



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

Case reference : LON/00BE/LSC/2021/004
County court :
Claim No: G11YY125
HMCTS code (video) : V: CVPREMOTE
Property : Flat (Apartment) 22 Lock House,
Tavern Quay, Rope Street, London
SE16 7EX
Claimant/applicant : Tavern Quay RTM Company Limited
Representative : Mr Roger McElroy, director of
Canonbury Management
Defendant/respondent : Rafael Stefenello Ghisleni
Representative : N/A
Type of application : Service and administration charges –
transfer from county court
Tribunal members : Judge Tagliavini
Mrs A Flynn MA MRICS
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 : 10 May 2021
Amended 24 May 2021

DECISION (AMENDED)

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 respondent is liable to pay arrears of service charges in the sum of £7,998.12.**

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

- 2. The defendant is ordered to pay the claimant the sum of £9,762.48. ~~The defendant is to pay~~ which sum includes interest on the sum of £7,998.12 in the sum of £359.36 and legal costs in the sum of ~~£455~~ £1,405.**

The application

1. In Claim No G11YY125 issued in the County Court on 7 September 2020, the claimant/applicant sought arrears of service charges in the sum of £7,998.12 plus court costs of £455.00. By an order of District Judge Hayes dated 17 December 2020 and sitting in the County Court at Clerkenwell & Shoreditch, the whole of the case was transferred to the First-tier tribunal for a determination of the payability of the service charges and to the Tribunal Judge sitting as a Judge of the County Court for a determination of the interest and costs.

The premises

2. The premises comprise an apartment on the second floor of two purpose-built blocks known as Lock House and made up of 41 apartments. By a lease dated 24 November between Tavern Quay Developments LLP and Rafael Steffenello Ghisleni, a term of 250 years was granted with effect from 24 March 2014 of

Apartment of 22 Loch House, Tavern Quay, Rope Street, London SE16 7FB ('the premises').

The applicant's case – service charges

3. The applicant asserts that it either a right to Manage company within the meaning of the commonhold and Leasehold Reform Act 2002 ('the 2002 Act') or a resident's management company or is the freeholder with the legal right to manage the building a Lock House ('the Building') in which the subject premises are situated. A letter dated 30/06/2020 from Canonbury Management to the respondent asserted that Tavern Quay RTM Company Ltd acquired the Right to Manage from the freeholder Tavern Quay Developments LLP in or around 04/11/2019. Creditors and buildings had been left unpaid by the previous management company/freeholder HML, much of the increased service charge costs was due to implementation of a 'waking watch' scheme and the resolution of longstanding issues in respect of various elements of estate management, such as repairs to the heating system, fixing a number of leaks and resolving fire safety issues.
4. Currently, the Estate is managed by Canonbury Management who took over from the previous management company/developer HML after the applicant acquired the 'right to manage' on 4 November 2019.
5. The applicant asserted that service charges are payable in advance on 1 April and 1 October of any service charge year or other quarterly period. Despite several demands for payment of service charges having been sent to the respondent, these had remained unpaid. Therefore, arrears of £7,998.12 were claimed in respect of the service charge including legal costs of £600.00 and the fee for obtaining copy of Land Registry documents of £50.00
6. In a response to the respondent's written assertions, the applicant asserted that the respondent had been kept updated in relation to the 'cladding project' and the costs and reasons for the work and provided emails/copies of letters to substantiate this. Therefore, the applicant asserted that it could see no defence to the claim for arrears of service charges and administration costs.
7. The applicant also asserted that the lease did not require the service charge accounts to be audited and that the respondent's case remained entirely unsubstantiated.
8. In oral evidence given at the hearing of the application, Mr McElroy told the tribunal that Canonbury Management had been appointed by the applicant to manage the estate at Tavern Quay made up of 5 'core' buildings built over a basement car park. Lock House was made up of two of these 'cores' with the remaining three 'cores' making up Ensign House.
9. Mr McElroy told the tribunal that the applicant RTM company had taken over from the property developer/managing company on 4 November 2019 and Canonbury Management had been subsequently contracted to provide services to the Estate. As this 'take-over' by the RTM company was part-way through the financial year and the record of payments kept by HML were

incomplete, the applicant had experienced difficulties in calculating the reserves position at the date the applicant took over the management of the Estate were confirmed by the independent accounting firm Gascoynes in a letter dated 19 June 2020. This had the effect of making the future service charge budget more difficult than it should have been otherwise.

10. Mr McElroy told the tribunal that in December 2019, due to Lock House having used the same ACM type of cladding as used at the Grenfell block of flats, the London Fire Brigade had ordered that either Lock House be immediately vacated or a 24/7 'waking watch' scheme be set up. Subsequently a waking watch scheme was introduced with dispensation from consultation being granted by the tribunal. This scheme was largely replaced by a more cost-effective fire alarm system, although both this and the waking watch scheme incurred the leases in larger than anticipated costs, both actual and estimated as set out in the Statement of Account date 01/07/2020 in which the cost of the waking watch for Lock House was given as £500,000.
12. Mr McElroy told the tribunal that the costs claimed in the County Court were made up of actual costs, balancing charges (overspends) and estimated costs covering the period 04/11.2019 to 31/03/2020 as set on in the Statement dated 01/07/2020. Mr McElroy stated that there had been no duplication of costs but because the service charge account of the developer/management company had been too low this had created the impression that service charges had become unreasonably inflated which together with the unexpected fire safety measure that had had to be implemented, created, wrongly the impression held by the respondent, that the service charges now demanded were unreasonable.

The respondents' case

13. In a Defence dated 22/10/2020 the defendant/respondent disputed the arrears of service charges and administration costs and asserted that they had unreasonably increased from £893.83 in the quarter 01/01/2020 – 31/03/2020 to around £3,890.00 due to the costs of a 'waking watch.' The defendant/respondent also asserted that the accounts, although signed by an accountant had not been audited.
14. In a statement titled 'The Respondent's Case' and dated 19 March 2021 and an email of 6 April 2021, the respondent asserted that he had not been provided with copies of the relevant invoices. However, the increase in service charge costs from around £3,500 per annum to approximately £16,000 without any consultation or previous warning, was unreasonable.
15. The Respondent asserted that he had been informed that the previous management company had left creditors unpaid and that at least part of the service charges would be utilised for the removal of flammable cladding from the building. Further, the service charge accounts had not been audited by a chartered accountant.
16. In his oral evidence, Mr Ghisleni told the tribunal that he had been led to expect by the directors of the applicant RTM company that he would be able

to 'sort out' the matter and was therefore surprised by the issuing of County Court proceedings.

The tribunal's decision and reasons

17. The tribunal finds the arrears of service charges and administration fees in the sum of £7,998.12 are reasonable and payable by the respondent.
18. The tribunal found the oral and documentary evidence provided by Mr McElroy to be detailed, explanatory and credible. The tribunal preferred this evidence to the vague assertions made by the respondent of (i) having paid the same service charges twice and (ii) the costs of the waking watch/fire alarm were excessive, although the respondent had neither sought to inspect the invoices or read thoroughly the documents provided to him, along with the other lessees at the tribunal's direction, the documents relating to the section 20ZA application in respect of the substantial but reasonable 'extra' costs.
19. However, the tribunal did agree with the respondent that the 'extra' amounts now sought by the applicant could have been set out in more detail and more warning could have been given of these increased costs, in a more accessible and easier to understand format. However, these matters did not detract for the reasonableness or the payability of the sums now demanded from the respondent.
20. The tribunal finds that the lease provides for the recovery of legal costs and interest now claimed by the applicant at paragraph 14 of Schedule 2 and paragraph 7 of Schedule 6, part 1 and clause 1 ('definitions') respectively.

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

21. The lease provides for the payment of interest and legal costs by the defendant. However, the legal costs claimed appeared to have been those incurred by the managing agent with many of the legal costs already added to the arrears of service charges that have been claimed in these proceedings. and found payable to the claimant/applicant by the respondent/defendant.
22. As the claimant has succeeded in its claim for arrears of service charges of £7,998.12. The interest is assessed as £359.36 in accordance with claimant/applicant's calculations. Legal costs are assessed in the sum of £1405 for the cost of issuing the claim and transfer to the first-tier tribunal.

Name: Judge Tagliavini

Date: 10 May 2021
Amended: 24 May 2021

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

Date: 10 May 2021
Amended: 24 May 2021

Rights of appeal from the decision of the tribunal ~~and 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 notices within 21 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.

In the County Court at Clerkenwell & Shoreditch	
Sitting at: 10 Alfred Place, London WC1E 7LR	
Claim Number:	G11YY125
Date	10 May 2021 (amended 24 May 2021)

General Form of Judgment or Order

Tavern Quay RTM Company Ltd	1st Claimant Ref
	2nd Claimant Ref
Rafael Steffenello Ghisleni	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 McElroy for the claimant and Mr Ghisleni in person

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

IT IS ORDERED THAT:

1. Judgement is entered for the Claimant in the sum of £9,762.48 including interest and costs (amended 24 May 2021).
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 10 May 2021 (amended 24 May 2021) under case reference LON/00BE/LSC/2021/0027

Dated: 10 May 2021

Amended: 24 May 2021