



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY) AND IN
THE COUNTY COURT SITTING AT 10
ALFRED PLACE, WC1E 7LR**

Case reference : **(1) LON/00BE/LSC/2021/0027 (Claim No:G4QZ672Q) – Flat 4**
(2) LON/00BE/LSC/2020/0163 (Claim No: G9QZ313P) – Flat 6

HMCTS code (video) : **V: CVPREMOTE**

Property : **(1) Flat 4 Regal Row, London SE15 2NH**
(2) Flat 6 Regal Row, London SE15 2NH

Claimant/applicant : **Regal Row Limited (Managing Agent)**

Representative : **Mr Leo Georgiou of Ringley Law LLP**
(1) Mr Zenaleh Gheremedhin – Flat 4

Defendant/respondent : **(2) Mrs Zelalam Gheremedhin & Mr Arefaine Gherezhier Gheremedhin – Flat 6**

Representative : **Ms J Hodgson of counsel instructed by TKD solicitors**

Type of application : **Service and administration charges – transfer from county court**

Tribunal members : **Judge Tagliavini**
Mr S Mason BSc FRICS

In the County Court : **Judge Tagliavini sitting as a District Judge of the County Court**

Venue : **10 Alfred Place, London WC1E 7LR**
V: CVPREMOTE.

Date of decision : **4 May 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was **V: CVPREMOTE**. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that the tribunal was referred are contained in an applicant's bundle of pages 1 to 402 and a respondents' document presented in a Statement (pp1 to 9) and Exhibit (pp1 to 72) the contents of which, the tribunal has noted. The order made is described at the end of these reasons.

Summary of decisions of the first-tier residential property tribunal

- (1) The sums demanded for arrears of service charges/reserve fund by the applicant in the sum of £8,804.15 are not payable by the lessee(s) of Flat 4.
- (2) The sums demanded for arrears of service charges/reserve fund in the sum of £11,623.48 by the applicant are not payable by the lessee(s) of Flat 6.
- (3) The tribunal makes an order in respect of section 20c of the Landlord and Tenant Act 1985 in respect of Flat 4 and Flat 6.

Summary of the decisions made by Judge Tagliavini sitting as a judge of the County Court

- (1) Claim G4QZ672Q is dismissed with no order for costs.
- (2) Claim G9QZ313P is dismissed with no order for costs.

The applications

Flat 4: - service charges/reserve fund

1. On 20/02/2020 the claimant issued a claim for arrears of service charges against Mr Zenaleh Gheremedhin for the period 01/01 to 19/02/2020 in the sum of £9,654.10 inclusive of interest and costs under Claim No. G4QZ672Q. By an order of DJ Swan dated 8 June 2020 the claim was transferred to the tribunal for determination of all matters including interests and costs.
2. The actual arrears of service charges (including reserve fund) claimed for the period 01/01/2018 to 01/01/2020 are £8,804.15.

Flat 6: -service charges

3. On 20/02/2020 the claimant issued a claim for arrears of service charges (including reserve fund) against Mrs Zelalem Gheremedhin and Mr Arefaine Gherezghier Gheremedhin for the service charge period 01/01/2019 to 19/02/2020, interest and costs in the inclusive sum of £12,391.72 under Claim No: G9QZ313P. By an order of DJ Bell dated 22 January 2021 the claim was transferred from the county court to the tribunal for determination of all matters including interest and costs under the tribunal's deployment powers.
4. The actual service charges claimed are in the sum of £11,623.48 for the service charge years 2019 and 2020.
5. All First-tier Tribunal ('FTT') judges are now judges of the County Court. Accordingly, where FTT judges sit in the capacity as judges of the County Court, they have jurisdiction to determine issues relating to ground rent, interest or costs, that would normally not be dealt with by the tribunal.
6. Accordingly, the parties were informed in the tribunal's letter dated 1 October 2020 that all the issues in the County Court proceedings would be decided by a combination of the FTT and the Tribunal Judge of the FTT sitting as a Judge of the County Court. Accordingly, Judge Tagliavini presided over both parts of the hearing, which has resolved all matters before both the tribunal and the County Court.
7. Therefore, this decision will act as both the reasons for the tribunal decision and the reasoned judgment of the County Court.

The premises

8. Flat 4 is a flat on the first in a purpose-built unit on three floors containing 8 residential units and 1 commercial unit on the ground/basement floors. The lease for Flat 4 is dated 15 August 1997 is made between RUSTEM NECIP and NECIP RUSTEM and Audley Creary granting a term of 125 years with effect from 1 January 1994.
9. Flat 6 comprises a second floor flat and the lease of Flat 6 is dated 17 May 1995 made between RUSTEM NECIP and NECIP RUSTEM and Andrea Williams granting a term of 125 years with effect from 1 January 1994.

The applicant's case – service charges

10. The claimant/applicant is the Freehold Management Company.
11. In support of the applications made in respect of both Flat 4 and Flat 6, two witness statements were provided by Mr L Georgiou a legal officer for Ringley Law LLP both of which were dated 25 February 2021. Mr Georgiou exhibited to these witness statements numerous invoices, service charge accounts and demand for payment covering the service charge period 2018 to 2020.

Flat 4

12. In his witness statement Mr Georgiou stated that the arrears of service charges and reserve fund were made up of:

£590.39 unpaid from 01/01/2018
£3,723.95 from 01/01/2019
£4,489.81 from 01/01/2020.

13. At the hearing of the applications, Mr Georgiou explained to the tribunal that the above sums were made up of demands for actual service charge/reserve charge funds. Mr Georgiou relied on the Service Charge Accounts for 31 December 2018 (dated 12/07/2019); Service Charge Account for 31 December 2019 (dated 22/03/2021) and Service Charge Budget for 01/01/2020 to 31/12/2020.

Flat 6

14. In his second witness statement Mr Georgiou stated that the arrears claimed were made up of arrears of service charge/reserve fund payments and made up of:

£3,835.40 and £3,298.27 from 01/01/2019
£4,489.81 from 01/01/2020

Flats 4 & 6

15. In support of these claims Mr Georgiou referred the tribunal to Service Charge certified accounts for 2018 (dated 12/07/2019) in which the total service charge/reserve fund surplus was identified as £12,291, which sum was said to be retained. A surplus of service/reserve funds was identified in the certified Service Charge Account for 2019 (dated 26/03/21) in the total sum of £13,653.
16. Demands dated 12/12/2018, 02/08/2019 and 20/12/2019 were addressed to Mr Zaneleh (Zela) Gheremedhin only, in respect of Flat 6 and not the defendants/respondent named in the Claim Form.
17. In his oral evidence to the tribunal, Mr Georgiou also told the tribunal that the clauses of the lease permitted the recovery of the heads of service charge itemised on the various statements included in the bundle of documents. However, when asked by both Ms Hodgson and the tribunal what the excess contributions were for the year prior to the service charge years in dispute and asserted that the Budget was effectively the 'certificate' referred to in the lease.

The respondents' case

18. In a Defence dated 24/03/2020 to Claim No. G4QZ6720 (Flat 4) the defendant named as Mr Zenaleh Gheremedhin disputed the whole of the sum claimed. A Defence asserted that the claimant had not complied with its repairing obligations under the terms of the lease and *that 'the defendant has on a number of occasions been forced to carry out repairs at her own expense.'*
19. In a respondent's Statement of Case dated 17 December 2020, Mrs Zelalem Gheremedhin stated she had purchased Flat 4 in 2000 as an investment. Mrs Gheremedhin went on to state that she owns Flat 6 with her husband, which was purchased in November 2006, also as an investment.

20. Mrs Gheremedhin stated that together with 3 other leaseholders, she had acquired the freehold of the building known as Regal Row using the Applicant company as a vehicle for the purchase. Although she is a shareholder of the applicant company, she is not a director.
21. Mrs Gheremedhin challenged the right of the applicant to claim them under the terms of the lease in the absence of a certificate stating the amount by which the annual costs exceeded the total annual contribution or a statement of any unexpected surplus.

Clause 3(ii) of the leases state:

The maintenance charge shall be paid to the Landlord annually in advance on the same day or days as the rent hereby reserved and so that in case of default the same shall be recoverable from the Tenant as rent in arrear.

Clause 3(iii)

If the expenditure incurred by the Landlord in any accounting period of twelve months in carrying out its obligations under Clause 4 hereof (hereinafter called the "annual cost") exceed the aggregate amount payable (or deemed to be payable) on account as aforesaid by the tenants of all the flats in the Building in the accounting period in question (hereinafter called "the annual contribution") together with any unexpended surplus as hereinafter mentioned and a certificate of the amount by which the annual cost exceeds the total of the annual contribution and any such expended surplus be served upon the Tenant by the Landlord or its agent with audited accounts in support thereof then the Tenant shall pay to the Landlord within twenty eight days of the service of such certificate (which said certificate shall as respects the matters therein contained bind the Landlord and Tenant unless some manifest error shall be found therein or in such accounts in which case such error shall be rectified) 12 ½ per cent of her annual cost less the maintenance charge (hereinafter called "the excess contribution") determined by the Landlord or the Surveyor of the Landlord of the amount of such excess shown therein such sum to be recoverable from the Tenant in case of default as if the same WERE IN ARREAR PROVIDED that if in any such accounting period as aforesaid the annual cost is less than the annual contribution the difference (being the unexpended surplus) shall be accumulated by the Landlord and shall be applied in or towards the annual cost in the next succeeding or future accounting period or periods as aforesaid.

22. In the Statement of Case Mrs Gheremedhin also disputed her liability to pay the service charges for Flat 4 on the grounds that the landlord had failed to carry out repairs to the communal front entrance door and the communal areas clean and tidy.

23. At the hearing of the applications it was conceded by Ms Hodgson that Mrs Gheremedhin was not seeking to challenge the invoices for works carried out at the Building (Regal Row) but relied on the ‘technical’ defence raised by the applicant’s failure to comply with the terms of the lease.

The tribunal’s decision and reasons

Flat 4:

24. The tribunal is unclear as to who is the lessee of Flat 4 as Claim No. G4QZ672Q has been issued against Mr Zenelah Gheremedhin only as the defendant and not Mrs Gheremedhin as the lessee. The tribunal finds that the service charge demands have only been addressed to Mr Zenaleh (Zela) Gheremedhin. This name was also repeated in the tribunal’s directions dated 11 February 2021 as being the lessee of Flat 4. However, Mrs Gheremedhim in her Statement of Case dated 17 December 2020, referred to herself as the lessee of Flat 4 and the joint owner of Flat 6 with her husband. Reference to Mrs Gheremedhim being the lessee of Flat 4 was also referred to in the Defence filed by TDK solicitors.
25. However, neither the applicant nor the respondents, either before or during the hearing, addressed this discrepancy and the parties appeared to proceed at the hearing on the basis that Mrs Gheremedhim was the lessee of Flat 4 and the joint lessee of Flat 6.

Flat 6:

26. The tribunal finds that the demands for payment of the service charges for the service charge years 2019 and 2020 were addressed to Mr Zenaleh (Zela) Gheremedhin and not to Mrs Zelalem Gheremedhin and Mr Arefaine Gherezghier Gheremedhin as named by the applicant in Claim No.G9QZ313P.

Flat 4 & Flat 6 – the certificate issue

27. Notwithstanding the confusion in respect of the identity of the correct lessee of Flat 4, the issue of the certificate of excess or surplus service charges is identical in respect of both Flat 4 and Flat 6. In the tribunal’s decision dated 7 August 20219 in application *LON/00AM/LDC/2019/0051*, in respect of Flat 6 and concerning the same parties, the identical ‘certificate’ issue that has been raised in the current applications were the subject of the tribunal’s determination in that earlier decision. In that decision the tribunal determined that:

The proceedings were commenced on the basis of estimated costs. We find that those estimated costs were wrongly calculated and are therefore irrecoverable as such. The excess contribution upon which the management charge can be based can only be established once the accounts for the previous year have been certified and it is the difference between those annual costs and the maintenance charge that was levied, which is the excess contribution.

28. Although the tribunal is not bound by its previous decisions, they are nevertheless of some persuasive value. In this instance the tribunal is satisfied that certified accounts have been obtained by the

applicant in respect of the service charge years 2018 and 2019 and dated 12/07/2019 and 22/03/2021 respectively. The tribunal is satisfied that these accounts are sufficient to act as the 'certificate' referred to in the lease and therefore make payable the "annual contribution" demanded by the applicant for the service charge years 2018 and 2019. However, at present the 2020 service charge is based on estimated costs as no certified accounts have been provided to the lessees. Therefore, the tribunal finds that the "annual contribution" demanded for 2020 is not yet payable.

29. The tribunal finds that the lease requires the service of a 'certificate' certifying the service charge account. Although reference is made to 'audited' accounts, the tribunal determines that this is not a compulsory matter but that audited accounts can (if the landlord chooses) be provided in support.
30. However, the tribunal is not satisfied that demands for payments have been sent to the correct lessees of Flats 4 and Flat 6 as Mrs Gheremedhin claimed to be the lessee of Flat 4 as well as Flat 6, a claim that was not disputed by the applicant. Further, the tribunal is not satisfied that the demands for payment in respect of the service charges have been sent to the correct lessees of Flat 6 as the name on the demands do not correlate with the names of the defendants.
31. Therefore, the tribunal determines that the sums of £8,804.15 (Flat 4) and £11,623.48 (Flat 6) claimed by the applicant have not been demanded of the correct lessee or otherwise properly demanded and are therefore not payable, notwithstanding the tribunal's findings above that the service charges/reserve fund for 2018 and 2019 are otherwise payable in the sums claimed by the applicant.

Section 20C

32. In light of the tribunal's findings and its decision, for the avoidance of doubt the tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 prohibiting the applicant from seeking to add the costs of these two applications to the service charges.

County Court matters – decision by the tribunal judge sitting as a judge of the County Court

Flat 4

33. Judge Tagliavini is not satisfied that the defendant in Claim No:G4QZ672Q has been correctly identified, considering Mrs Gheremedhin's unchallenged assertions as to her ownership of the subject property. Further, having regard to the tribunal's decision of there being no liability to pay the arrears of service charges said to have been incurred in respect of Flat 4 the claim is dismissed with no order as to costs.

Flat 6

34. In light of the findings of the tribunal, as to the invalidity of the demands for payment of service charges in Claim No. G9QZ313P, Judge Tagliavini dismisses the claim with no order as to costs.

Name: Judge Tagliavini

Date: 4 May 2021

Name: Judge Tagliavini (sitting as a District
Judge of the County Court.

Date: 4 May 2021

Rights of appeal from the decision of the tribunal and the Addendum

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

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.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appeals in respect of decisions made by the Tribunal Judge in the capacity as a Judge of the County Court

Appeals in respect of decisions made by the Tribunal Judge in his/her capacity as a Judge of the County Court An application for permission to appeal may be made to the Tribunal Judge who dealt with your case or to an appeal judge in the County Court.

Please note: you must in any event lodge your appeal notice within 28 days* of the date of the decision against which you wish to appeal. Further information can be found at the County Court offices (not the tribunal offices) or on-line.

Appeals in respect of decisions made by the Tribunal Judge in the capacity as a Judge of the County Court and in respect of the decisions made by the FTT. You must follow both routes of appeal indicated above raising the FTT issues with the Tribunal Judge and County Court issues with either the Tribunal Judge or proceeding directly to the County Court.

**As amended in the tribunal's Directions of 18 February 2021*

General Form of Judgment or Order

In the County Court at Clerkenwell & Shoreditch	
Sitting at: 10 Alfred Place, London WC1E 7LR	
Claim Number:	G4QZ672Q
Date	4 May 2021
Regal Row Limited	1st Claimant Ref
	2nd Claimant Ref
Mr Zenaleh Gheremedhin	1st Defendant Ref
	2nd Defendant Ref

**BEFORE Tribunal Judge Tagliavini sitting as a Judge of the County Court
(District Judge)**

UPON:

- (a) The County Court having transferred to the First-tier Tribunal the matters within the Tribunal's jurisdiction
- (b) The Tribunal Judge (sitting as a Judge of the County Court) having exercised County Court jurisdiction on any matters falling outside the Tribunal's jurisdiction

AND UPON hearing Mr Leo Georgiou for the claimant and Ms Hodgson of counsel for the defendant

AND UPON this order putting into effect the decisions of the First-tier Tribunal made at the same time

IT IS ORDERED THAT:

1. The claim is dismissed with no order as to costs.

2. The reasons for making of this Order are set out in the combined decision of the Court and the First-tier Tribunal (Property Chamber) dated 4 May 2021 under case reference LON/00BE/LSC/2021/0027

Dated: 4 May 2021

General Form of Judgment or Order

In the County Court at Clerkenwell & Shoreditch	
Sitting at: 10 Alfred Place, London WC1E 7LR	
Claim Number:	G9QZ313P
Date	4 May 2021

Regal Row Limited	1st Claimant Ref
	2nd Claimant Ref
Mrs Zelalam Gheremedhin	1st Defendant Ref
Mr Arefaine Gherezghier Gheremedhin	2nd Defendant Ref

**BEFORE Tribunal Judge Tagliavini sitting as a Judge of the County Court
(District Judge)**

UPON:

- (a) The County Court having transferred to the First-tier Tribunal the matters within the Tribunal's jurisdiction
- (b) The Tribunal Judge (sitting as a Judge of the County Court) having exercised County Court jurisdiction on any matters falling outside the Tribunal's jurisdiction

AND UPON hearing Mr Leo Georgiou for the claimant and Ms Hodgson of counsel for the defendant

AND UPON this order putting into effect the decisions of the First-tier Tribunal made at the same time

IT IS ORDERED THAT:

1. The claim is dismissed with no order as to costs.

2. The reasons for making of this Order are set out in the combined decision of the Court and the First-tier Tribunal (Property Chamber) dated 4 May 2021 under case reference LON/00BE/LSC/2020/0163

Dated: 4 May 2021