



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

Case reference : **LON/00BK/LSC/2020/0063**
HMCTS code : **V: CVPREMOTE**
(video)

Property : **Flat 37 Langford Court, Abbey Road,
London NW8 9DN**

Applicant : **Langford Court RTM Company Limited**

Representative : **Mr M Comport, Solicitor of Dale & Dale
Solicitors Limited**

Respondent : **Mr Fida Bobby Ayum Syed**

Representative : **In person**

Type of application : **For the determination of the liability to
pay service charges under section 27A
of the Landlord and Tenant Act 1985**

Tribunal members : **Judge Tagliavini
Mr M Cairns MCIEH**

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

Venue : **10 Alfred Place, London WC1E 7LR
V: CVPREMOTE.
17 & 18 December 2020**

Date of decision : **25 January 2021**
Date of Addendum : **8 April 2021**

DECISION & ADDENDUM

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 to are in four bundles (1-306), (1 to 40), (1 to 268) and (1 to 14) 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 tribunal finds that arrears of service charges for the service charge years 2016, 2017, 2018 and the interim charge for the 2019 are reasonable and payable by the respondent in the sum of £15,457.03.
- (2) The counterclaim is dismissed.
- (3) No order is made by the tribunal under section 20C of the Landlord and Tenant Act 1985 prohibiting the costs incurred by the applicant in the tribunal from being added to the service charges.
- (4) No order is made by the tribunal under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

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

- (1) Judgement for the claimant for the arrears of service charges and interest in the sum of £17,774.65 to be paid by the defendant.
- (2) The counterclaim is dismissed.
- (3) The claimant's costs assessed in the sum of £19,550.49 are payable by the defendant.

The applications

1. The County Court proceedings were originally issued in the Northampton County Court Centre under Claim No F61YX028 with Particulars of Claim dated 28 May 2019 seeking service charge arrears in the sum of £16,227.04 and administration costs of £100, statutory interest at the rate of 8% in the sum of £2,510.74 and continuing at the rate of £3.56 per day and legal costs in

the sum of £1,482.00. The claim was subsequently transferred to the Central London County Court and then in turn transferred to this tribunal, by an order of Recorder Mayall dated 16/01/20. The order transferring issues to the First Tier Tribunal (Property Chamber) tribunal stated that the proceedings were transferred pursuant to section 176A of the Commercial (sic) and Leasehold Reform Act 2002.

2. Mr Syed had defended these proceedings on the basis that £37,616.67 had already been paid to the applicant by his mortgage company (Santander) on 09/02/2019 and disputed the applicant's records of payment made by the respondent and raised a counterclaim seeking damages of £101,97.47 for damages of £64,354.80 for the damage caused to his property arising out of water ingress into his flat in 2013 and a refund of the £37,616.67 paid to the applicant by his mortgage company.
3. 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.
4. 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.
5. Therefore, this decision will act as both the reasons for the tribunal decision and the reasoned judgment of the County Court.

The preliminary issue

6. In a Skeleton Argument and oral submissions, Mr Comport on behalf of the applicant made an application for the tribunal to 'strike out' the respondent's counterclaim under CPR 3.4(b) in which he sought (i) damages in respect of repairs and redecoration of the subject flat and (ii) the return of £37,616.67 paid by his mortgagee Santander in respect of service charge arrears. The applicant sought to rely upon a further bundle of evidence (Bundle 3) in support of its application concerning the previous proceedings brought by the applicant against the respondent under Claim No. B5YX347 and asserted that Mr Syed had no reasonable case.
7. In the previous proceedings under Claim No B57YX347 issued on 10 November 2015 the applicant claimed arrears of service charges up to and including 24 June 2015 in the amount of £16,542.57, administration charges of £100, costs of £1,482.00 and interest of £2,381.07 continuing at the daily rate of £3.60. The respondent had entered a fully pleaded defence and counterclaim denying his liability to pay the sums sought and asserting damage to the subject premises caused by water ingress in 2013 from the flat above and sought damages of £11,200.

8. Although Mr Syed had sought to defend and counterclaim for water damage to his flat in the proceedings under B57YX347 his defence and counterclaim were 'struck out' on 3 March 2017 for failing to comply with the court's previous Order. Subsequently judgment was obtained by the applicant and a default certificate was obtained from the court by the applicant on 12 June 2018 in the sum of £27,551.36 where fixed costs of £146 were also awarded. Mr Syed's failed attempt to have this judgement set aside was unsuccessful and resulted in an order for him to pay further costs of £2,250 by 21 January 2019 in respect of the failed application.
9. As Mr Syed had paid no further sums towards the arrears of £11,542.47, the interest of £2,452.74 and the court's assessed costs of £22,271.36 his debt culminated in an outstanding total of £36,266.57. Subsequently in response to the forfeiture proceedings issued by the applicant, the respondent's mortgagee Santander paid the sum of £37,616.67 representing the £36,266.57 and the additional costs incurred in the forfeiture proceedings.
10. In light of these previous proceedings and decisions the applicant made an application to the tribunal for the late admission of the documents relevant to Claim No. 57YX347 and submitted that the outcome of the previous proceedings limited the respondent's ability to raise and rely upon the same facts in respect of the counterclaim in the current proceedings.
11. In a Skeleton Argument and oral submissions Mr Syed accepted that he had not vigorously pursued his counterclaim in the earlier proceedings as he had hoped the extent of any damage caused to his flat would be revealed at a later date. Mr Syed also asserted that as the court had not previously considered the merits of the counterclaim and no findings had been made in respect of it his current counterclaim should be allowed to proceed in the tribunal. Mr Syed also raised issues of 'racism' and unfairness as he was a 'litigate in person' (sic) and this tribunal should now determine the issues raised.

Preliminary issue – the tribunal's decision

12. As the counterclaim had been referred to the tribunal for determination the tribunal considers that it has jurisdiction under The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 to determine whether the counterclaim in whole or part should be struck out. Having heard the submissions of both parties the tribunal finds and accepts that the service charge arrears accumulated up to 24 June 2015 have been the subject of Claim No. B57YX347 for which judgment has been entered and various orders made in respect of costs which the respondent was found liable to pay in the total sum of £37,616.67. Therefore, as these matters have not been successfully appealed by the respondent, the tribunal determines that it has no jurisdiction to allow these matters to be litigated for a second time in this tribunal under rule 9(2) (a) of the 2013 Rules the tribunal must 'strike out' this part of the counterclaim.
13. As regards the remaining part of the respondent's counterclaim concerning the water damage to his flat, the tribunal finds that this issue has not been the subject of scrutiny by, or findings of the court on the merits of the claim.

Rather, in view of the history of the previous proceedings in Claim No. B57YX347, the tribunal finds that the respondent's counterclaim in respect of water damage was struck out for his failure to comply with the Order requiring an interim payment of a sum of money and not due to a lack of merit. Therefore, the tribunal considers that it is reasonable and appropriate for this part of the counterclaim to continue for the tribunal's determination.

The applicant's case – service charges

14. The application transferred to this tribunal concerned arrears of service charges which had arisen in the service charge years 2016, 2017, 2018 and the estimated expenditure for the first six months of 2019. In a letter dated 1 October 2020 from the tribunal to the parties it was made clear that the tribunal would determine all issues relating to the service charges for the years identified above in addition to the respondent's counterclaim for damages. No objection was received from the parties as to that course of action.
15. In a Statement of Case (undated) it was stated that the applicant is a Right to Manage Company and has dealt with the building known as Langford Court for nearly 20 years whose obligations under the lease are performed by its managing agent Parkgate Aspen. The respondent is the leaseholder of Flat 37 Langford Court, 22 Abbey Road, London NW8 9DN ('the premises') under a lease dated 9 January 1981 granted for a term of 99 years less 7 days from 29 September 1977. Under the terms of the lease the respondent is required to pay the Interim Charge and Service Charge when demanded in accordance with the terms of the lease apportioned at 1.049% which was calculated following the abolition of local council rates which were calculated in accordance with the size and situation of the premises.
16. In support of the application the tribunal heard the oral evidence of Mr Soloman Unsdorfer, Director of Parkgate Aspen who spoke to his witness statement dated 8 September 2020. Mr Unsdorfer told the tribunal that in a Scott Schedule My Syed had sought to challenge a large number of items of service charges but had failed to provide any alternative quotes in respect of communal work of window cleaning (Symonds); gardening (McGregor), pest control (Expest); the buildings insurance and specifically the inclusion of terrorism insurance; directors insurance and plant insurance (communal lifts and boiler/heating). Mr Unsdorfer explained to the tribunal that the items marked 'Parkgate cash invoices' were receipts for monies received from the insurers brokers' St Giles for monies paid by the insurers upon insurance claims. Items in respect of payments to JB Leitch concerned the payments for their legal services in respect of proceedings against the respondent which had initially been paid for out of the service charges and recredited when paid by Mr Syed or his mortgage company. Other legal advice had been provided by Wallace LLP and paid for out of the service charges in respect of matters unrelated to these or previous proceedings against the respondent.
17. Mr Unsdorfer also told the tribunal about the works of removal of some asbestos that had been carried out in 2018 for the sum of £12,860 and the preliminary/investigatory steps that had been taken in respect of planned

major works in the period 2016 to 2018 for which all invoices had been provided to the respondent. Mr Unsдорfer told the tribunal that in fact no major works had been carried out in this period and that the invoices charged in the service charge accounts related to professional charges for advice and reports on two anticipated major works projects concerning the communal boiler plant and the re-wiring of the rising and lateral mains in the building up to and including each flat's junction box.

18. Mr Unsдорfer also gave evidence as to the Director's Liability Insurance charges to the service charge accounts as provided for by the lease as the Directors of the applicant RTM company were otherwise not protected against claimed for losses.
19. The applicant also relied upon the oral evidence of Mr Paul Smith a credit controller employed by Parkgate Aspen who spoke to his witness statement dated 7 September 2020. In his evidence Mr Smith explained to the tribunal the payments alleged to have been made by the respondent of £5,000; £7,000, and £2,500 and the payment made by his mortgagee Santander of £36,266.57.
20. Mr Smith referred the tribunal to the earlier county court proceedings under Claim No. B5YX347 and the payments made by and on behalf of the respondent. These included the £5,000 paid by the respondent towards the arrears of £16,542.47 as ordered by the court leaving an arrears balance of £11,642.47. A court order dated 15 August 2017 entered judgment on the arrears for the applicant together with interest of £2,452.74. The respondent was ordered to pay £7,000 towards costs to be assessed. This sum was paid by Mr Sayed. Subsequently a default certificate was obtained from the court by the applicant on 12 June 2018 in the sum of £27,551.36 and fixed costs of £146. Mr Syed's failed attempt to have this set aside resulted in an order for him to pay costs of £2,250 by 21 January 2019 in respect of the failed application. In response to forfeiture proceedings the respondent's mortgagee Santander paid the sum of £37,616.67 representing the £36,266.57 and the additional costs incurred in the forfeiture proceedings the latter sum being retained by JB Leith for the legal costs incurred on behalf of the applicant thereby satisfying the debt in full in proceedings relating to No. B5YX347 and providing the respondent with a nil balance on his service charge account as of 24 June 2015.
21. In support of the application the tribunal was provided with the accounts for 2016, 2017 and 2018, supporting invoices and Building Insurance documents and a demand for the first interim charge for the service charge year 2019 together with the Scott Schedule which the parties had been required by the tribunal to complete. In this the applicant had set out how each charge had been incurred in response to Mr Syed's various assertions that 'prejudicial charges that isn't sanctioned' and 'discriminatory charges' to serve other flats with no further explanation for these and similar assertions as well as assertions of charges for 'service not seen or provided' and a 'conflict of interest.'

22. In the applicant's case a small number of concessions as to the arrears of service charges claimed were made amounting to £270.01. These reduced the total of the service charge arrears claimed to £15,957.03 and interest of £2,376.87 continuing at a rate of £3.50 per day.

The applicant's response - the counterclaim

23. The applicant also provided the tribunal with a Statement of Case in Response to the Respondent's Counterclaim dated 15 October 2020 made in Claim No. F61YX028 in which the respondent sought damages in the sum of £64,354.80 (inclusive of VAT) and the return of the payment of £37,616.67 as service charges and payments had not been properly accounted for by the applicant. The applicant denied liability for the damage caused by the water leak and asserted that liability had not been admitted by Mr Gavin Noe a former property manager with Parkgate Aspen. The applicant asserted that the respondent had failed to provide any surveyor's report to establish the cause of the water damage or the extent of his losses.
24. The applicant asserted that the respondent appeared in the tribunal proceedings seeking to rely on a counterclaim for damages for the applicant's alleged breach of the covenant for 'quiet enjoyment' by reason of the applicant's failure to carry out repairs to the subject premises. The applicant asserted that the respondent had failed to particularise how the applicant had breached the covenant for quiet enjoyment for allegedly failing to carry out repairs or making an insurance claim as Mr Syed had not provided details of the alleged cause of the damage and the estimated costs of repair.
25. Mr Comport asserted that a claim made under the insurance policy would not have been successful if the damage was caused by another tenant as they would be responsible for any losses although the applicant makes an insurance claim whenever possible.

The respondent's case – service charges

26. In a document headed 'Defence and Counterclaim' dated 29 June 2020 Mr Syed asserted that there had been multiple breaches of company law by the applicant and a failure by the applicant to act fairly towards him in its management of Langford Court and a failure to provide clear accounts and had not previously provided these for the service charge years 2016, 2017 and 2018. Mr Syed asserted that the demands for service charges for 2019 was invalid as no (copies) of invoices had been sent with the demand for payment and that this went against 'corporate governance.'
27. When challenged in cross-examination by Mr Comport, Mr Syed maintained he had never been permitted to access the service charge vouchers as he had not felt welcome in the managing agent's office and had in fact made a report of racist behaviour to the police because of this. Mr Syed also made assertions

in cross-examination of having been bullied and harassed by the applicant as well as the porter having been rude to him.

The respondent's case – the counterclaim

28. In the Respondent's Statement of Case in Response to the Applicant's Defence dated 30 October 2020 Mr Syed asserted that £53,626.00 plus VAT of £10,725.80 was sought in damages for the cost of repairs and redecoration to the subject as evidenced in the accompanying quotations from Aspect Maintenance dated 24 June 2019. Mr Syed also sought the return of £37,616.67 due to the applicant's failure to provide historical cost break-down as it had been requested and copies of the accounts. The lack of repair to the subject flat had led to Mr Syed suffering harassment and discrimination which had been reported to the police and ill health leading to surgery.
29. Mr Syed asserted that Mr Brian Parker (deceased) had admitted liability on the part of the applicant although had failed to make a claim on the insurance and that he had provided estimates to the applicant of the repair and redecoration costs. This failure to claim had been continued by Mr Paul Smith. Mr Syed asserted that the reference to the applicant's 'breach of covenant for quiet enjoyment' referred to the applicant's unreasonable behaviour and refusal to enter into any dialogue or mediation in respect of the issues raised by Mr Syed.
30. The respondent asserted that Mr Brian Parker, a former employee of Parkgate Aspen had initially dealt with his complaint about the water damage to his flat. From the pipes of the flat above After Mr Parker had died Mr Gavin Noe dealt with the matter until he too left the employ of Parkgate Aspen. Mr Syed asserted he had supplied quotations for works to Mr Parker dated 5th February 2013 and 6th February 2013 but also stated that these had predated the water leak which formed the subject of the counterclaim as this had occurred in January 2014 . Mr Syed asserted that the applicant had failed to make a claim on the insurance in respect of the water ingress into his flat or to carry out repairs and that the extent of the damage had increased. Mr Syed also challenged the applicant's right to claim legal costs.
31. In respect of the counterclaim for 'breach of covenant for quiet enjoyment' Mr Syed asserted that this related to the applicant's unreasonable behaviour to enter into dialogue with the respondent, to provide a break-down of the service charges, to involve the respondent in any decision-making process at Langford court, to refuse payments of ground rent, refusing to undertake mediation, and employed Porters who have bullied and harassed the respondent. Mr Syed also asserted that the applicant's failure to report the leak to the insurance company had meant he had to reside in a flat damaged by water ingress at a time he was in ill-health hereby exacerbating his condition further.
32. The respondent also relied upon the oral evidence of Mr Michael Danso an accountant and director of Anthony Michael & Associates who spoke to his witness statement dated 9 August 2020. In his statement Mr Danso referred to the obligation of the Management Agency to act 'fairly and reasonably'

under the terms of the lease and the lessor's ability to claim under any policy of insurance that covers the demised premises. Mr Danso queried whether Mr Syed had been properly consulted on the items of expenditure now claimed by the applicant and asserted that there had been a lack of communication with Mr Syed by Parkgate Aspen.

33. Mr Danso challenged the return of Mr Syed's of a cheque for ground rent and asserted that the respondent had been treated with 'contempt' and that the behaviour of the managing agent appeared to be 'discriminatory' as Mr Syed's service charges appeared to be subsidising those of other lessees in the building.
34. Mr Danso took issue with the inclusion of terrorism cover on the building's insurance asserting it was unnecessary and possibly discriminatory as there was no evidence of a potential threat to the building or its residents and occupier. Mr Danso queried why Mr Syed had not been informed of there being asbestos in the building as it raised health concern issues and also asserted that the amount now claimed in these proceedings had already been paid by Mr Syed's mortgagee Santander.
35. Mr Danso asserted that the applicant's failure to deal with the water damage caused to Mr Syed's flat amounted to 'discrimination.' Mr Danso also challenged various heads of service charge asserting that Mr Syed had not been consulted about the asbestos works; the cleaning in the building is mostly done by the porter and not Symonds Cleaning; the cleaning work was duplicated by High Wayman Access; the gardening carried out by MacGregor and later Evansley Gardens was unreasonably expensive for the small garden at the building; there had been no visit by Expest to the subject premises but other visits had generated too high costs; the legal costs of Wallace LLP were too high.
36. Mr Danso also asserted that Mr Syed had not received any support from the management agent despite his long residency in the building and that the water damage to his flat had been ignored and should have been covered by the building insurance.
37. Mr Danso queried the 'cash book receipt processing' invoices' as being ambiguous; the terrorism insurance as being unnecessary and the insurance costs too high; the directors and officer liability insurance as unreasonable. Mr Danso also challenged the recoverability of legal fees.
38. In support of the respondent's counterclaim the tribunal was provided with copies of email correspondence between Mr Syed and Mr Brian Parker. These referred to Mr Syed having obtained two quotes for works of refurbishment to the flat which he had acquired before the water leak from the flat above and which he had provided to Mr Parker and relied upon for ongoing submission to the insurance company in support of a claim. An email from Mr Parker dated 22 January 2014 to Mr Syed stated:

'Regarding the water penetration from the flat above, I have today spoken to the owner who has admitted there was a non-

functioning sani-flow unit in the toilet which is today being replaced. Of course any consequential damage to your flat is a matter for the insurers and as I have previously stated you should provide this office with no less than 2 estimates for reinstatement.'

39. A letter dated 1 February 2014 referring to an earlier letter of 12 December 2012 (sic) from Mr Syed stated:

"I am glad to hear from you, that this is totally insured by building insurance, so extremely grateful for this straightforward process, to settle this case ASAP. ...I know that with you visiting my premises to inspect damage, the process will be speeded up. I now enclose two quotes that you had requested for the insurer to act on.....Firstly, Mr Donald burke, Donal Burke Decoration, dated 5th February 2013 at the cost of £10,820.00 (Labour & Materials) and by Mr Christian Stepto, Crimson and Scarlet Bespoke Decorators, dated 6th February 2013 at the cost of £9,570.00.

40. In an email dated 9 January 2014 from Mr Syed to Mr Parker the respondent confirmed that these quotations had been obtained in respect of previous water damage sustained to his flat but had decided to allow walls to dry out first before proceeding with any claim or repairs and redecoration. Mr Syed ended this email by requesting ' I would appreciate, that you contact the building insurance company about this continue(sic) damage from above.....once I get my case moving with the party above then will supply my quotations.' However, a subsequent email dated 7 October 2015 from Mr Gavin Noe, Commercial Manager to Mr Syed acknowledged receipt of his estimates and requested (again) in order to set up an insurance claim (i) the date of loss (ii) cause of leak and (iii) brief description of damage within Flat 37. Other emails relied upon by the respondent revealed that a claim had not in fact been made in respect of the water damage to Mr Syed's flat as a result of the leaking pipe from the flat above. An email dated 5 August 2019 from the applicant informed Mr Syed of an inspection by F&D Services of the respondent's flat in order to draw up an estimate of the damage done to the bathroom and kitchen following a leak in 2014. In evidence to the tribunal Mr Syed accepted that he had not had carried out any repairs or redecoration to remedy the ingress of water leak which occurred in January 2014.
41. The tribunal was also provided with documentary evidence of Mr Syed's attempt to pay two years of ground rent by a cheque for £120. This was returned by the applicant to Mr Syed in a letter dated 15 December 2014 with the explanation that the annual ground rent had increased to £120 per annum after a rent review on 29 September 2010.
42. The tribunal was also provided with various hospital letters setting out Mr Syed's various appointments and medical procedures. Photographs of the communal areas and garden were also provided by Mr Syed as well as photographs of the interior of his flat purporting to show the extent of disrepair caused by the ingress of water in January 2014.

The tribunal's decision – service charges

43. The tribunal finds that the service charges for 2016, 2017, 2018 and the interim fee for 2019 have been properly demanded by the applicant and are reasonable and payable by the respondent except for the totality of managing agents fees incurred during this period. The tribunal also finds that the interim demand for 2019 service charges has been made in accordance with paragraph 3 of the 5th Schedule of the lease which provides the Interim Charge is to be paid by equal payments in advance on 24 June and 25 December in each year.
44. The tribunal finds that the evidence of Mr Unsorfer was cogent and credible as to why the sums claimed had been incurred and were supported by the relevant invoices. The tribunal also accepts the explanation as to sums that have been received in respect of insurance claims and credited to the service charge account and finds that the applicant, where possible has directly charged individual lessees for losses caused by them in order to reimburse the sums expended from the service charges.
45. The tribunal found the widespread and vague objections to the service charges by Mr Syed and Mr Danso to lack substance and often credibility and found that there was little evidence produced in support of them. In particular the tribunal found Mr Syed's objections to the service charges in the form of the pro forma tribunal provided Scott Schedule to lack clarity or substance. Further, the tribunal finds Mr Syed's failure to provide any alternative quotations and suggest alternative costs was unsatisfactory and non-supportive of his claims.
46. The tribunal does not accept Mr Syed's objections to the inclusion of terrorism cover in the buildings insurance and finds in the absence of any evidence to the contrary, that the insurance of the lifts and boiler/heating apparatus to be reasonable and appropriate. Mr Syed's assertion that he should be written to about every single expense the applicant intended to incur (regardless of whether consultation was statutorily required) demonstrated a misunderstanding about his rights as a lessee and the responsibilities of the applicant and its managing agent. The tribunal finds that Mr Syed's objection to cleaning and gardening costs were unsupported by any relevant evidence in the form of alternative or comparable quotations.
47. The tribunal finds that the provisions of the lease under clause 5(c) allows for the charge of the Directors Insurance to be made to the service charges as it provides for the lessor to insure against third party claims made against the lessor and by extension the applicant RTM Company.
48. The tribunal finds that the respondent has been provided with proper demands for all of the service charges including 2019 and has been provided with copies of accounts and opportunities to inspect the invoices. The tribunal finds that Mr Syed has failed to take advantage of these opportunities to inspect the invoices due to his unsupported allegations of racism and

harassment. The tribunal also finds that the service charges have been reasonably apportioned to Mr Syed since the abolition of the system of rates.

The tribunal's decision – counterclaim

49. The tribunal finds that water damage was caused to Mr Syed's flat from a leaking sani-flow pipe from the flat above in about January 2014. The tribunal finds that the applicant was made aware of this problem and on investigation, responsibility for the leak was admitted by the tenant of the flat above that of Mr Syed.
50. The tribunal finds that a claim for the damage caused to the respondent's flat was not made by the applicant on the respondent's behalf despite Mr Syed having requested a claim to be made by the applicant. The tribunal also finds that Mr Syed did not instigate any proceedings against the tenant above responsible for this water ingress for reasons that were unclear to the tribunal. The tribunal finds that the respondent declined the applicant's offer of obtaining estimates said to be required in support of an insurance claim of the damage caused and the repairs required to the subject premises on Mr Syed's behalf and relied instead on two quotations pre-dating the January 2014 incident.
51. The tribunal finds that there was a lack of communication between the applicant and the respondent and a degree of miscommunication and misunderstanding was apparent between the parties when Mr Parker was finally replaced by Mr Noe. The tribunal finds that Mr Syed failed to cooperate with the applicant's reasonable requests for information due to his belief he had already provided the information sought and his assumption that it had already been recorded by the applicant and an insurance claim made.
52. The tribunal finds that there is no contemporaneous independent surveyor's report that establishes the nature or extent of the damage to Mr. Syed's flat caused at the date of the water ingress in January 2014. Further, the tribunal finds that two quotations relied upon by Mr Syed pre-date the incident and one has been prepared several years after the incident. The tribunal finds that all three quotations appear to take into account items that appear not to be linked to the water damage caused by the incident in January 2014 and finds that the photographs relied upon Mr Syed do not differentiate between damage caused in January 2014 or the unspecified earlier dates referred to by Mr Syed in his evidence.
53. The tribunal accepts that Mr Syed has suffered from ill health but finds that there is no evidence provided by the respondent to sufficiently link this having been caused or contributed to by the condition of the subject premises or to the ingress of water in January 2014.
54. However, the tribunal finds that the respondent has failed to establish that the water damage was caused by the applicant's actions or inaction and that liability for damage to his flat fell within the applicant's obligations to maintain or repair. Further, the tribunal finds that the applicant was not in

breach of the covenant for quiet enjoyment as the respondent has failed to particularise or support the assertions of unfair, discriminatory treatment or behaviour that is alleged to contravene the terms of the lease or the requirements of the Landlord and Tenant Act 1985.

55. However, the tribunal finds that the applicant failed through its managing agent to submit a potential or exploratory claim on behalf of the respondent and failed to make it clear to Mr Syed in a timely manner that it had not done so. The tribunal therefore finds that the managing agent fees charged to Mr Syed for the periods 2016, 2017, 2018 and the interim charge of 2019 to be unreasonable and reduces these by £500 over the period claimed to reflect this lack of clarity and the standard of service provided to Mr Syed in this period.

Contractual provision for (legal) costs

56. The claimant has asked the tribunal to consider the matter of costs on a contractual basis under the terms of the lease. The applicant has submitted that the lease sufficiently provides for the contractual payment of legal costs under clause 3(9); clause 5(5)(j) and 5(5)(p).
57. The tribunal finds that clause 3(9) specifically concerns forfeiture proceedings and therefore does not apply to the payment of legal costs sought in this application and counterclaim. However, the tribunal accepts the applicant's submission on respect of clauses 5(5)(j) and (p) as making provision for the recovery of contractual (legal) costs.

Section 20 of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002

58. Although the respondent did not make any express applications under these provisions the tribunal considers it appropriate to deal with such matters in any event.
59. In light of the tribunal's findings in respect of the claim and counterclaim the tribunal does not consider it appropriate to make any order under these provisions save that it finds that the administration charge of £100 claimed by the applicant is payable by the respondent.

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

Interest on Service Charges

60. The applicant landlord has claimed interest under s69 Count Courts Act 1984 on the arrears of servicer charges at the rate of 8%. Judge Tagliavini sitting alone as a judge of the Count Court awards interest at the rate of 4% as the interest rates have been low for many years and the applicant recognises and accepts that a discretion as to the level of interest payable is retained by the court.
61. Therefore, Judge Tagliavini awards the applicant landlord total interest in the sum of £2,317.62.

Costs

62. No schedule of costs was provided by the applicant landlord. However, the landlord relied on clauses 3(9) and 5(9)(j) and (p) of the lease, which it said entitled it to claim the costs of these proceedings. In the alternative, the applicant landlord sought an order for costs in the court's discretion under the provisions of section 51 Senior Courts Act 1981.
63. The first issue for the county court is whether to award some or all of the costs. The second issue is then the qualification of such costs as are awarded. Had this claim and counterclaim been allocated to a track before being transferred to the tribunal it would have been allocated to the multi-track in light of the multitude of issues raised and the value of the counterclaim. Consequently, Judge Tagliavini allocates the claim and counterclaim to the multi-track in respect of the assessment of costs.
64. However, in the absence of the provision of any Schedule of Costs it is considered appropriate to allow the applicant an opportunity to provide such a Schedule to Judge Tagliavini sitting as a (District) Judge of the County Court in order for these costs to be assessed. This Schedule of Costs is to be provided in writing to Judge Tagliavini and to the respondent by 15 February 2021. Any written submissions by the respondent are to be sent to tribunal sitting as the Central London County Court by 28 February 2021. Thereafter Judge Tagliavini will make an assessment of costs to be paid to the claimant by the defendant and an Order will be issued accordingly.
65. A separate County Court order, reflecting the decisions of the tribunal and of Judge Tagliavini as a Judge of the County Court is attached.

Name: Judge Tagliavini

Date: 25 January 2021

Addendum to the Tribunal's Decision dated 25 January 2021 concerning issues of costs and interest

The applicant's case

66. Further to the tribunal's decision dated 25 January 2021 being sent to the parties, the tribunal issued further Directions dated 18 February 2021 in respect of the matter of costs sought in the total sum of £21,338.19 and interest of £1,805.18 (as at 9/3/21) on the sum found to be owing by the respondent of £15,457.03 and continuing at the daily rate of £1.69.
67. In compliance with these Directions the applicant sent a Statement dated 10 March 2020(sic) together with 5 Statements of Costs representing (i) legal costs arising before transfer of the claim from the county court to the tribunal; (ii) costs of setting aside a judgement in default which were summarily assessed by the county court at £600; (iii) and (iv) a legal costs arising in the tribunal in respect of the claim and (v) legal costs arising in respect of the counterclaim. In addition an updated Schedule of Interest was provided as at 9/3/2021.

The respondent's case

68. Mr Syed sent to the tribunal a Witness Statement dated 31 March 2021 accompanied by a statement from his accountant/representative Mr Michael Danso FCCA MBA Msc dated 30 March 2021. Although it had been directed by the tribunal in its Directions dated 18 February 2021, that the respondent was required to comment upon the Schedule(s) of Costs sent to him by the applicant, neither the respondent's witness statement nor the statement of Mr Danso addressed this issue in any detail. The respondent's comments on costs concerned the respondent's views that attempts should have been made to 'settle' the matter by discussion, negotiation or mediation and that he had attempted to do so but had been met with little cooperation from the applicant and that it was unfair to impose costs on the respondent.
69. The respondent sought in his Witness Statement for the 'Judgement for £17,774.64 to be set aside as well as any Order on costs. Mr Syed indicated that he wished to appeal the tribunal's decision or alternatively wished the tribunal to review its decision and take into account the submissions made in the Witness Statement.
70. For the avoidance of doubt the respondent's request to Appeal the tribunal's decision, for the tribunal to review its decision or to set its decision aside is not considered in this Addendum. The correct time for appealing the tribunal's decision and Addendum is as set out in the Directions dated 18 February 2021 and as indicated at the end of this Addendum i.e. within 28 days of the date of the Addendum.

Decision of Judge Tagliavini sitting as a District Judge of the county court

71. As it has been previously determined above that contractual (legal) costs are payable by the respondent, only the amount of those costs is considered in this Addendum in accordance with the provisions of CPR Rule 44.5. Judge Tagliavini has considered the five Statements of Costs provided by the applicant and considers that the costs sought in Statement 2 have already been the subject of a court order when the costs of the setting aside of the judgement in default were assessed in the sum of £600. Therefore, Judge

Tagliavini disregards Statement 2 seeking costs of £1,467.50 for the purpose of assessing costs.

72. In the absence of any detailed objection by the respondent to all or part of the costs and the absence of any documentary evidence in respect of any 'without prejudice' offers of settlement by the respondent, it is considered on a summary assessment that both the rates charged and the amount of the costs sought by the applicant on the claim and the unsuccessful counterclaim are reasonable.
73. Therefore, the applicant/claimant's costs in the sum of £19,550.49 are payable by the respondent/defendant.
74. No further order is made in respect of the interest claimed.
75. An Order is attached to the Decision and Addendum has for the purpose of clarity been amended to reflect the complete Decision/Addendum of the tribunal/county court.

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

Date: 8 April 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*

In the County Court at Central London	
Sitting at: 10 Alfred Place, London WC1E 7LR	
Claim Number:	F61YX028
Date	8 April 2021

General Form of Judgment or Order

Langford Court RTM Company Limited	1st Claimant Ref
	2nd Claimant Ref
Mr Fida Bobby Ayum Sayed	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 R Comport solicitor for the Claimant and Mr Sayed 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. The Defendant shall pay to the Claimant within 35 days of the date of this Order the sum of £17,774.65 being the sum found due and payable in respect of service charges and interest to the date of judgment.
2. The Claimant's costs are assessed in the sum of £19,550.49 and are to be paid by the Defendant within 35 days of the date of this Order.
3. 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 25 January 2021 and 8 April 2021 under case reference LON/00BK/LSC/2020/0063.

Dated:

8 April 2021