings of holiday units many of which must belong to the Respondents. We are also mindful that we are nearly at the year end and the Applicant will then be able to produce actual accounts of expenditure supported by documentary evidence which the Respondents can consider.
116. Having made our findings and considered the totality of the evidence, we reviewed matters and we are satisfied that none of the budgeted amounts are properly payable or reasonable.
117. We note that the Applicant has agreed to pay the First Respondent's costs of preparing the bundle in the sum of £2439.60. If the Applicant fails to pay this sum, it shall be recoverable through the County Court as a sum which this Tribunal has found is due and payable to the First Respondents.

Costs Applications

118. Various parties indicated they will wish to make applications in respect of costs pursuant to Rule 13 of the Tribunal Procedure Rules. It was agreed that we would give directions for the same.
119. Any application shall be filed and served on all other parties within 28 days of this decision. The application shall include a full reasons as to why the application is made together with a full breakdown of all costs claimed and any supporting documents.
120. The respondent to any costs application may file and serve a detailed reply within 21 days of any application made pursuant to paragraph 116 above.
121. The applicant may within 14 days file and serve a brief reply.
122. The parties in complying with paragraphs 119 and 120 above will provide any dates to avoid for a video hearing with a time estimate of ½ a day for the next 4 months. The Tribunal will then list the matter for a hearing.

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 by

email to rpsouthern@justice.gov.uk 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.

Annex A

Landlord and Tenant Act 1985

Section 19 Limitation of service charges: reasonableness.

(1) Relevant costs shall be taken into account in determining the amount of a 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 or the carrying out of works, only if the services or works are of a reasonable standard; and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise

Section 27A Liability to pay service charges: jurisdiction

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to—

(a) the person by whom it is payable,

(b) the person to whom it is payable,

(c) the amount which is payable,

(d) the date at or by which it is payable, and

(e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to—

(a) the person by whom it would be payable,

(b) the person to whom it would be payable,

(c) the amount which would be payable,

(d) the date at or by which it would be payable, and

(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which—

(a) has been agreed or admitted by the tenant,

(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,

(c) has been the subject of determination by a court, or

(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

(a) in a particular manner, or

(b) on particular evidence, of any question which may be the subject of an application under subsection (1) or (3).

(7) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

UPDATED list of Trowers & Hamblins LLP's clients in respect of Ilfracombe Holiday Park

(Enclosure to Trowers & Hamblins LLP's letter to the FTT dated 22.03.2021)

Case Reference: CH1/18UE/LIS/2021/0004/JG

Application: To Determine the Reasonableness and Liability to Pay Service Charges

Property: Ilfracombe Holiday Park, Marlborough Road, Ilfracombe, EX34 8PF

Applicant: GP Ilfracombe Management Company Limited

Respondents: The Leaseholders

Tribunal Member(s): Judge D R Whitney

Investor	Property
Kathryn Anne Lea	44
Kathryn Anne Lea	45
Furat Naser Saud Alabdali / Noor Alobaidi	49
Terence Hamer	50
Shaun Whitton & Tina Whitton	51
Hitesh Vyas	52
Nigel David Francis Brown & Barbara Brown	53
Nigel David Francis Brown & Barbara Brown	54
Harold George Lewis and Hazel Yvonne Lewis	55
Sergio Giuseppe Giovanni Corsini and Angela Maria Teran	56
Anton Ford Robinson	101
Tahira Jaffar	105
Abeer Abbas Abdulla Shehab Alderazi	106
Tahira Jaffar	107
Maria Assunta Sperduto	111
A.A. Azure Yachting Ltd	112
Christopher Wood	113
Lisa Caren Bentham & Philip John Bentham	114
Alpa and Pratik Visaria	115
Meeta Gulabbhai Patel / Nitin Amrut Patel	119
Anantrai Bhaishanker Vyas and Ushaben Anantrai Vyas	122
Sami Hamed Hezam Ezaden	125
Norman Edward Sander	126
Usman Mirza	127
James Robert Casey	129
Norman Edward Sander	130
Desmond Joseph Lyons & Mary Lyons	131
Desmond Joseph Lyons & Mary Lyons	132
Desmond Joseph Lyons & Mary Lyons	133
Stephen John Fisher and Diane Fisher	134
Iram Aamir Malik	135
Vera Robinson	143
Navinchandra Parmar	145
Mousa Ahmad Aljamal	146
Thiresia Alexandrou & Vasileios Sotiriou	147
Olalere Simeon Babasola and Olufolajimi Nnamdi Babasola	148
Gillian Tidball	150
Robert Lindley	152
Harith Suleiman Al Brashdi	156
Abdulrahman Emad Koshak	157
Sayed Mohammed and Haffiza Mohammed	159
Sayed Mohammed and Haffiza Mohammed	160
Hebah Yousef Dia Aldajani	162
Christine Sau May Tai	167
Khalid Mohammad Obiedat	168
Michelle Smith	171
Constantinos Panayiotou and Despo Constantis Panayiotou	173
Despo Constantis Panayiotou & Elias Panayiotis Panayiotou	175
Despo Constantis Panayiotou & Elias Panayiotis Panayiotou	177

Antonia Ruth Kench	178
Hua Xiao	180
Tivejolen Limited	209
Tivejolen Limited	210
Sophia & Chirag Solanki	211
Sophia & Chirag Solanki	212
Gerard Benoit Pacaud	214
Gerard Benoit Pacaud	216
Elias Abimrad & Siham Abimrad	217
Ayden Alan Hipkiss	218
Emma Jane Hipkiss-Phillips	219
Christopher Keith Morley	221
Elias Abimrad & Siham Abimrad	224
Stuart Victor Douglas Richard	226
Helen Elizabeth McCluskey	227
Monica Dawn Snowden	228
Nigel Robert Beevers & Pauline Beevers	230
Marta Evelyn Thorp	232
Rajesh Sharma	234
Mahmood Zakeri & Phillipa Johann Zakeri	236
Bhumika Niraula and Sushil Niraula	238
Georges Robert Khayat	240
Richard Tunbosun Jeje	242
Henry David Walkinshaw	243
Xin Chen & Tong Zhou	244
Gilbert Ayodele Akinbobola	245
Evelyn Ogbeyanu Ezefili and Michael Ezefili	246
Bibi Fahiza Khameery	247
Kim Williams	248
Ahmad Mahmoud Mohammad Rashid	249
Wolfhart Ltd	251
Diego Alejandro Devoto	252
Entanglewood Ltd	253
KC94 Property Ltd	254
Mutimer P&C Ltd	255
Constantinos Panayiotou and Despo Constantis Panayiotou	256
Natalie Pericleous Panayides	257
Jeremy and Martie Sharrock	258
Chi-Jung Chen	259
Mohammad Naser Imran & Lubna Imran	260
Helen Elizabeth McCluskey	262
Diego Alejandro Devoto	264
Christopher Keith Morley	6T
Kathryn Campbell Wilson	10G
Mukesh Parmar	10M
Anne Shirley McCrea	10T
Lorna Josephine Woodward	11G
Michael Scott Dickson & Patricia Margaret Atalanta Dickson	11M
Thomas James Adam	11T
Stuart Victor Douglas Richard	12G
Greig David Morrish	12M
Anastassios and Nicolete Crassas	12T
Stuart Victor Douglas Richard	13G
B&B Chauhan Limited	13M
Adefunke Omolara Kasali	13T
Carmel Doreen Glanville	14T
Karen Mary Sparkes	15T
Marie Celine Murphy	16T
Maxine Margaret Hopton & Brian Hopton	17T
PPP Properties Ltd	18G
DKV Properties Ltd	18M
Mohammad Naser Imran & Lubna Imran	18T
Abdullah Abdulrahman Alamoudi	19G
Sayeed Mohammed and Haffiza Mohammed	19M

Luigi Terzaga	19T
Joanna Adelajda Kosinska	1G
Shahida Sultana	1M
Roland Charles Sparling	1T
John Brusey Cow (deceased)	20G
Arvindkumar Bhulabhai and Ranjanben Patel	20M
John Brusey Cow (deceased)	21G
Thomas John Winter	21M
Wolfe Solutions Ltd	21T
Yulia Zeevi	22G
Zubair Amin	22M
Pawel Gozdz	22T
Gillian Margaret Aitchison	23G
Lian Properties Limited	23M
Christa and Hans-Guenther Klenk	23T
Kentankumar Rajnikant Shah & Tanviben Ketankumar Shah	24G
Ambreen Faraz	24M
Paul Thomas Lysaght	24T
Ahmad Lutfi Khader and Rabab Nimer	25G
Kathryn Elizabeth Lindley	25M
Konstantinos boulakis and Artemis Boulaki	25T
Lemongold Limited	26G
Konstantinos boulakis and Artemis Boulaki	26M
Jonathan Foster & Helen Foster	29G
K8 Virtua Ltd	2G
Michael and Susan Watson	2M
Gian Carlo Gini	2T
Bel London Ltd	30G
Furat Naser Alabdali	31G
Christa and Hans-Guenther Klenk	32G
Revendran Krisnan Nair & Catherine Ellen Nair	33G
Winkworth Family Homes Ltd	35G
Fiona Elizabeth Janet Folley	36G
Michael Jonathan Mansel Lord & Julie Lord	37G
Silvergate Equestrian Ltd	38G
Gillian Ann Weeks	39G
Lesley Elizabeth Hawkes	3G
Shahida Sultana	3M
Malcolm Tudor Hawkes	3T
Farid Abdelkader Mohamed Farid & Yasmin Abdelkader Mohamed Farid Abdelkader	40G
Kimerie Mapletoft	41G
Wafaa Khaleel Ismael Al-Ani	41T
Virginie Moate	42G
Milada Murray	42M
Ali Omar Zeglam and Anne Elizabeth Zeglam	42T
Navneet Kumar Kohli	43G
Richard & Paula Fay Wiltshire	43M
Ameenah & Haneen Zeglam	43T
Richard & Margaret Pybus	4G
James Ford Mason	4M
Mohammad Naser Imran & Lubna Imran	4T
Eugene Hansram Lakhisaran and Maya Aroenadebie Jadnanansing	5M
Ayden Alan Hipkiss	5T
PB Judd Ltd	61G
PB Judd Ltd	61M
Dominic Paul Sankey and Rosemary Thomson	61T
PB Judd Ltd	62G
Asjad Hameed & Dr Nuzhat H Hameed	62M
Mumtaz Akbar Syeda and Sarah Syeda	62T
Jubair Ali Thottakuruchi Mohamed Ali & Farzana Begum Thottakuruchi	63M
Zaidi	63T
Gecko Documentation Services Ltd	64T
Ziauddin Limited	65G
Susan Jane Merkin	65M

The Nimbus Group Limited	65T
Susan Jane Merkin	66G
Rodger Dister Jensen	66M
Deborah Cutcliffe Carter Clout	66T
PB Judd Ltd	67M
Michael Oladipo Daramola and Yetunde Daramola	67T
Dmitry Lyakutin and Elena Dannikova	68G
Roger Charles Levick	68M
Michael Oladipo Daramola and Yetunde Daramola	68T
Paul Grant	6G
Suleiman Al Brashdy	6M
Waqas Anis and Surayya Amin	7M
Paresh Kumar Jethalal Bharmal Shah & Nilla Paresh Shah	7T
Hua Xiao	8G
Ada Lampert	8M
Ahmed Munir and Rehana Munir	8T
Sarah Merryn Goodwin-Davis	9G
Ahmed Munir and Rehana Munir	9T