General Form of Judgment or Order

In the County Court at Central London **sitting at 10 Alfred Place, London WC1E 7LR**	
Claim Number	D16YX902
Date	13 September 2019

RALEIGH CLOSE LIMITED	**Claimant** **Ref:** 34/PH/JO103025
STOCKTONIA LIMITED	**Defendant** **Ref:**

BEFORE Judge Martyński, sitting as a judge of the County Court (District Judge) and sitting with Mr S Mason (as an Assessor) at 10 Alfred Place, London WC1E 7LR on 16 April & 18 June 2019

Upon hearing Mr Kilcoyne (Counsel) for the Claimant and Ms Tweedie for the Defendant

IT IS ORDERED THAT:

1. The Defendant must pay to the Claimant the following sums by 1 October 2019:
   Service Charges: £4060.11
   Interest: £781.89

2. The Claimant must pay to the Defendant the sum of £240.00 in respect of the Counterclaim by 1 October 2019

3. The Defendant must pay to the Claimant costs of £12,383.30 in respect of the claim 25 December 2019

4. The Claimant must pay to the Defendant costs of £486.66 in respect of the counterclaim 25 December 2019

5. The parties may set off the sums payable between themselves by agreement

Dated: 13 September 2019

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/00AU/LSC/2017/0348**
Case Number:	**:**	**D16YX902**
Property	**:**	**Ground Floor Flat, 12 Riversdale Road, N5 2JT**
Applicant/ Claimant	**:**	**Raleigh Close Limited**
Respondent/ Defendant	**:**	**Stocktonia Limited**
Representatives	**:**	**Mr D Killcoyne for the Applicant** **Ms J Tweedie for the Respondent**
Type of Application	**:**	**Service Charges – transfer from County Court**
Tribunal	**:**	**Mr M Martyński (Tribunal Judge)** **Mr S Mason BSc FRICS FCIArd**
Dates of Hearing	**:**	**16 April & 18 June 2019**

Date of Decision : 5 July 2019

DECISION

The decision in this case will be finalised and will take effect from 1 October 2019 ("the Hand Down date"). There is no need for any party to attend at the tribunal offices on that day.

DECISION SUMMARY

1. Of the total sum claimed in respect of Service Charges and Administration Charges (£6,244.28), the sum of £5572.94 is payable. [Tribunal decision].

2. The Respondent's Counterclaim succeeds in the sum of £240.00. [Court decision made by Judge Martyński with Mr Mason as an Assessor].

3. Interest is payable by the Respondent on the sums found due at the rate of 4% per annum amounting to £781.89. [Court decision made by Judge Martyński].

4. Costs: The Applicant's costs payable by the Respondent on the claim are assessed at £12,383.30. The Respondent's costs payable by the Applicant on the Counterclaim are assessed at £486.66. [Court decision made by Judge Martyński]

BACKGROUND

5. The subject building is a detached period block converted into four flats. The subject flat is on the ground floor.

6. The leaseholder of the subject flat is the Respondent Company. This is a family company operated by members of Ms Tweedie's family. Ms Tweedie occupies the flat.

7. The Applicant Company is the former freehold owner of the property. The current freehold owner is R.G. Securities Limited who took ownership on 29 May 2017.

8. On 15 February 2017, the Applicant issued proceedings against the Respondent in the County Court Money Claims Centre. The amounts claimed were:

Service and Administration Charges	£6,244.28
Interest	£356.82 and £1.96 per day
Legal costs	£1,800.00

The Service and Administration charges date from the time when the Applicant owned the freehold interest in the building.

9. The Respondent filed a Defence, Part-Admission and Counterclaim dated 30 March 2017. The Defendant admitted the sum of £1,000 and Counterclaimed in the sum of £415 "+ *further sums as yet unquantified*". A further Defence and Counterclaim (undated) was then filed. The Counterclaim contained the same claim of £415 with other items to be assessed and was stated to be limited to £1,500.

10. The Applicant filed a Defence to Counterclaim dated 11 April 2017 and then a Reply to Defence dated 12 May 2017.
11. By order dated 5 September 2017, District Judge Fine, sitting in the County Court at Central London made an order in the following terms:-

> The claim and counterclaim, if appropriate are transferred to the First Tier Tribunal (Property Chamber) for determination.

12. Directions were issued by the tribunal on 17 October 2017. Those directions allowed the parties to file further Statements of Case and the case was set down for hearing for 12 March 2018. The directions recorded the parties' agreement that the Respondent's counterclaim should be dealt with under the tribunal's jurisdiction.

13. The Respondent filed a further Statement of Case dated 14 December 2017. The Applicant filed a further Statement of Case dated 19 January 2018.

14. On 12 March 2018, the matter came before the tribunal but the tribunal did not consider that the matter was sufficiently prepared for a final hearing. Accordingly, the tribunal issued further directions. These included, permission for the Respondent to send a statement setting out the items in dispute and a response to this from the Applicant.

15. In a statement from Ms Tweedie dated 29 April 2018, the Defendant sought to increase its counterclaim to £6154.24. In respect of this increase, Ms Tweedie's statement said;

> We recognise that the total here is more than our previously self-imposed limit of £1,500. However, this has not been done arbitrarily, but as a result of further roof leaks that were not discovered until after the limit was set.

16. The Applicant's statement sent in response to the Respondent's statement commented in detail on the increased counterclaim.

17. The case was then set down for hearing on 8 August 2018 with Judge O'Sullivan presiding. The case could not be completed in the day allotted for the hearing and accordingly the hearing was adjourned part-heard. Unfortunately, Judge O'Sullivan died before the hearing could be re-convened.

18. The case was then heard afresh at hearings which took place on 17 April and 18 June 2019.

19. At the outset of the hearing on 17 April 2019, the following issues were discussed/agreed/decided:-

    (a) All aspects of the case would be decided by; (i) the tribunal where it had jurisdiction to do so; (ii) in respect of any matter that was in the sole jurisdiction of the County Court, by the Tribunal Judge sitting as a Judge of the County Court (District Judge).

(b) R.G. Securities Limited had not, so far as the County Court proceedings were concerned, been formally added as a party. That company did not own the freehold interest at any point during the time in dispute in these proceedings. Accordingly, there seemed no point in R.G. Securities formally being made a party to proceedings.
(c) As to the Counterclaim, of course no permission had been given (nor indeed any fee paid) for the increase in the claim. However, the Respondent is entitled to set up that claim as a set-off against the claim against her both in the County Court and within the jurisdiction of the tribunal.
(d) The Respondent Company was not represented at the hearing. Ms Tweedie is not a director of the Company and has therefore no standing to represent it. Ms Tweedie told the tribunal that the directors of the Company were willing to allow her to represent the Company in the hearing. The Applicant took a pragmatic view and Counsel for the Applicant told us that the Applicant would take no objection to Ms Tweedie representing the Company so long as she provided the directors' authority for that in due course.
(e) Finally, there was some discussion regarding the respective parties' experts and the lack of disclosure of experts' reports prior to the hearing. Both parties took a pragmatic view and it was decided that we would hear from the experts during the course of the hearing.

The issues and our decisions

A breakdown of the sums in issue

20. The sum claimed in the County Court of £6,244.28 breaks down as follows[1]:

Years 2014/15	Total	Respondent's share
Buildings Insurance	£2727.55	£1120.48
Electricity	£ 465.27	£ 191.13
Management fees	£1392.00	£ 571.83
		£1883.44
Years 2015/16		
Electricity	£ 409.71	£ 168.31
Management fees	£1368.00	£ 561.97
Keys	£ 20.45	£ 8.40
Entryphone	£ 194.40	£ 79.86
Roof Works	£1440.00	£ 591.55
Roof Works	£1536.00	£ 630.99
Surveyor's fees	£2411.93	£ 990.82
		£3031.90
Years 2016/17		

[1] There are some minor discrepancies between the individual figures for each year shown in the table and the total amount claimed. The reason for this appears to be that the Respondent's share of the Service Charge can be calculated to more than two decimal points and one arrives at different totals depending on the number of decimal points used in the calculation. The differences in the figures are however very small

Interim demand	£1092.62	£1092.62
Administration Charge	£240.00	£ 240.00

Insurance 2014/15

21. Ms Tweedie for the Respondent said that there had been discussions regarding insurance between her and the managing agents. It was the case that the buildings insurance premium was due shortly before the Service Charge year end. It was the practice of the managing agents to demand this premium at the outset of the Service Charge year, hold on to the money, and then pay the premium nearly a year later. It was agreed that this practice would cease and the insurance premium would be paid by the leaseholders much nearer the date to when it was actually to be paid. This agreement was set out in writing.

22. We were shown an agreement signed by Trust Property Management (the Applicant's managing agents) and by Ms Tweedie on behalf of the Respondent. The agreement is dated 15 May 2014 and the relevant part reads as follows:-

> **Premium for insurance cover 2014-15**: Trust confirms that nothing is owing by Stocktonia for insurance cover for the years up to and including June 2014-June 2015.

23. The documents show a premium for insurance in the sum of £2725.55 being paid on 18 July 2014 for the year 23 June 2014 to 22 June 2015. Other accounts that we were shown by the Applicant appeared to show only one insurance premium being paid per year.

24. It was the Respondent's case that it had double-paid an insurance premium.

25. We were not shown anything by the Respondent to suggest that more than one premium per year was paid.

26. The agreement referred to above can be read to mean that, as at the date of the agreement, that being May 2014, nothing was *owing*. It does not say that nothing *would* have to be paid for the 2014/15 year. Even if it cannot be read that way, it appears on the evidence that the agreement was a mistake. That mistake does not free the Respondent from the obligation of having to pay towards the insurance of the building.

27. Taking into account all the evidence, we conclude that there has been no overpayment in respect of insurance.

Management fees – all years in issue

28. The fee is £1392.00 per year. This would, save for the terms of the Respondent's lease, break down to £348.00 (inclusive of VAT) per unit. Such a sum, for a small residential development is, in the tribunal's experience and

knowledge, well within the average of fees for London. However, the Respondent actually pays £571.78 under the terms of its lease as it pays a higher percentage of Service Charges than other flats (41.08%).

29. We heard evidence from Ms Davey from the managing agents. She took over management around the end of 2014. She described to us the work carried out by the managing agents. It is a basic service with three visits to the property per year. There is little to manage in the property. For example, the account for the year 14/15 shows that the only expenditure was in respect of; insurance, electricity and managing agent's fees.

30. Ms Tweedie complained that there were no routine services provided for the property such as cleaning and gardening. However, there was no real evidence that prior to the end of 2016, there had been any great demand from the then leaseholders for such services.

31. We heard evidence from Mr Mark Fowler, the father of Bella Fowler, who became a leaseholder in December 2016. According to Mr Fowler, his daughter was upset that there was no cleaning or gardening. When she raised this with the managing agents, she was told that there were no such services but on the other hand, there was no charge for these services. Mr Fowler stated that his daughter was also upset about the lack of maintenance of the internal décor.

32. During the evidence, we noticed that despite a Health and Safety report dated November 2011 raising an issue of there being a missing lock to an electrical cupboard, this matter does not appear to have been dealt with until August 2014 when a further Health and Safety report was carried out. There were complaints from Ms Tweedie and from a neighbouring leaseholder, Ms Charlton, that although, following complaints, the door entry system was repaired, the Applicant took the view that the landlord's responsibility for this ended at the front door of each flat with the result that there were unresolved issues with the system inside the flats.

33. We are unable to conclude that there is any wholesale or any particularly important failing in management. However, it is clear that the management is not as proactive or tenant focussed as it could be. A very basic service is being provided.

34. On balance, we have concluded that the management fee is probably at the lower of the scale for a building of this nature and that it reflects the basic service being provided and have decided to allow the fee as it stands.

Electricity – all years in issue

35. The only electricity used so far as the Service Charge is concerned is that for the common parts. The actual amount of electricity that is used is minimal. The issue is the standing charge. The total standing charge per year is much greater than the charge for the amount of electricity actually used.

36. It is the Applicant's case that the utility company treats the Applicant as a commercial user of electricity and so charges a higher standing charge. The Applicant is limited to the charges that are available at the time of taking out the contract. In 2015, the Applicant took action to change utility supplier to get a better standing charge rate.

37. Ms Tweedy provided an email from another agent with electricity charges for what were said to be similar properties in the area showing much lower charges.

38. We took the view that there is insufficient evidence to persuade us that the electricity charges were unreasonable in amount. We accept the explanation given by the Applicant's agent. The email submitted by Ms Tweedie and referred to above is of no real evidential value.

Repairs – 2015/16

39. *Replacement keys for front door*: Ms Tweedie said that these were not needed. The amount in dispute is £8.39. On balance, we conclude that if they were obtained, they were probably needed and allow this sum.

40. *Entryphone repairs*: Ms Tweedie said that her entryphone had not worked properly for years. Miss Davey for the Respondent stated that this had not been reported by Ms Tweedie and that the repairs in question were in respect of another leaseholder's system**.**

41. We had regard to a witness statement in the papers before us from Christie Charlton, a tenant of another leaseholder who stated that repairs were carried out to parts of the entryphone system at the front door but that the workmen would not look at the part of the entryphone in the flat as they considered that to be the leaseholder's responsibility.

42. On balance, it seems to us that, more likely than not, repairs were carried out to the entryphone system at the point of the front door. It seems to us that the complaint in respect of this item appears to be that more repairs were not done rather than the cost of the repairs actually done being unreasonable. Accordingly, we allow this sum.

Repairs – 2016/17 – Roof works

43. Of the two charges for roof works only the charge for £1536 was disputed. This charge breaks down as follows:

    Works to the front dormer - £564.00
    Works to flat roof - £972.00

44. Major works to the building were carried out in 2015. The specification for the works was actually prepared some years before the works were carried out. The specification as it related to the dormers read as follows:

....thoroughly overhauling the sheet metal coverings by replacing all defective sections and redressing all loose sections to leave all in satisfactory order...

45. After the works were completed in 2015, there were leaks into one of the dormers resulting in further works having to be carried out, these are the works in dispute.

46. Expert evidence was given in respect of this matter for the Applicant by Mr Tilbury BSc(HONS). Mr Tilbury was not involved in the works themselves. The works were overseen by another Surveyor, Mr Saltman. In his expert report, Mr Tilbury stated that, in his view, there were a number of inherent problems with the design and construction of the dormers. He commented on the works to the dormers as follows:

> These latent defects are all inherent points of weakness and demonstrate the poor workmanship carried out to the property which were most likely introduced as part of its original conversion.
>
> In view of these constraints it is my opinion that Mr Saltman ought to have obtained a quotation for the replacement of the Zinc roof covering so meaningful discussions could have been carried out between the freeholder and the leaseholder. However, in view of the fixed budget of the contract , the limited funds available, the time it took to get works on site, the adjustments which would need to be made to adapt the scaffold, the requisite upgrading of the roof structures to comply with building regulations, consulting with Town Planning in relation to the proposals, the timber repairs which would have been required to accommodate both the insulation and sheet ply decking, the possible adjustment of the Dormer detail and the associated works with the pitched roof sections it is quite likely Mr Saltman opted for this form of repair rather than to proceed per the specification.
>
> I understand to address these issues a Technatorch SBS mineral felt application was adhered at these locations and whilst the repair is unconventional, the form of repair is functional and has insured the longevity of the covering is maintained to the point the point where the necessity for further works can be considered at the next cyclical works.`

47. The Respondent's expert, Mr Ficken MRICS, was not able to add a great deal to this issue. He inspected the dormers from ground level with a camera zoom years after the works were carried out. He criticised the workmanship in some respects. In cross-examination in the hearing, Mr Ficken said that it was difficult to see why the dormers were not properly repaired during the course of the main works, he pointed to the fact that the specification was to replace and renew.

48. In our view, the fact that further works were required to the dormers to deal with leaks a short time after the main works were carried out, suggests, of itself, that the main works were not completed properly. Added to this is the evidence of Mr Tilbury who accepted that the specification required works that were of a greater scope than those actually carried out.

49. We conclude therefore that the costs in question in respect of the dormers were not reasonably incurred, these were extra costs incurred to put right

mistakes in the main works and these mistakes can be laid at the door of the Applicant's agents.

50. As for the works to the flat roof, again, these were carried out within a few months of major works to that roof due to leaks into the property. After these works were carried out, there were yet further leaks. The original specification in the major works for that roof provided as follows:

> *'….hacking out all loose, slumped, split or otherwise defective areas of asphalt to the rear flat roofs at all three levels but cutting out all defective sections and renewing using a hot poultice method……'*

51. There was general agreement that the flat roof was in the final years of its natural life. The decision made at the time of the major works in 2015 was to repair rather than replace. There is no challenge in respect of that overall decision.

52. In his expert report, the Respondent's expert, Mr Ficken, stated that from his inspection, some years after the 2015 works were carried out, and from photographs taken in 2015, the works had been carried out with minimising costs as a priority. Mr Ficken went on to detail his inspection of the roof and he said as follows:

> A general inspection of the asphalt and solar paint indicated that there were areas of ponding, as may be expected with a flat roof, however, a number of these were, concerningly around the areas that had received felt followed by asphalt patch repairs,……Similarly there were a number of areas that appeared to be blistering – some were clearly adjacent to the recently repaired / remediated locations – which indicated that the roof had been poorly maintained and that the level / extent and quality of the repair works was less than expected.

53. Mr Ficken did not inspect the roof personally until January 2018. At that time he found areas responsible for two leaks into the building. At one location he found damage to the asphalt that appeared to have been caused by a hot bucket (which would have been used in previous repairs). As to the other source of a leak, this was at the base of a junction step in the roof. Mr Ficken lifted the lead flashing at that point and noted that at the point where previous repairs had been carried out, mastic or lead adhesive had been used to prevent water ingress beyond the flashing, however, the asphalt had been merely taken to, or adjacent to, the upstand / tier, but not dressed up at all.

54. The Applicant's expert, Mr Tilbury, noted the following in his report:

> With regards to the rear flat roofs it is clear that extensive Asphalt repairs were undertaken as part of the contract. The fact that a decision was made to introduce a felt repair method would suggest Mr Saltman took into account the age of the Asphalt, its exposure to the elements and that its brittle characteristics had the potential to damage the roof further…….
>
> It is my opinion that the works executed on site successfully returned the building back into repair and whilst the introduction of a mineral felt repair was not conventional, the felt was an effective means of addressing what would appear to be an ageing roof.

55. The Respondent relied on the fact that there have been a number of leaks from the flat roof, not just those which are the subject of the repair bills being dealt with in these proceedings.

56. In cross-examination, Mr Ficken accepted that he was in some difficulty talking about the repairs in question as he was not involved in this matter at that stage but that it was closer to probable than possible that works were not properly done leading to further leaking.

57. On balance, and given Mr Ficken's very clear evidence regarding damage caused by the hot bucket, we conclude that 50% of the costs of the repairs in question were not reasonably incurred.

Surveyor's fees

58. Whilst we have, by implication in our decisions above, criticised some of the management and decision making in the major works so far as they touched on the works to the roof, we have not made a deduction in the Surveyor's fees in respect of those works. We have reached that decision for the following reasons;
    (a) The fees are for the contract administration, not the supervision of the works
    (b) The fees are based on a percentage figure of 12.5% which is modest in any event
    (c) We do not consider that we can, with the benefit of hindsight and the parties' agreement to carry the works out on a tight budget, criticise the specification of works

Interim demand for the Service Charge year 2016/17

59. The Respondent's lease provides for the payment of a sum on account of the Service Charge each year. The relevant provisions of the lease are as follows:-

> 2. THE Lessee HEREBY COVENANTS with the Lessor as follows:-
> ……..
> (iii) (a) To contribute and pay to the Lessor or his agents or as he may direct during the said term being the proportion of the costs expenses and outgoings incurred by the Lessor in respect of the matters referred to in the Fourth Schedule hereto which the rateable value of the premises bears to the rateable value of the Building
> (c) The Maintenance Charge shall be paid as follows:-
> As to Seventy Five Pounds (£75.00) per annum or seventy-five per centum (75%) of the Maintenance Charge for the preceding year whichever is the higher (hereinafter called "the Interim Charge") payable in advance on the day of payment of rent. As to the balance (if any) within twenty-one days of the delivery to the Lessee by the Lessor of an account (hereinafter called "the Maintenance Account") showing particulars of such costs expenses and outgoings for the year up to the previous Twenty-fourth day of June……..

60. We were shown a demand sent to the Respondent and dated 10 June 2016. That demand sets out a total estimated Service Charge expenditure for the forthcoming Service Charge Year of £2,660.00. The demand sets out the Respondent's share (based on the rateable value of its flat as per the lease terms) of the estimated amount, being £1,092.00.

61. The total Service Charge payable by the Respondent for the previous year was £3,029.38. The demand on account for the year 16/17 of £1,092.00 is therefore significantly less than 75% of the amount payable for the year 15/16 (even after our reductions).

62. The terms of the Respondent's lease oblige the Respondent to pay the 75% in advance on the day for payment of rent (set under the terms of the lease as 24 June – Clause 1). Therefore, the Respondent was obliged to make the payment demanded. The sum is therefore payable.

Administration Charge - £240.00

63. There is no clear demand for this sum. We were referred to two documents. The first is a letter sent by the Applicant's solicitors to the Respondent dated 1 December 2016. This letter is a demand for payment of outstanding Service Charges. The letter contains the following paragraphs:-

> Despite formal requests, you have failed to voluntarily pay service charges and fees due, totalling £6,244.28. You are in breach of the terms of your lease.
>
> We are instructed that your lease imposes an obligation upon you to pay our client's legal costs incurred as a result of your breach. The legal costs to date are £384.00 providing that you make full payment to us within 7 days of the date of this letter. We assert that these costs are reasonable based upon the costs information attached.
>
> As at the date of this correspondence, interest pursuant to your Lease, at a rate of 4% above base (4.25%) has accrued in the sum of £259.05 and continues to accrue at a daily rate of £0.73.
>
> Should you fail to comply with the above, legal proceedings will be issued which may ultimately result in the loss of your leasehold interest.

64. The second document is an invoice, dated the same date as the letter referred to above, from the Applicant's managing agents to the Respondent for Charges in the sum of £6,004.28.

65. We were told that, in order to get to the figure of £240.00 for the Administration Charge, one has to take the sum of £6224.28 mentioned in the letter from the figure of £6,004.28 in the invoice.

66. As to the provisions of the Respondent's lease allowing such a charge, the Respondent relied upon the forfeiture clause in the lease which is as follows:

> To pay unto the Lessor all proper and reasonable costs and charges and expenses (including legal costs and fees payable to a Surveyor) which may be incurred by the Lessor incidental to the preparation and service of a notice under Section 146 of the Law of Property Act 1925 by the Lessor or incurred in or in contemplation of proceedings

> under Section 146 or 147 of that Act notwithstanding forfeiture may be avoided otherwise than by relief granted by the Court

67. The Administration Charge is not payable. There is, in reality, no demand for it. It would be impossible for any recipient of the letter and invoice dated 1 December 2016 to realise that an Administration Charge in that sum was being demanded.

The Respondent's Counterclaim / set-off

68. In the Counterclaim filed in the County Court, the Respondent sets out its claims as follows:

> Emergency repairs to leaks to the rear roof post repairs and renovations carried out by the claimant 2015 £115
>
> Surveyor's report on the state of both roofs repairs and renovations as above, showing the inadequacy of same, in particular in relation to the materials used £300
>
> Internal repairs following the leaks to the rear roof To be assessed
>
> Snagging items following the building works ditto
>
> (Maximum total: £1,500)

69. In the Statement of Case dated 29 April 2018, the Respondent sets out its claims as follows:-

Item	**Cost**	**Counter claim**
Repair to bedroom from 2016 rear roof leaks	£830)	
Insurance excess 1 (2016 leaks)	£500	£500
(Repair to bedroom from 2017 rear roof leaks	£5,500)	
Insurance excess 2 (2017 leaks)	£500	£500
Investigation of source of 2017 roof leak	£240	£240
Surveyor's report inc courier (March 2018)	£470	£477.60
Remedial work: Main roof dormers (41.08%)	£1500 + VAT	£739.44
Remedial work: Rear roof (41.08%)	£7,500 + VAT	£3,697.20

70. We have taken the claim set out in the Statement of Case dated 29 April 2018 to replace the Counterclaim filed in the County Court. To the extent that it exceeds the Counterclaim filed in the County Court, we treat it as a set-off on the question of the payability of the Service Charges claimed by the Applicant.

71. So far as the claim for insurance excesses are concerned, Ms Tweedie told us that no insurance claim had yet been made, accordingly no loss has actually

been incurred as yet. Further, there is no proper evidence of the extent and costs of repairs/decorations. We therefore dismiss these claims. However, this does not prevent the Respondent claiming in respect of these items once the work is carried out.

72. As to the claim for £240.00 for the investigation of the leak in 2017, we allow this sum as a Counterclaim. The Applicant is liable for disrepair to the structure and exterior of the building without first having had notice of the disrepair. There is no doubt that, as a result of the various leaks in the roof, following, what should have been a patching of the roof to extend its life, the Respondent has been put to cost to try and find out the cause of those leaks. The Respondent was justified in wishing to carry out an independent investigation given that the roof continued to leak after the major works were carried out.

73. Mr Kilcoyne, Counsel for the Applicant, argued that, as the Respondent was in breach of its obligations to pay Service Charges, there was no liability upon the Applicant in respect of disrepair, he relied upon clause 3.(3) of the lease which makes the landlord's maintenance and repairing obligations conditional upon the lessee's compliance with its obligations to make payments due under the terms of the lease. We reject that argument. In accordance with *Yorkbrook Investments v Batten* [1985] 2 EGLR 100, we find that, in this case, the lease does not provide a condition precedent for performance of obligations. We do not consider that this is a case where *Yorkbrook* can be distinguished as per *Bluestorm Ltd v Portvale Holdings* [2004] 2 EGLR 38. This is not a case where there is a fixed intention on the part of the Respondent not to pay Service Charges, the Respondent has paid Service Charges over the years but has disputed some of those service charges and has had an arguable case on that dispute (although we have rejected those arguments for the most part).

74. The costs of the Surveyor's report for purpose of litigation fall to be considered under the question of costs. There is no doubt that the evidence from Mr Ficken was useful and that it materially advanced the Respondent's case to its advantage.

75. As to the claims for remedial works, these refer to remedial works that may be carried out by the Applicant and part-payable by the Respondent as a future Service Charge. No such sums have been demanded or incurred and accordingly those claims are dismissed.

Interest

76. Interest is payable under the terms of the lease at 4% per annum. The claim issued by the Applicant sought interest up to the date of issue of £356.82. This has been reduced to £324.71 based on the amount of the reduction made in the charges. Interest on the sums allowed by the tribunal from (a) the date of issue to the date of the first payment of £1000 by the Respondent on 13 April 2017; (b) the reduced sum outstanding from 14 April 2017 to the date of the Respondent's second payment of £512.83 on 5 June 2018; (c) the further

reduced sum from 6 June 2018 to 1 October 2019 gives a total interest sum of £781.89.

COSTS

Applicant's costs

77. The Applicant is entitled to its costs of these proceedings under the terms of the lease. We are satisfied that the lease, at Clause 2 (set out earlier in this decision) allows charges incurred in respect of contemplation of forfeiture. We are satisfied, having considered the Applicant's solicitor's statements in correspondence (set out earlier in this decision) that these proceedings were issued in contemplation of forfeiture.

78. However, the Applicant is only entitled to its costs in so far as it has been successful in the proceedings. In money terms, it has been successful on the claim to the extent of nearly 90%. However, the reality is that on an important item which took up much of the tribunal's time, that being the roof, the claim, so far as it was contested, was much less successful. Further, the Applicant cannot be allowed all of its costs of defending the partially successful counterclaim. We have accordingly come to the conclusion that the Applicant should get 70% of its allowable costs.

79. As the costs are claimed under a contract, the Applicant is entitled to have its costs assessed on the Indemnity basis, that being that it should be allowed its costs save where those costs can be shown to be of an unreasonable amount or unreasonably incurred. Looking in detail at the costs claimed, we have disallowed the following costs on the ground that they are overheads, not properly chargeable inter-parties;

    Photocopying fees (£698.69)
    Fees for preparation of bundles (£1539.60 inc. VAT)

80. This produces a figure of £12,383.30 for the Applicant's costs of the proceedings. Those costs are disproportionate to the amounts in issue, however, proportionality is not a factor to be taken into account when determining costs on the Indemnity basis.

Respondent's costs

81. The Respondent is entitled to its costs (in the County Court, not as a matter of course in the tribunal[2]) of the counterclaim. That counterclaim was very limited in its success but its success depended upon a good deal of surrounding evidence. The Applicant claimed her costs at £4866.69. We have allowed those at 10%, that being £486.66. These costs are disproportionate to the amount of the counterclaim allowed but proportionate in relation to the proceedings as a whole.

Section 20C Landlord and Tenant Act 1985

[2] This is in contrast to the Applicant's costs, as they are claimed under a contract, they do cover proceedings before the tribunal

82. Although probably academic in this case given that the Applicant no longer has an interest in the subject building; the logical application of S.20C here is to make an order that none of the costs incurred or to be incurred in these proceedings are to be regarded as relevant costs to be taken into account in determining the amount of any Service Charge payable by the Respondent. This ensures that the Respondent's liability for costs is limited by the orders made in these proceedings.

Other costs issues

83. We have not considered paragraph 5A to Schedule 11, Commonhold and Leasehold Reform Act 2002 (power of the court/tribunal to limit landlord's legal costs) because that provision only applies to proceedings begun after 5 April 2017.

Mark Martyński, Deputy Regional Tribunal Judge

13 September 2019

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 office which has been dealing with the case.

2. The application for permission to appeal must arrive at the Regional office within 28 days after the Hand Down Date.

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.

Appealing against the decisions made by the Judge in his/her capacity as a Judge of the County Court

5. Any such application must arrive at the tribunal offices in writing before the Hand Down date. The application for permission to appeal must state the

grounds of appeal, and state the result the party making the application is seeking.

6. If an application is made for permission to appeal and that application is refused, or if no application for permission to appeal is made but, in either case, a party wants to pursue an appeal, that party must file an Appellant's Notice at the County Court office (not the tribunal office) within 28 days of the Hand Down date.

Appealing against the decisions of the tribunal and the decisions of the Judge in his/her capacity as a Judge of the County Court

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