



**In the FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY) and in
the COUNTY COURT AT
Clerkenwell & Shoreditch sitting at
10 Alfred Place, WC1E 7LR**

Tribunal Case reference : **LON/00AU/LSC/2022/0020**

County Court Claim Number : **H60YX202**

Property : **Unit 3, 3 Benwell Road, London, N7 7AY**

Applicant (Claimant) : **Benwell Road RTM Company Limited**

Respondent (Defendant) : **Mr Adam Paul Davies**

Type of application : **For the determination of the reasonableness of and the liability to pay service and administration charges**

Tribunal Members : **Tribunal Judge I Mohabir
Mr K Ridgeway MRICS**

In the County Court : **Judge Mohabir**

Date of Decision : **31 August 2022**

DECISION

Those parts of this decision that relate to County Court matters will take effect from the 'Hand Down Date' which will be:

- (a) If an application is made for permission to appeal within the 28-day time limit set out below – 2 days after the decision on that application is sent to the parties, or;
- (b) If no application is made for permission to appeal, 30 days from the date that this decision was sent to the parties.

Background

1. The history to this claim was helpfully set out by Regional Tribunal Judge Martynski in the following way, when he gave directions on 25 February 2022:

A. "The Claimant/Applicant issued proceedings in the County Court on 13 May 2021 making the following claims:

Service & Administration Charges:	£3,856.60
Administration Charges:	
Interest:	£2,444.29
Costs:	£975.60 plus further costs

B. A Defence was filed on 28 June 2021.

C. On 8 December 2021 D.J. Swan in the County court at Clerkenwell & Shoreditch made the following order:

Upon the Court considering that the decision of the First Tier Tribunal as to the standing of the Claimant to bring these proceedings is not binding but may be highly persuasive

And upon the Court considering, that the issue in the case may be best determined by the First Tier Tribunal (property chamber)

Transfer to F.T.T (Property Chamber)

D. In order to understand the issues, as now defined (below) for the purpose of these proceedings, it is necessary to summarise the history of the case which is as follows:

(a) In 2013, the Claimant issued proceedings in the County Court against the Defendant claiming Service Charges (and possibly Administration Charges) amounting to £3847.27 ("the 2013 County Court proceedings"). It seems that these charges related to a period up to the beginning of the service charge year 2014.

(b) At the trial of that action, District Judge Byrne dismissed the claim on the following grounds;

(i) That the Claimant (as an RTM Company) had not been able to satisfy her on the evidence that it was properly constituted

and that accordingly, it had the right to pursue the proceedings

(ii) Even if the Judge had been satisfied as to the constitution of the RTM Company, on the evidence as presented to her, she concluded; “I am not sufficiently satisfied that the full amounts claimed are properly substantiated in the evidence that has been provided today”

(c) There were further proceedings between the parties in 2014, this time in this tribunal (“the 2014 tribunal proceedings”). The RTM Company sought a declaration as to the payability of Service Charges for the years 11/12, 12/13 & 13/14 and proposed Service Charges for 2014/15. On 13 May 2014, I gave directions in those proceedings. In those directions, on the issue of the County Court proceedings in 2013, I stated as follows:

It appears on a reading of the transcript of the Judge’s decision therefore that on the day of the hearing of the County Court claim, the Applicant, Benwell Road RTM Company, was not able to prove its case.

The result of this decision (which has not been appealed) is that the Applicant is not entitled to pursue the Service Charge claim of £3847.27 in the application before this tribunal.

It does not appear to me however that the County Court has made any decision generally regarding the validity of the formation of the Applicant Company or its Right to Manage.

(d) These tribunal proceedings were determined in a decision date 17 October 2014. The tribunal decided that the Service Charges proposed for 2014-2015 were reasonable. The tribunal commented as follows:

We have read the transcript of the county court judgement and, like Judge Martynski, we consider that on a fair reading, the court ruled quite simply that on the basis of the evidence before it, the applicant had not established that it is a properly constituted RTM Company. Putting this another way, it remained open to the applicant to provide such evidence in these proceedings. [para 33]

In our judgement, they have succeeded in establishing that the applicant is a properly constituted RTM Company..... [para 34]

(e) At the Case Management Hearing for the current proceedings, the parties agreed the issues as follows:

(i) The claim breaks down as follows:

Administration Charges:	£3240.00
Service Charges:	£616.60

(f) As to the claim for Service Charges, it is Mr Davies’ case that; (a) these Service Charges were considered by the County Court in 2013 and the claim for them was dismissed. Accordingly no further claim

for them can be made, and; (b) after the Case Management Hearing in the previous tribunal proceedings, the RTM Company had agreed to withdraw its claim for the £616.60. If these defences are not successful, Mr Davies says that the issues as to reasonableness and payability of Service Charges which he wanted to pursue in the County Court proceedings in 2013, will have to be re-opened.

- E. These proceedings will be administered by the Tribunal. The Judge who eventually hears the case will deal with *all* the issues in the case, including, interest and costs, at the same time as the tribunal decides the payability of the Service and Administration charges and the Judge (sitting alone as a Judge of the County Court) (DJ) will make all necessary County Court orders”.
2. The Tribunal’s determination takes place pursuant to section 27A of the Landlord and Tenant Act 1985 (as amended) (“the Act”) regarding whether the alleged service charge arrears are payable and/or reasonable and under Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”) as to whether administration charges are payable and/or reasonable.

Lease Terms

3. The Respondent is the long leaseholder of Unit 3, 3 Benwell Road, London, N7 7AY (“the property”) by a lease dated 6 March 2006 between (1) Bravestable (Drayton Park) Limited (2) Trinity (Estates) Property Management Limited and (3) Adam Paul Davies (Title number NGL861145) (the “lease”). The Applicant is entitled to exercise the management functions of the landlord and the manager under the Lease by virtue of sections 96 and 97 of the 2002 Act.
4. Pursuant to the provisions of paragraph 2 in the Twelfth Schedule of the lease, the Respondent is required to pay the service charge at the times and in the manner stipulated in paragraph 3 the Twelfth Schedule, which provides that payment is to be made:
- “On ten dates during each year nominated by the Management Company and with not less than one month between each date (***or such other dates as shall from time to time be nominated by the Management Company at its sole discretion***) the Lessee shall pay by Banker's Standing Order or such other payment method as may be stipulated by the Management Company”.
5. In other words, in the event that payment is not on the ten nominated dates, it is in the absolute discretion of the Applicant when the service charge can be demanded in each year.
6. In addition, pursuant to the provisions of paragraph 33, Part II of the Sixth Schedule of the lease the Respondent is required to pay to the Applicant all costs charges and expenses which may be incurred by it in connection with the recovery of arrears of the rent and the service

charge and all expenses incurred in or in contemplation of proceedings under Sections 146 and 147 of the Law of Property Act 1925 notwithstanding in any such case forfeiture is avoided otherwise than by relief granted by the Court.

7. Furthermore, clause 10(i) of the lease permits the Applicant to recover interest on any arrears of service and administration charges at the rate of 10% per annum or at the equivalent rate of 2% above the base rate of Barclays Bank plc, whichever is the greater. In this instance the rate of 10% is the applicable rate.

Relevant Law

8. This is set out in the Appendix annexed hereto.

Hearing

9. The hearing in this case took place on 10 June 2022. The Applicant was represented by Mr Lazarev, a Solicitor from the firm of Lazarev Cleaver. The Respondent appeared in person.
10. The Tribunal heard oral evidence in relation to the disputed service and administration charges from Mr Cleaver on behalf of the Applicant. He is a Director of Urang Property Management Limited (“Urang”), which is the managing agent for the property. It was appointed pursuant to a management agreement dated September 2012. The Tribunal also heard oral evidence from the Respondent.

Decision

Service Charges

11. It was common ground that Urang issued an interim service charge demand to the Respondent dated 26 February 2013 for the sum of £616.60 in respect of the period 1 October 2012 to 31 March 2013, which was paid by him without challenge.
12. At the conclusion of the 2014 Tribunal proceedings, the Respondent was ordered to pay the sum of £1,279.02 by 19 November 2014. On 24 March 2015, the Applicant served the Respondent with a further service charge demand for the period 1 April 2015 to 31 March 2016 for the sum of £1,446.33. On 31 May 2015, the Respondent paid the sum of £2,108.75 in respect of his total outstanding service charges leaving a balance of £616.60.
13. The Respondent’s case was that, by reason of the dismissal of the 2013 County Court proceedings and the reasons given by District Judge Byrne for doing so, the Applicant was never entitled to demand the sum of £616.60. In addition, the 2014 Tribunal proceedings dismissed the service charge claim for this sum. Therefore, he is entitled to deduct this sum from his total service charge liability as he did on 31 May 2015.

14. Furthermore, the Respondent relied on a purported agreement made with Urang's employee, Ms Paige McIntosh, to refund him this amount on the basis that it was not owed by him. The Respondent referred the Tribunal to the various emails passing between him and Ms McIntosh from May to August 2015 on this issue.
15. The Tribunal was satisfied that the 2013 County Court proceedings did not extinguish the Respondent's service charge liability for the period 1 October 2012 to 31 March 2013. The only reason those proceedings were dismissed is that the Applicant had not come up to proof that it had been validly constituted. Indeed, when giving directions in the 2014 Tribunal proceedings, Tribunal Judge Martynski indicated as much and this was restated in the decision issued following those proceedings (see above).
16. In concluding that the Applicant had in fact been validly constituted from the outset, this meant that all service charge demands served on the Respondent were retrospectively valid, including the one for the sum of £616.60. As this was not challenged and paid by the Respondent at the time, he is now prevented from doing so pursuant to section 27A(4) of the Act and he is not entitled to make any further challenge in respect of this sum.
17. The Tribunal was also satisfied that the sum of £616.60 was withdrawn from the 2014 Tribunal proceedings and was not the subject matter of the decision issued by the Tribunal then.
18. The Tribunal found that there was no agreement made between the Respondent and Ms McIntosh (or anyone else at Urang) that he was not liable for the sum of £616.60 and it would be refunded to him. The Tribunal also accepted the evidence of Mr Cleaver in those terms. It is clear from the email exchanges that, at best, there was only a proposal made to the Respondent to defer payment until such time as he sold the property, which was not accepted by him.
19. Accordingly, for the reasons given, the Tribunal was satisfied that the Respondent is liable for the sum of £616.60. As he did not dispute the quantum, it was allowed as claimed.

Administration Charges

20. The sum of £3240.00 represents the total costs incurred by Urang in pursuing the Respondent for payment of his service charges. The costs include the costs that were incurred in the 2014 Tribunal proceedings and for each service charge year thereafter until 1 July 2020. Detailed evidence of why the costs were incurred and the various amounts are set out in paragraph D in the Applicant's statement of case and at paragraphs 11 to 25 in the witness statement of Mr Cleaver. The Tribunal does not propose to restate the facts again here.
21. The Tribunal accepted the evidence of Mr Cleaver about the extent of the debt recovery work carried out by Urang. It was beyond doubt that Urang had engaged extensively with the Respondent in an attempt to

resolve the present and historic service charge disputes with the Respondent, albeit unsuccessfully. His forensic and numerous correspondence had clearly resulted in a great deal of extensive work and, therefore, administrative cost being incurred by Urang.

22. The Tribunal found that the additional administration cost incurred in preparation for and attendance at the 2014 Tribunal proceedings by Urang was recoverable under the terms of the management agreement it had with the Applicant, as they fell outside the scope of the core services and fixed costs in the agreement. In turn, the Applicant is entitled to seek an indemnity from the Respondent under paragraph 33, Part II of the Sixth Schedule of the lease.
23. The Tribunal accepted the evidence of Mr Cleaver that although the actual costs incurred were £4,200, they had been capped and agreed at £2,000 plus VAT. Given the litigious stance taken by the Respondent on the 2014 Tribunal proceedings and similarly in these proceedings, the Tribunal had little difficulty in finding that the costs were reasonably incurred and reasonable in amount.
24. The Tribunal found that the additional fixed debt recovery costs for the Respondent's outstanding service charges between 30 November 2016 to 1 July 2020 by Urang were recoverable under paragraph 15 of the management agreement. The Tribunal also found that they were reasonably incurred, as it appears that the Respondent did not dispute the service charges arrears demanded during this period of time, and the amounts were reasonable.
25. Accordingly, the sum of £3240.00 is payable by the Respondent.
26. Contractual interest at the rate of 10% is, therefore, payable on the Respondent's in the sum of £2444.29 up to 11 May 2021 and in the sum of £418.70 from 12 May 2021 until 10 June 2022, being the date of the hearing.

Costs

27. The Applicant also contractually sought the legal costs it had incurred in bringing this claim against the Respondent. The sum claimed was £14,569.50 including VAT.
28. The Tribunal was satisfied that the Applicant is entitled to recover its costs contractually under paragraph 33, Part II of the Sixth Schedule of the lease¹.

¹ see: *Freeholders of 69 Marina, St Leonards-on-Sea v Oram* [2011] EWCA Civ 1258

29. The assessment of the quantum of the costs by the Tribunal was carried out by way of a summary assessment. Although the sums in issue were modest, from the extensive evidence filed and served by the Respondent, it was clear that more work had been required by the Applicant's solicitors in conducting the litigation and preparing for this hearing that would ordinarily be necessary and this had to be reflected in the overall award of costs.
30. Despite this, the Tribunal considered that the time spent on documents was excessive and was reduced to £3,750. Similarly, the attendances claimed in respect of the 3 hearings overall was reduced to £1,750. The Tribunal was satisfied that although the work had entirely been carried out by Mr Lazarev as a Grade A fee earner, he had in fact been charging the lesser hourly rate of £250, which was reasonable.
31. Accordingly, the Applicant's costs payable by the Respondent are summarily assessed at £6,425 plus VAT of £1,285 plus the disbursements of £455 for the court fees and travelling costs of £32.50. The total costs payable by the Respondent is £8,197.50.
32. The Tribunal orders that the service and administration charges and the costs awarded are payable by the Respondent within 28 days of this decision being served on the parties.

Name: Tribunal Judge I Mohabir **Date:** 1 August 2022

Rights of appeal

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).

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary

adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

- (1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to -
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
 - (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
 - (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Paragraph 5A of Schedule 11 Commonhold and Leasehold Reform Act 2002

Limitation of administration charges: costs of proceedings

5A(1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.

(2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.

(3) In this paragraph—

(a) “litigation costs” means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and

(b) “the relevant court or tribunal” means the court or tribunal mentioned in the table in relation to those proceedings.