



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

**IN THE COUNTY COURT at Central
London sitting remotely by CVP
video**

Tribunal reference : **LON/00BK/LSC/2021/0177**

Court claim number : **G8QZ8oH8**

Property : **Flat 500, Clive Court, 75 Maida
Vale, London W9 1SG**

Applicant/Claimant : **Clive Court (Maida Vale) Freehold
Limited**

Representative : **Mr Jeff Hardman of Counsel
instructed by Mono Law Limited**

Respondent/Defendant : **Ms Maha Abdel-Mahmoud**

Representative : **In person**

Tribunal members : **Judge N Hawkes
Mr S Johnson MRICS**

In the County Court : **Judge N Hawkes sitting as a
District Judge**

Date of decision : **17 December 2021**

DECISION

This decision takes effect and is 'handed down' from the date it is sent to the parties by the Tribunal office:

Summary of the decisions made by the Tribunal

(1) Of the service charges in sum of £16,072.93 which are claimed by the Applicant in this application, the Tribunal finds that the sum of £16,072.93 is payable by the Respondent.

Summary of the decisions made by the Court

(1) The Defendant is ordered to pay the Claimant the sum of £16,072.93 in respect of the Claim.

(2) The Counterclaim is struck out.

(3) The costs which the Claimant has been ordered to pay the Defendant pursuant to paragraph 3 of DDJ Smith's order dated 20 April 2021 are summarily assessed in the sum of £60.80.

(4) The Defendant is ordered to pay the Claimant's costs of the County Court proceedings (excluding the costs provided for at paragraph 3 of DDJ Smith's order) summarily assessed in the sum of £4,398.91.

The background

1. The Applicant/Claimant is the freehold owner of Clive Court, 75 Maida Vale, London W9 1SF ("the Block"). The Respondent/Defendant is the leasehold owner of Flat 500, Clive Court, 75 Maida Vale, London W9 1SG.
2. Proceedings were originally issued by the Applicant/Claimant against the Respondent/Defendant on 19 June 2020 in the County Court under Claim Number G8QZ80H8. The history of the proceedings is set out below.
3. On 20 April 2021, DDJ Smith made the following order:
"The Claim and Counterclaim shall be transferred to the First Tier Tribunal Property Tribunal for determination of the Defendant's liability for and reasonableness of the claimed service and administration charges, together with any other matter which may be appropriate for a Judge of the County Court sitting in the First-tier Property Tribunal to consider and determine."
4. After the proceedings had been sent to the Tribunal offices, the Tribunal decided to administer the whole claim so that the Tribunal Judge at the final hearing performed the role of both Tribunal Judge and Judge of the County Court (District Judge).

The hearing

5. The final hearing took place by CVP video on 15 November 2021.
6. The Applicant/Claimant, Clive Court (Maida Vale) Freehold Limited, was represented at the hearing by Mr Jeff Hardman of Counsel and the Respondent/Defendant, Ms Maha Abdel-Mahmoud, appeared in person.
7. Mr Hardman was accompanied by Ms Sarah Hussain, solicitor at Mono Law Limited and, at times, two paralegals from Mono Law Limited were present. Dr Shrivani, Dr Namdar Baghaei-Yazdi and Mr Kushal Thakur also attended the hearing as representatives of the Claimant company.
8. The Tribunal heard oral evidence of fact from:
 - a. Dr Namdar Baghaei-Yazdi; and
 - b. The Respondent, Ms Maha Abdel-Mahmoud.
9. The Tribunal is at the present time not generally carrying out physical inspections due to the coronavirus pandemic and colour photographs of the Block were provided in the hearing bundle. Neither party requested an inspection and, in all the circumstances, the Tribunal did not consider it to be necessary or proportionate to carry out an inspection.

The Tribunal's Determinations

10. Prior to the hearing, the Respondent applied for all of the invoices for the service charge years 2018 to 2020 to be disclosed in these proceedings. By letter dated 9 November 2021, the Tribunal stated that, if the requested disclosure was not given, the parties could address the issue of disclosure at the start of the hearing on 15 November 2021.
11. The Applicant did not agree to provide the requested disclosure and the Respondent renewed her application for disclosure at the start of the hearing. In doing so, she made reference to section 22 of the Landlord and Tenant Act 1985 ("the 1985 Act").
12. Section 22 of the 1985 Act gives lessees certain rights to inspect and take copies of accounts, receipts and other documents supporting a summary of relevant costs. There are potential sanctions if a relevant landlord without reasonable excuse fails to comply with the requirements of section 22.
13. The disclosure of documents in Tribunal proceedings is a separate matter. The Tribunal indicated that we would only order the disclosure of documents in these proceedings if the documents in question were relevant to the proceedings and if it was proportionate to require their disclosure. Disclosure in these proceedings would involve the

Applicant's solicitors taking copies of all of the documents to be disclosed.

14. In opposing the application for disclosure, Mr Hardman submitted that the invoices were not relevant to the matters raised by the Respondent in these proceedings and that their disclosure would be disproportionate because invoices run to 6-7 lever arch files.
15. The Tribunal was informed that Clive Court is a large building containing 154 residential units with communal gardens, lifts and portage services. Accordingly, we accepted that the service charge invoices for the years 2018 to 2020 were likely to be extensive. The Respondent does not challenge the reasonableness or payability of any specific service charge items. Accordingly, the Tribunal was not satisfied that it was necessary or proportionate to order the extensive disclosure sought by the Respondent. Further, it is noted that the period of the Applicant's claim does not include the service charge year 2018.
16. The history of these proceedings is as follows. The proceedings were issued on 19 June 2020 as a County Court debt claim with a total value of £10,925.02. This sum comprises a claim for unpaid service charges in the sum of £10,128.46 and a claim for unpaid reserve fund contributions in the sum of £611.20. The claim as issued covered the period from 25 March 2019 to 26 March 2020.
17. The Respondent filed two Defence and Counterclaims dated 20 and 21 July 2020. The value of the Counterclaim was stated to be £2,999 and she paid a Counterclaim fee in the sum of £105. A Reply and Defence to Counterclaim was then prepared dated 7 August 2020.
18. By order of DDJ Smith dated 20 April 2021, the Applicant was granted permission to amend the Particulars of Claim in a form which had been served on 19 April 2021 and the Respondent was granted permission to file and serve an Amended Defence by 4 pm on 11 May 2021. The Particulars of Claim were amended to include a claim in respect of service charge arrears which were said to have accrued following the issue of the claim.
19. Following the amendment of the Particulars of Claim, the Applicant/Claimant claims unpaid service charges in the total sum of £16,072.93 for the period 2019 to 2021. Interim service charges are claimed for the first two quarters of 2021 but the claim otherwise concerns actual service charges.
20. An Amended Defence and Counterclaim was filed and served by the Respondent which is dated 11 May 2021. The Counterclaim states:

"The Defendant is entitled to monetary compensation was a result of the Claimant's failure to issue the requisite share certificate, and to be entered in the Company's Register of Members."

21. By order dated 21 May 2021, Judge Martynski, sitting as a District Judge, ordered that (emphasis supplied):

“Unless by 4pm 18 June 2021 the Defendant:

(a) Delivers (by email) to the Tribunal and to the Claimant an amended Counterclaim which;

i. Sets out in full the legal basis for her Counterclaim and the claim for damages

ii. Contains a statement of value of the Counterclaim

(b) Confirms that she has paid to the County Court office at Central London the relevant fee for the Counterclaim

The Counterclaim will stand as struck out”

22. Accordingly, the Respondent was required to set out the legal basis for her Counterclaim and claim for damages but no permission was granted to the Respondent to add further issues.
23. The Respondent then filed a N9B form which limited her Counterclaim to £5,856.25. She did not, however, confirm as directed at paragraph (b) of the order of Judge Martynski that she had paid to the County Court office at Central London the relevant fee for the Counterclaim. Accordingly, the Counterclaim stands struck out. However, having heard submissions concerning the Counterclaim, the Tribunal will set out its observations on the merits.
24. The Tribunal can determine Counterclaims by tenants for damages where such damages amount to a set-off and constitute a partial or complete defence to a service charge claim (see *Continental Property Ventures Inc v White* [2007] L. & T.R. 4).
25. There is a factual dispute between the parties concerning whether or not a share certificate was issued for the Respondent and concerning whether or not she was entered onto the register of the Claimant Company. The Tribunal accepts on the balance of probabilities the evidence of Dr Namdar Baghaei-Yazdi that these steps were taken. At the Tribunal’s request, a copy of the share certificate was sent by email to the Respondent and to the Tribunal during the course of the hearing.
26. Further, it is noted that the Respondent has not specified any legal cause of action potentially entitling her to compensation as a result of the matters complained of; she has not explained how any damages claim has been quantified; and she has not explained why the damages claim would amount to a set off.
27. In addition to the N9B form, the Respondent filed and served a further document headed Counterclaim. At paragraph 1 of this document, she states that the Defence is repeated and then, rather than expand upon

her pleaded case concerning the share certificate and register, the Respondent attempts to raise additional claims relating to a freehold refund (£400), parking space refund (£347.54), property damage (£50,000), legal expenses (£19,001.50) and a freehold acquisition refund (£3,471.77).

28. The Respondent was not granted permission to amend the Counterclaim to include these matters and, had the Counterclaim not been struck out, these issues would not in any event be before the Tribunal. On 16 July 2021, the Applicant filed a document headed Amended Reply and Defence to Counterclaim. The relevant pleadings are the Amended Particulars of Claim claiming the sum of £16,072.93, the Amended Defence dated 11 May 2021 (“the Amended Defence”) and the Amended Reply and Defence to Counterclaim insofar as it addresses the Amended Defence dated 11 May 2021.
29. In the Amended Defence to the service charge claim, the Respondent states that, on 11 December 2018, Corvan (Properties) Limited sold its freehold interest to the Applicant. This is not in dispute. However, she goes on to state that no legitimate lease has been granted to her and that the Applicant is relying upon a lease granted by the predecessor freehold company.
30. The Tribunal accepts Mr Hardman’s submission that the Respondent’s lease did not become invalid or illegitimate on the transfer of the freehold interest in the Block to the Applicant. The Respondent has not produced any authority in support of the contention that the transfer of the freehold would invalidate her lease. If it is the intention of the parties that a new extended lease is to be granted to the Respondent, the existing lease will remain in force until the grant of any new lease.
31. The Respondent states in her Amended Defence that she has not been issued with a legitimate share certificate or entered onto the register of the Claimant Company. As stated above, the Tribunal accepts the evidence of Dr Namdar Baghaei-Yazdi on this issue. However, in any event, these matters do not amount to a potential defence to the claim for service charges.
32. The Respondent also states that she is “owed a refund as a result of the acquisition of the freehold”. The nature of the refund and the legal cause of action relied upon are not particularised. The Counterclaim has been struck out and we do not accept that this assertion amounts to a potential defence to the claim for service charges.
33. The Respondent states that the service charge dispute concerns the service charge years 2018 to 2021. However, the Applicant has confirmed that the year 2018 does not form part of its claim. The service charge demands to which the Tribunal was referred in support of the claim relate to the years 2019 to 2021.
34. The Respondent asserts that the service charges which form the subject matter of the claim were not correctly demanded and that service

charges are not payable unless first certified in accordance with clause 4(iv) of the lease.

35. The Tribunal accepts the evidence of Dr Namdar Baghaei-Yazdi that the service charges which form the subject matter of these proceedings were correctly demanded with a summary of the Respondent's rights and obligations as a tenant. We also accept his evidence that the actual service charges have been certified in accordance with the provisions of the lease.
36. As regards the interim service charges, Mr Hardman relies upon clause 4(iv)(i) of the Lease which includes provision that:

"... nothing in this clause or these presents contained shall disable the Lessor from maintaining an action against the Lessee in respect of non-payment of any such interim payment as aforesaid notwithstanding that the certificate had not been signed at the time of the proceedings ..."
37. We accept Mr Hardman's submission that, in accordance with this clause, interim service charges can be demanded in the absence of a certificate.
38. The Respondent does not challenge the reasonableness and/or payability of any specific service charge items and we accept the evidence of Dr Namdar Baghaei-Yazdi that the service charge costs are reasonable.
39. The Applicant does not pursue a claim for contractual costs in these proceedings but wishes to reserve its position as to whether any costs which are not the subject of an order of the Court may be recovered pursuant to the lease. Accordingly, it is not necessary for the Tribunal to address the issue of contractual costs.
40. During the course of the hearing, the Respondent informed the Tribunal that she had thought that her Amended Defence dated 11 May 2021 would be considered in addition to her July 2020 Defences. In our view, this is not the correct interpretation of DDJ Smith's order and we are not satisfied that the Defences dated July 2020 are before the Tribunal.
41. Further, it is noted that, at paragraph 1 of her document dated 18 June 2021 headed "Counterclaim", the Respondent states "*The Defence is repeated*". Accordingly, she appears to be aware of the need to expressly state whether or not she is incorporating a previous pleading into a new pleading.
42. We also note that the matters raised in the July 2020 Defences do not appear to amount to a potential defence in law to all or part of the service charge claim, save for an issue raised by the Respondent in very general terms concerning consultation.

43. In her July 2020 Defence, the Respondent stated that she was unable to ascertain whether any of the relevant charges exceed the threshold above which a statutory consultation pursuant to section 20 of the 1985 Act should be carried out. She also made a broad assertion that no consultation was carried out. She did not apply her service charge percentage to any specific service charge items in order to assert whether the relevant threshold had been exceeded.
44. In the Amended Reply and Defence to Counterclaim, the Applicant stated that *“the Defendant has not made clear whether the Amended Defence and CC and Re-Amended Counterclaim are intended to replace the Defence and CC in its entirety or supplement it.”* However, the Applicant has approached the hearing on the basis that the issues in dispute are those set out in the Defence dated 11 May 2021 and, in our view, these are the relevant issues.
45. Accordingly, we find that the service charges claimed by the Applicant in these proceedings are reasonable and payable.
46. The Respondent issued an injunction application against the Applicant on 28 October 2021 and she wished the Tribunal to determine this application. The injunction application has not been referred to the Tribunal by the Court to be dealt with pursuant to the Deployment Scheme.
47. By the date of the final hearing in the Tribunal proceedings, directions had not been given requiring the Applicant to respond to the injunction application. Injunction proceedings are not within the jurisdiction of the Tribunal and, in our view, the Deployment Scheme (in which the Tribunal Judge may also sit separately as a County Court Judge) is not the appropriate forum for injunction proceedings to continue as a standalone matter following the conclusion of a service charge dispute.
48. Once there are no outstanding issues in these proceedings falling within the Tribunal’s jurisdiction, any outstanding matters are best determined in the Court at Central London. Accordingly, the Applicant was informed that she should pursue her injunction application (which has not in any event been referred to the Tribunal) in the County Court.

The Court’s Determinations

The Claim

49. The Tribunal has determined that, of the service charges in sum of £16,072.93 which are claimed by the Applicant, the sum of £16,072.93 is payable by the Respondent. Accordingly, the Defendant is ordered to pay the Claimant the sum of £16,072.93 in respect of the Claim.

The Counterclaim

50. By order dated 21 May 2021, Judge Martynski, sitting as a District Judge, ordered (emphasis supplied):

“Unless by 4pm 18 June 2021 the Defendant:

(a) Delivers (by email) to the Tribunal and to the Claimant an amended Counterclaim which;

i. Sets out in full the legal basis for her Counterclaim and the claim for damages

ii. Contains a statement of value of the Counterclaim

(b) Confirms that she has paid to the County Court office at Central London the relevant fee for the Counterclaim

The Counterclaim will stand as struck out”

51. The Respondent then filed a N9B form which limited her Counterclaim to £5,856.25. She did not, however, confirm as directed at paragraph (b) of the order of Judge Martynski that she had paid to the County Court office at Central London the relevant fee for the Counterclaim. Accordingly, the Counterclaim stands struck out.

Interest

52. Submissions were not made concerning the claim for interest at the hearing and it is not referred to in the Claimant’s Skeleton Argument other than by way of background at paragraph 5. However, in the Amended Particulars of Claim, the Claimant pleads:

“Further, the Claimant claims interest on the sum of ~~£10,128.46~~ £16,072.93 under the terms of the Lease at the rate of 10% per annum from 09/04/2019 until ~~18/06/20~~ amounting to ~~£796.56~~ and continuing at the rate of ~~£2.78~~ per day until judgement or earlier payment or, alternatively, at such rate as the court thinks fit, ~~plus any~~ additional costs incurred by the Claimant post issue of this claim.”

53. Clause 1(v) of the Lease provides:

“Interest’ shall mean interest at the rate of 4 per centum per annum above Lloyds Bank p.l.c. Base Rate from time to time in force with a minimum of 10 per centum per annum”

54. Accordingly, the Court accepts that the contractual rate of interest is 10%. However, CPR 16.4(2) provides (emphasis supplied):

*(2) If the claimant is seeking interest **he must—***

(a) state whether he is doing so—

(i) under the terms of a contract;

(ii) under an enactment and if so which; or

*(iii) on some other basis and if so what that basis is; **and***

(b) if the claim is for a specified amount of money, state—

(i) the percentage rate at which interest is claimed;

(ii) the date from which it is claimed;

(iii) the date to which it is calculated, which must not be later than the date on which the claim form is issued;

(iv) the total amount of interest claimed to the date of calculation; and

(v) the daily rate at which interest accrues after that date.

55. The Amended Particulars of Claim do not comply with these requirements. As the requirements are mandatory, the Court does not order the Defendant to pay interest on the basis of the Amended Particulars of Claim.

Costs

56. At the conclusion of the hearing, the Court was informed that the Claimant wished to reserve its position concerning the recovery of contractual costs pursuant to the lease.
57. Both parties seek orders in respect of County Court costs and have filed and served cost schedules, points of dispute, and points of reply. All of the submissions made have been considered by the Court but, in order to keep this determination to a proportionate length, they will not be set out in full.
58. This is a summary assessment and the Court of Appeal has stated: “*on a summary assessment, it [the assessment] was necessarily going to require something of a rough and ready approach*” *Bryen and Langley Ltd v Martin Boston* [2005] EWCA Civ 973 at [53].
59. By paragraph 3 of the order dated 20 April 2021, DDJ Smith, in granting the Claimant permission to amend the Particulars of Claim, ordered that:
- “The costs of the amendments are the Defendant’s in any event to be assessed if not agreed at the final hearing.”*
60. CPR 46.5 and Practice Direction 46 paragraph 3.4 apply where the Court orders that the costs of a litigant in person are to be paid by any other person.
61. The Defendant failed to file and serve her costs schedule in accordance with paragraph 9.5(4)(b) of Practice Direction 44. By the end of the hearing the costs schedule had still not been served and Practice Direction 44 paragraph 9.6 obliges the Court to take this default into account when exercising its discretion as to costs.

62. The Defendant's failure to comply with paragraph 9.5(4)(b) of Practice Direction 44 has caused inconvenience to the Claimant and to the Court in having to deal with the assessment of these costs by way of a paper determination. The costs awarded to the Defendant will be assessed on the standard basis and will be reduced by 20% to take account of this default.
63. The Defendants' costs schedule includes two charges of £95 for amending the Defence and Counterclaim. It is only reasonable for the Defendant to incur the costs of amending the Defence and Counterclaim once. Having considered the nature of the pleadings and all the circumstances of the case the Court allows 4 hours at the rate of £19 an hour in respect of the Defendant's costs of the amendments (£76). 80% of this sum is £60.80.
64. Accordingly, the costs which the Claimant has been ordered to pay the Defendant pursuant to paragraph 3 of DDJ Smith's order dated 20 April 2021 are summarily assessed in the sum of £60.80.
65. Both parties have served costs schedules and are seeking to claim their costs of the County Court proceedings. As regards the costs of the County Court proceedings which are not already the subject of a costs order ("the County Court costs"), CPR 44.2(2) provides:
- (2) If the court decides to make an order about costs—*
- (a) the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party; but*
- (b) the court may make a different order.*
66. The Claimant has succeeded in full in its claim for unpaid service charges and is therefore the successful party in these proceedings. However, the Court must consider whether there is any reason to depart from the general rule that the Defendant should be ordered to pay the reasonable County Court costs of the Claimant in full.
67. On the issue of costs, the Defendant contends that the Claimant amended its claim in order to bring the claim above the small claims track threshold.
68. The sum claimed in the Particulars of Claim was already over the small claims track threshold of £10,000 when the claim was issued. Further, the conduct of the Claimant in applying to amend the Particulars of Claim to include arrears which accrued following the issue of the claim was reasonable and does not justify any reduction in the costs payable by the Defendant.
69. The Claimant failed to file and serve its costs schedule in accordance with paragraph 9.5(4)(b) of Practice Direction 44. By the end of the hearing, the costs schedule had still not been served and Practice

Direction 44 paragraph 9.6 obliges the Court to take this default into account when exercising its discretion as to costs.

70. The Claimant's failure to comply with paragraph 9.5(4)(b) of Practice Direction 44 has caused inconvenience to the Defendant and to the Court in having to deal with the costs application by way of a paper determination (a process significantly more time consuming than a summary assessment of costs of this nature at the conclusion of a hearing). The costs awarded to the Claimant will be awarded on the standard basis and will be reduced by 20% to take account of this default.
71. The Court only has jurisdiction to make a costs order in respect of the County Court costs. The Tribunal not generally a costs-shifting jurisdiction and no applications for costs have been made to the Tribunal pursuant to the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
72. If this matter had not been allocated to the Deployment Scheme, it would have been referred to the Tribunal solely for a determination concerning the reasonableness and payability of the service charges. It would then have been referred back to the County Court following the Tribunal hearing for determinations to be made concerning interest, County Court costs, and any aspect of the Counterclaim which is not said to amount to a set-off. The short hearing before the Court to deal with the outstanding matters would not be a fast track-trial and the order in respect of the County Court costs would not include the costs of the Tribunal hearing.
73. The allocation of these proceedings to the Deployment Scheme does not alter the position that the Court only has jurisdiction to make a costs order in respect of the County Court costs. The hearing before the Tribunal does not become a County Court fast track trial as a result of the Deployment Scheme and it remains important to distinguish between the costs of the Tribunal proceedings and the costs of the Court proceedings.
74. By paragraph 4 of Directions dated 30 July 2021, Judge Martynski stated (emphasis supplied):

"This case is allocated (so far as is necessary for the purpose of the County Court proceedings) to the Fast Track."
75. In its reply to the points of dispute, the Claimant states that (emphasis supplied) ***"the costs forming the subject matter of this dispute are now for the Tribunal to decide. Accordingly, D's arguments about administration charges and contractual costs do not apply."*** The Court does not accept the assertion that the Tribunal has jurisdiction to make any order in respect of County Court costs.
76. The Court considered whether to invite further submission on this point but concluded that it would not be proportionate in all the

circumstances to extend and the summary assessment process (which has already been the subject of detailed written submissions) yet further. As stated above, it is noted that the Claimant reserves its position concerning the recovery of contractual costs.

77. In its points of dispute, the Claimant states that the Defendant rejected a reasonable without prejudice offer but no details of that offer have been provided.
78. The Claimant filed a costs schedule following the hearing claiming costs in the sum of £21,841.76. No attempt was made in this schedule to make any distinction between the costs of the Tribunal proceedings and the County Court costs. Further, the costs of instructing Counsel to amend the Particulars of Claim and Counsel's fee of £1,200 plus VAT for amending the Particulars of Claim have been included in the costs schedule notwithstanding DDJ Smith's order that the costs of the amendments were to be the Defendant's in any event.
79. The costs awarded to the Claimant will be reduced by a further 10% to take account of the Claimant's conduct in serving a costs schedule which was not limited to the potentially recoverable costs of the Court proceedings. The Defendant is therefore ordered to pay 70% of the reasonable County Court costs of the Claimant assessed on the standard basis.
80. When costs are assessed on the standard basis, the burden of proof is on the receiving party and the costs must be proportionate. It is necessary to consider whether the items are reasonably incurred and reasonable in amount and to consider whether the bill is proportionate.
81. The solicitors' hourly rates are reasonable. It is accepted that was reasonable to have made significant use of a Grade A fee earner when the hourly rate charged by that fee earner was significantly below the guideline hourly Grade A rate.
82. The costs schedule has been prepared in a way which makes it very difficult to assess the amount of time spent on attendances which concern the Court proceedings rather than the Tribunal proceedings. Having considered the procedural history of the matter and doing its best on the limited information available, the Court allows in total 8 hours at the rate of £180 per hour plus VAT (£1,440 plus VAT of £288) and 3 hours at the rate of £100 per hour plus VAT (£300 plus VAT of £60) in total in respect of attendances relating to the County Court aspects of this matter.
83. As regards the disbursements, the costs of amending the Particulars of Claim should not have been included as they are covered by DDJ Smith's order. It is not accepted that costs in connection with any proposed strike out or summary judgment application were reasonably incurred because not such application appears to have been brought. However, the Land Registry fees of £24 and £10; the £1.20 for the search of the electoral register and the postage costs of £9.33 are

allowed. Accordingly, disbursements are allowed in the total sum of £44.53.

84. In the schedule of work on documents item 1 is allowed, item 2 is not allowed because the updated interest calculation was not pleaded in accordance with the CPR, it is agreed that item 3 should be reduced to £50, items 4 and 5 are allowed, the Court is not satisfied that the costs of item 6 were reasonably incurred because there does not appear to have been any strike out or summary judgment application; items 7, 8 and 9 are allowed, item 10 is not allowed in light of DDJ Smith's order; items 11, 12, 13 and 14 are allowed; item 16 is reduced to £90 because an experienced solicitor could be expected to give this advice in 30 minutes; item 17 is not allowed because the work was occasioned by the amendment of the Particulars of Claim; and item 18 is allowed.
85. Items 15 and 19 to 21 concern the final hearing. The County Court aspects of this hearing were very limited and took no more than around 30 minutes of hearing time. In all the circumstances, a reasonable fee for this work, including both the preparation and hearing time, is £600 plus VAT of £120. £150 plus VAT of £30 is allowed in respect of item 22.
86. Accordingly, the sum of £3,050 plus VAT of £610 is allowed in respect of work on documents and the County Court aspect of the hearing. The Court issue fee of £491.63 is allowed; any Tribunal fees do not form part of this summary assessment.
87. The sums set out above total £6,284.16 and the Court is satisfied that this figure is proportionate. 70% of this sum is £4,398.91. Accordingly, the Defendant is ordered to pay the Claimant's costs of the County Court proceedings summarily assessed in the sum of £4,398.91.

Name: Judge N Hawkes

Date: 17 December 2021

ANNEX - RIGHTS OF APPEAL

Appealing against the tribunal's decisions

1. A written application for permission must be made to the First-tier Tribunal at the Regional tribunal office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.

3. If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers
5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.

Appealing against the County Court decision

1. A written application for permission must be made to the court at the Regional tribunal office which has been dealing with the case.
2. The date that the judgment is sent to the parties is the hand-down date.
3. From the date when the judgment is sent to the parties (the hand-down date), the consideration of any application for permission to appeal is hereby adjourned for 28 days.
4. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.
5. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers.
6. If an application is made for permission to appeal and that application is refused, and a party wants to pursue an appeal, then the time to do so will be extended and that party must file an Appellant's Notice at the appropriate County Court (not Tribunal) office within 14 days after the date the refusal of permission decision is sent to the parties.
7. Any application to stay the effect of the order must be made at the same time as the application for permission to appeal.

Appealing against the decisions of the tribunal and the County Court

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

General Form of Judgment or Order



In the County Court at Central London	
sitting at 10 Alfred Place, London WC1E 7LR	
Claim Number	G8QZ80H8
Tribunal ref.	LON/00BK/LSC/2021/0177
Date	17 December 2021

Clive Court (Maida Vale) Freehold Limited	Claimant Ref
Ms Maha Abdel-Mahmoud	Defendant Ref

BEFORE Tribunal Judge Hawkes, sitting as a Judge of the County Court (District Judge),

UPON the Claim and Counterclaim having been transferred to the First-tier Tribunal Property Chamber for administration by order of DDJ Smith dated 20 April 2021

AND UPON hearing Mr Hardman of Counsel for the Claimant and the Defendant in person

AND UPON having considered the written submissions filed by both parties

IT IS ORDERED THAT:

1. The Defendant is ordered to pay the Claimant the sum of £16,072.93 in respect of the Claim.
2. The Counterclaim is struck out.
3. The costs which the Claimant has been ordered to pay the Defendant pursuant to paragraph 3 of DDJ Smith's order dated 20 April 2021 are summarily assessed in the sum of £60.80.
4. The Defendant is ordered to pay the Claimant's costs of the County Court proceedings (excluding the costs provided for at paragraph 3 of DDJ Smith's order dated 20 April 2021) summarily assessed in the sum of £4,398.91.

Dated: 17 December 2021

REASONS

The Claim

88. The Tribunal has determined that, of the service charges in sum of £16,072.93 which are claimed by the Applicant, the sum of £16,072.93 is payable by the Respondent. Accordingly, the Defendant is ordered to pay the Claimant the sum of £16,072.93 in respect of the Claim.

The Counterclaim

89. By order dated 21 May 2021, Judge Martynski, sitting as a District Judge, ordered (emphasis supplied):

“Unless by 4pm 18 June 2021 the Defendant:

(a) Delivers (by email) to the Tribunal and to the Claimant an amended Counterclaim which;

i. Sets out in full the legal basis for her Counterclaim and the claim for damages

ii. Contains a statement of value of the Counterclaim

(b) Confirms that she has paid to the County Court office at Central London the relevant fee for the Counterclaim

The Counterclaim will stand as struck out”

90. The Respondent then filed a N9B form which limited her Counterclaim to £5,856.25. She did not, however, confirm as directed at paragraph (b) of the order of Judge Martynski that she had paid to the County Court office at Central London the relevant fee for the Counterclaim. Accordingly, the Counterclaim stands struck out.

Interest

91. Submissions were not made concerning the claim for interest at the hearing and it is not referred to in the Claimant’s Skeleton Argument other than by way of background at paragraph 5. However, in the Amended Particulars of Claim, the Claimant pleads:

“Further, the Claimant claims interest on the sum of ~~£10,128.46~~ £16,072.93 under the terms of the Lease at the rate of 10% per annum from 09/04/2019 until ~~18/06/20~~ amounting to £796.56 and continuing at the rate of £2.78 per day until judgement or earlier payment or, alternatively, at such rate as the court thinks fit, plus any additional costs incurred by the Claimant post issue of this claim.”

92. Clause 1(v) of the Lease provides:

“Interest’ shall mean interest at the rate of 4 per centum per annum above Lloyds Bank p.l.c. Base Rate from time to time in force with a minimum of 10 per centum per annum”

93. Accordingly, the Court accepts that the contractual rate of interest is 10%. However, CPR 16.4(2) provides (emphasis supplied):

*(2) If the claimant is seeking interest **he must**—*

(a) state whether he is doing so—

(i) under the terms of a contract;

(ii) under an enactment and if so which; or

*(iii) on some other basis and if so what that basis is; **and***

*(b) **if the claim is for a specified amount of money, state—***

(i) the percentage rate at which interest is claimed;

(ii) the date from which it is claimed;

(iii) **the date to which it is calculated**, which must not be later than the date on which the claim form is issued;

(iv) **the total amount of interest claimed to the date of calculation; and**

(v) **the daily rate at which interest accrues after that date.**

94. The Amended Particulars of Claim do not comply with these requirements. As the requirements are mandatory, the Court does not order the Defendant to pay interest on the basis of the Amended Particulars of Claim.

Costs

95. At the conclusion of the hearing, the Court was informed that the Claimant wished to reserve its position concerning the recovery of contractual costs pursuant to the lease.
96. Both parties seek orders in respect of County Court costs and have filed and served cost schedules, points of dispute, and points of reply. All of the submissions made have been considered by the Court but, in order to keep this determination to a proportionate length, they will not be set out in full.
97. This is a summary assessment and the Court of Appeal has stated: “on a summary assessment, it [the assessment] was necessarily going to require something of a rough and ready approach” *Bryen and Langley Ltd v Martin Boston* [2005] EWCA Civ 973 at [53].
98. By paragraph 3 of the order dated 20 April 2021, DDJ Smith, in granting the Claimant permission to amend the Particulars of Claim, ordered that:

“The costs of the amendments are the Defendant’s in any event to be assessed if not agreed at the final hearing.”
99. CPR 46.5 and Practice Direction 46 paragraph 3.4 apply where the Court orders that the costs of a litigant in person are to be paid by any other person.
100. The Defendant failed to file and serve her costs schedule in accordance with paragraph 9.5(4)(b) of Practice Direction 44. By the end of the hearing the costs schedule had still not been served and Practice Direction 44 paragraph 9.6 obliges the Court to take this default into account when exercising its discretion as to costs.
101. The Defendant’s failure to comply with paragraph 9.5(4)(b) of Practice Direction 44 has caused inconvenience to the Claimant and to the Court in having to deal with the assessment of these costs by way of a paper determination. The costs awarded to the Defendant will be assessed on the standard basis and will be reduced by 20% to take account of this default.
102. The Defendants’ costs schedule includes two charges of £95 for amending the Defence and Counterclaim. It is only reasonable for the Defendant to incur the costs of amending the Defence and Counterclaim once. Having considered the nature of the pleadings and all the circumstances of the case the Court allows 4 hours at the rate of £19 an hour in respect of the Defendant’s costs of the amendments (£76). 80% of this sum is £60.80.
103. Accordingly, the costs which the Claimant has been ordered to pay the Defendant pursuant to paragraph 3 of DDJ Smith’s order dated 20 April 2021 are summarily assessed in the sum of £60.80.

104. Both parties have served costs schedules and are seeking to claim their costs of the County Court proceedings. As regards the costs of the County Court proceedings which are not already the subject of a costs order (“the County Court costs”), CPR 44.2(2) provides:
- (2) If the court decides to make an order about costs—*
- (a) the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party; but*
- (b) the court may make a different order.*
105. The Claimant has succeeded in full in its claim for unpaid service charges and is therefore the successful party in these proceedings. However, the Court must consider whether there is any reason to depart from the general rule that the Defendant should be ordered to pay the reasonable County Court costs of the Claimant in full.
106. On the issue of costs, the Defendant contends that the Claimant amended its claim in order to bring the claim above the small claims track threshold.
107. The sum claimed in the Particulars of Claim was already over the small claims track threshold of £10,000 when the claim was issued. Further, the conduct of the Claimant in applying to amend the Particulars of Claim to include arrears which accrued following the issue of the claim was reasonable and does not justify any reduction in the costs payable by the Defendant.
108. The Claimant failed to file and serve its costs schedule in accordance with paragraph 9.5(4)(b) of Practice Direction 44. By the end of the hearing, the costs schedule had still not been served and Practice Direction 44 paragraph 9.6 obliges the Court to take this default into account when exercising its discretion as to costs.
109. The Claimant’s failure to comply with paragraph 9.5(4)(b) of Practice Direction 44 has caused inconvenience to the Defendant and to the Court in having to deal with the costs application by way of a paper determination (a process significantly more time consuming than a summary assessment of costs of this nature at the conclusion of a hearing). The costs awarded to the Claimant will be awarded on the standard basis and will be reduced by 20% to take account of this default.
110. The Court only has jurisdiction to make a costs order in respect of the County Court costs. The Tribunal not generally a costs-shifting jurisdiction and no applications for costs have been made to the Tribunal pursuant to the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
111. If this matter had not been allocated to the Deployment Scheme, it would have been referred to the Tribunal solely for a determination concerning the reasonableness and payability of the service charges. It would then have been referred back to the County Court following the Tribunal hearing for determinations to be made concerning interest, County Court costs, and any aspect of the Counterclaim which is not said to amount to a set-off. The short hearing before the Court to deal with the outstanding matters would not be a fast track-trial and the order in respect of the County Court costs would not include the costs of the Tribunal hearing.
112. The allocation of these proceedings to the Deployment Scheme does not alter the position that the Court only has jurisdiction to make a costs order in respect of the County Court costs. The hearing before the Tribunal does not become a County Court fast track trial as a result of the Deployment Scheme and it remains important to distinguish between the costs of the Tribunal proceedings and the costs of the Court proceedings.

113. By paragraph 4 of Directions dated 30 July 2021, Judge Martynski stated (emphasis supplied):
- “This case is allocated (so far as is necessary for the purpose of the County Court proceedings) to the Fast Track.”*
114. In its reply to the points of dispute, the Claimant states that (emphasis supplied) *“the costs forming the subject matter of this dispute are now for the Tribunal to decide. Accordingly, D’s arguments about administration charges and contractual costs do not apply.”* The Court does not accept the assertion that the Tribunal has jurisdiction to make any order in respect of County Court costs.
115. The Court considered whether to invite further submission on this point but concluded that it would not be proportionate in all the circumstances to extend and the summary assessment process (which has already been the subject of detailed written submissions) yet further. As stated above, it is noted that the Claimant reserves its position concerning the recovery of contractual costs.
116. In its points of dispute, the Claimant states that the Defendant rejected a reasonable without prejudice offer but no details of that offer have been provided.
117. The Claimant filed a costs schedule following the hearing claiming costs in the sum of £21,841.76. No attempt was made in this schedule to make any distinction between the costs of the Tribunal proceedings and the County Court costs. Further, the costs of instructing Counsel to amend the Particulars of Claim and Counsel’s fee of £1,200 plus VAT for amending the Particulars of Claim have been included in the costs schedule notwithstanding DDJ Smith’s order that the costs of the amendments were to be the Defendant’s in any event.
118. The costs awarded to the Claimant will be reduced by a further 10% to take account of the Claimant’s conduct in serving a costs schedule which was not limited to the potentially recoverable costs of the Court proceedings. The Defendant is therefore ordered to pay 70% of the reasonable County Court costs of the Claimant assessed on the standard basis.
119. When costs are assessed on the standard basis, the burden of proof is on the receiving party and the costs must be proportionate. It is necessary to consider whether the items are reasonably incurred and reasonable in amount and to consider whether the bill is proportionate.
120. The solicitors’ hourly rates are reasonable. It is accepted that was reasonable to have made significant use of a Grade A fee earner when the hourly rate charged by that fee earner was significantly below the guideline hourly Grade A rate.
121. The costs schedule has been prepared in a way which makes it very difficult to assess the amount of time spent on attendances which concern the Court proceedings rather than the Tribunal proceedings. Having considered the procedural history of the matter and doing its best on the limited information available, the Court allows in total 8 hours at the rate of £180 per hour plus VAT (£1,440 plus VAT of £288) and 3 hours at the rate of £100 per hour plus VAT (£300 plus VAT of £60) in total in respect of attendances relating to the County Court aspects of this matter.
122. As regards the disbursements, the costs of amending the Particulars of Claim should not have been included as they are covered by DDJ Smith’s order. It is not accepted that costs in connection with any proposed strike out or summary judgment application were reasonably incurred because not such application appears to have been brought. However, the Land Registry fees of £24 and £10; the £1.20 for the search of the electoral register and the postage costs of £9.33 are allowed. Accordingly, disbursements are allowed in the total sum of £44.53.

123. In the schedule of work on documents item 1 is allowed, item 2 is not allowed because the updated interest calculation was not pleaded in accordance with the CPR, it is agreed that item 3 should be reduced to £50, items 4 and 5 are allowed, the Court is not satisfied that the costs of item 6 were reasonably incurred because there does not appear to have been any strike out or summary judgment application; items 7, 8 and 9 are allowed, item 10 is not allowed in light of DDJ Smith's order; items 11, 12, 13 and 14 are allowed; item 16 is reduced to £90 because an experienced solicitor could be expected to give this advice in 30 minutes; item 17 is not allowed because the work was occasioned by the amendment of the Particulars of Claim; and item 18 is allowed.
124. Items 15 and 19 to 21 concern the final hearing. The County Court aspects of this hearing were very limited and took no more than around 30 minutes of hearing time. In all the circumstances, a reasonable fee for this work, including both the preparation and hearing time, is £600 plus VAT of £120. £150 plus VAT of £30 is allowed in respect of item 22.
125. Accordingly, the sum of £3,050 plus VAT of £610 is allowed in respect of work on documents and the County Court aspect of the hearing. The Court issue fee of £491.63 is allowed; any Tribunal fees do not form part of this summary assessment.
126. The sums set out above total £6,284.16 and the Court is satisfied that this figure is proportionate. 70% of this sum is £4,398.91. Accordingly, the Defendant is ordered to pay the Claimant's costs of the County Court proceedings summarily assessed in the sum of £4,398.91.