



**In the FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY) and in
the COUNTY COURT AT the County
Court Money Claims Centre sitting
at 10 Alfred Place, WC1E 7LR**

Tribunal Case reference : LON/00BK/LSC/2022/0120

County Court Claim Number : H49YY883

Property : Flat 19 Hinde House, 11 Hinde Street, W1U 3BD

Applicant (Claimant) : Hinde House Management Company Limited

Representative : Mr James Castle (Counsel)
Instructed by SLC Solicitors

Respondents (Defendant) : (1) Bryce Makintosh Morrison
(2) Maxiam Arshad Noor

Representative : Mr Graham Wood

Type of application : Transfer from County Court

In the County Court : Deputy District Judge N Carr

Tribunal : Deputy Regional Judge N Carr
Mrs M Krisko (FRICS)

Date of Decision : 15 August 2022

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. The Tribunal has no jurisdiction to determine the matters raised in the Amended Defence dated 19 May 2022

Summary of the decisions made by the County Court

Upon there being no counterclaim made with the Amended Defence dated 19 May 2022

And upon the Defendants failing to comply with directions dated 12 April 2022

And upon there being no application for relief from sanctions

And upon the First Defendant neither signing the Defence dated 8 January 2022 nor the Amended Defence nor attending at the hearing

And upon the Second Defendant and Claimant agreeing terms, and the Second Defendant having purported authority to act on behalf of the First Defendant throughout these proceedings

And upon the court dispensing with the requirement for an application in the appropriate form pursuant to CPR rule 40.(A(9))

IT IS ORDERED:

1. There be judgment for the Claimant in the sum of:

(a) £34,745.20, for service and administration charges demanded and unpaid for the period between 15 August 2019 – 22 November 2021; and

(b) agreed costs in the sum of £10,000 (inclusive of VAT);

2. Pursuant to Practice Direction 40B 12, the Defendants must pay the total sum of £44,745.20 (inclusive of VAT) by the following instalments on the following dates:

(a) £10,000 on 15 August 2022;

(b) £10,000 on 15 September 2022;

(c) £10,000 on 15 October 2022;

(d) £10,000 on 15 November 2022; and

(e) £745.20 on 15 December 2022.

THE PROCEEDINGS

- 1) Proceedings were originally issued against the Defendants/Respondents on 10 December 2021 in the County Court under claim number H49 YY 883. The Second Respondent filed a Defence dated 8 January 2022, which did not itself set out a Defence but simply required transfer to the Tribunal to determine unidentified issues under section 27A of the Landlord and Tenant Act 1985. The Applicant joined in that request, and

on 18 March 2022 proceedings were then transferred to this Tribunal by the order of Deputy District Judge Wilson.

- 2) Directions were issued and the matter eventually came to hearing on 15 August 2022.
- 3) The Defendants/Respondents provided an Amended Defence, pursuant to the order of Judge Martynski, on 19 May 2022. No documents or scott schedule were attached to that Amended Defence as directed. The Defendants/Respondents did not file or serve witness statements as directed. The Defendants/Respondents filed and served an approximately 1800-page bundle, for which no permission was sought nor given, on 5 August 2022.
- 4) On 9 August 2022, I directed the parties as follows:
 1. *The parties must attempt to agree an addendum to the Bundle provided by the Applicant, to add to the end of it such of the Respondents' bundle which is not duplication (whether of the Applicant's bundle or internally) and with which no issue is taken by the Applicant, to be notified to the Tribunal/Court by no later than **4pm on Thursday 11 August 2022**;*
 2. *Any such agreed addendum shall be incorporated into the Applicant's index and bundle. The Applicant shall then provide a **single pdf document in which the whole bundle is contained**, which must be made available by link to remote server (e.g. dropbox, wetransfer) if it is too large to send as a single email attachment, by the same time and date as in paragraph 1;*
 3. *If the parties cannot agree, the Tribunal/Court will not consider the Respondents documents unless or until an application for relief from sanctions is fee paid in the county court and sent to the Tribunal for determination as a preliminary issue at the hearing;*
 4. *The parties **must try to agree a scott schedule** of the items put into contention by the Respondent's 'Defence Statement' (Reply to Defence) as previously directed, to be made available to the Tribunal/Court by no later than **9am on the day of the hearing (15 August 2022)**.*
 5. *It is specifically brought to the attention of the parties that there has been no counterclaim made, and therefore there is no set off that can be argued.*
- 5) On 11 August 2022 the Defendants/Respondents provided a scott schedule of 25 line items. It was not in the form, nor did it have the content, required, but at least itemised the alleged disputes.
- 6) On the same date, the Claimant/Applicant's solicitor notified that it did not agree to any amendment of the bundle it had provide, on the basis that the Defendant/Respondent had not complied with any directions.

THE HEARING

- 7) The Claimant/Applicant was represented by Mr James Castle of counsel, instructed by SLC solicitors. He was accompanied by Mr Nigel Cross and Mr David Williams. The second Defendant/Respondent, Mr Noor, appeared represented by Mr Graham Wood. The first Defendant/Respondent, Mr Morrison, did not appear, and it is unclear if he was represented by Mr Wood. Mr Noor has purported throughout the proceedings to represent Mr Morrison, though the Tribunal has not had a signed authority from Mr Morrison. Mr Morrison has also not signed either of the Defences (original or Amended). Mr Wood confirmed that he had not met him.
- 8) At 9.56am the panel was forwarded an email from Mr Noor in which were two witness statements and an amended scott schedule. These had been sent at 00:45 on 15 August 2022.
- 9) After introducing the panel, I asked Mr Wood whether there had been an application for relief from sanctions as directed. He confirmed that there had not. I confirmed that therefore the Defendants/Respondents would not be permitted to rely on these documents.
- 10) Sitting as a Judge of the County Court I asked Mr Wood and Mr Noor to run through the scott schedule dated 11 August 2022 with me. Items 1 – 18, and 23 – 25 appeared to me to be matters requiring a counterclaim in order to be relevant to the dispute before the Tribunal/Court. No counterclaim had been made. Mr Noor sought to suggest that he didn't know he had to make a counterclaim in the Tribunal. I directed him to the Defence dated 8 January 2022 and notified him that was when any counterclaim should be raised, as it was started in the County Court. He had not done so then, or in the Amended Defence. These matters were therefore not in the jurisdiction of either the Tribunal or the County Court to determine.
- 11) In respect of line items 19 (door locks) and 20 (camera doorbell system), I asked that Mr Wood identify where those particular disputes were in the Amended Defence. Mr Noor conceded they were not there. I explained that Mr Noor had had to set out the entire case he wanted the Tribunal/Court to determine in the Amended Defence, and he would not be allowed to rely on these disputes added to the scott schedule long after the bundle had been prepared. In any event they appeared to be works that fell outside of the scope of the dispute, as the Claimant/Applicant's case was about seeking a reasonable sum in payment of reserves, not a specific bill for major works (some of which, it appears, had also taken place after the time period the claim covers).
- 12) In respect of line item 22 (allegation of no demands/rights and obligations), I again asked Mr Wood to identify where this appeared in the Amended Defence. He confirmed it did not. I confirmed that the Tribunal/Court would not therefore permit him to introduce it now.

- 13) In respect of line item 21 (allegation that the paintwork to the block was 'very poor quality' but 'we paid our share of £20,000), I asked Mr Noor to confirm whether the Respondents/Defendants had made any payments in light of his admissions (contained in the bundle) on 21 October 2021 that the service charge and internet bill (if not the reserve fund demand) were due and payable [531]. He accepted they had not. I asked where the evidence was of poor workmanship. Mr Noor said the Claimant/Applicant had not provided documents. I pointed out that he was asking us to determine whether the costs of the works had been reasonably incurred and were reasonable in amount, so that he ought to have provided at least photographs and specifics of what the Respondents/Defendants suggested were deficient. Mr Noor continued to suggest this was the fault of the Claimant/Applicant.
- 14) I explained to Mr Noor that he had not provide any argument or evidence to explain how the demands to the reserve fund were not reasonable demands towards the funding of potential future expenditure, in accordance with the lease. The specifications of the work were not the underlying foundation of the Claimant/Applicant's claim.
- 15) As I confirmed to Mr Wood, and to Mr Noor, there is nothing to stop the Respondents/Defendants making their own application to the Tribunal for determination of whether the sums incurred in respect of the works, whether the earlier 2019 ones or the ones in 2022, are payable by virtue of section 27A of the Landlord and Tenant Act 1985. However, for all the reasons set out above, there was no such dispute before the Court or Tribunal to be determined today. As I stated to Mr Noor, he is strongly advised to obtain his own independent legal advice. The property is a significant asset at a salubrious central London address, for which Mr Noor purports to be able to obtain rental income of up to £2,000 a week. The assistance of a high street solicitor can be easily obtained at reasonable rates, as the dispute is not so specialist as to require enhanced professional knowledge. In any event, I include with this decision a Legal Advice Flyer in which are identified a number of organisations that may be able to assist the Defendants/Respondents at low or no cost.
- 16) In the circumstances we invited the parties to have a 30-minute discussion to agree how the claim should be progressed today.
- 17) On reconvening, the parties had agreed terms, which it was proposed to put into a Tomlin Order. There was perceived difficulty in the absence of Mr Morrison to agree to the Order. Mr Noor had asserted throughout his authority to act on Mr Morrison's behalf, and stated he had a power of attorney, but that was not available.
- 18) The terms did not require to be kept privileged between the parties, and were not such that the Court could not order. I suggested that therefore I would make a county court order in the terms agreed, for which I did not need Mr Morrison's agreement. Mr Morrison would therefore benefit from the agreement made by Mr Noor despite not having in fact, it seemed, filed a defence in his own name.

19) The parties having agreed, the Tribunal has no jurisdiction to make a decision.

20) As Deputy District Judge of the County Court, I make the Order as attached.

Name: Deputy Regional Tribunal Judge Nicola Carr **Date:** 15 August 2022
Deputy District Judge Nicola Carr

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	
COUNTY COURT MONEY CLAIMS CENTRE	
sitting at 10 Alfred Place, London WC1E 7LR	
Claim Number	H49YY883
Date	15 August 2022

Hinde House Management Company Limited	Claimant Ref 115881.002
Mr Bryce Makintosh Morrison	1st Defendant Ref
Maxiam Arshad Noor	2nd Defendant Ref

BEFORE Deputy Regional Tribunal Judge Nicola Carr, sitting as a Judge of the County Court (District Judge)

UPON the claim having been transferred to the First-tier Tribunal for administration on 18 March 2022 by order of Deputy District Judge Wilson sitting at the County Court at the County Court Money Claims Centre

AND UPON hearing Counsel for the Claimant and Mr Graham Wood for the Defendant

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

AND UPON there being no counterclaim made with the Amended Defence dated 19 May 2022

AND UPON the Defendants failing to comply with directions dated 12 April 2022

AND UPON there being no application for relief from sanctions

And upon the First Defendant neither signing the Defence dated 8 January 2022 or the Amended Defence dated 19 May 2022, nor attending at the hearing

AND UPON the Second Defendant and Claimant agreeing terms, and the Second Defendant having purported authority to act on behalf of the First Defendant throughout these proceedings

AND UPON the court dispensing with the requirement for an application in the appropriate form pursuant to CPR rule 40.(A)(9)

IT IS ORDERED THAT:

1. There be judgment for the Claimant in the sum of:
 - (a) £34,745.20, for service and administration charges demanded and unpaid for the period between 15 August 2019 – 22 November 2021; and
 - (b) agreed costs in the sum of £10,000 (inclusive of VAT);
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 - (b) £10,000 on 15 September 2022;
 - (c) £10,000 on 15 October 2022;
 - (d) £10,000 on 15 November 2022; and
 - (e) £745.20 on 15 December 2022.

Dated: 15 August 2022