FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**BIR/00CU/LIS/2019/0037** **BIR/00CU/LIS/2019/0038**
Court Reference	**:**	**E46YX665 and E52YX233** **(County Court at Birmingham)**
Property	**:**	**Flat 2 and Flat 9 Saldavian Court, Slaney Road, Walsall, WS2 9AG**
Applicant/Claimant	**:**	**Saldavian Court RTM Limited**
Representative	**:**	**Mr Jonathan Wragg of Counsel instructed by PDC Law**
Respondent/ Defendant	**:**	**Mr Vimal Korpal**
Type of Application	**:**	**Service Charges** **On Transfer from the County Court**
Tribunal Judge sitting As a Judge of the County Court	**:**	**Judge Anthony Verduyn**
Date of Hearing	**:**	**7th November 2019**
Date of Decision	**:**	**9th January 2020**

DECISION

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1. The Defendant is the registered proprietor of long leasehold interests in two flats: Flats 2 and 9 Saldavian Court, Slaney Road, Walsall WS2 9AG. Both leases were granted on 3rd August 1978 for 99 years from 25th December 1974 and were assigned to the Defendant in 2007. The leases each contained provisions for the lessees to contribute to service charges, expenditure on major works and reserve funds. There has been a significant history of liability for these sums being disputed by the Defendant.

2. The Claimant is a Right to Manage ("RTM") company. It has appointed Residential Management Group Limited as its managing agent for Saldavian Court. The managing agent has instructed PDC Law in these proceedings. In respect of Flat 2 the Claimant issued a claim for £5,548.53 for service charges, major works and reserve funds, plus £1,005.50 in administration fees. In respect of Flat 9 the Claimant issued a further claim for £3,278.67 for service charges, major works and reserve funds, plus £661 in administration fees. There are also claims for contractual costs.

3. Pursuant to the Order of Deputy District Judge Dhaliwal of 7th June 2019, the Defendant was required to file a particularised defence and he did so by a defence dated 3rd July 2019. The claims are defended on two bases: firstly, that there is no legal relationship between the parties unless the Claimant can prove that, as an RTM Company, it was constituted properly pursuant to the statutory procedure set out in Sections 78 and 79 of the Commonhold and Leasehold Reform Act 2002; and, secondly, the proceedings are an abuse of process because of a history of discontinued claims made by the Claimant between 2009 and 2012 which, it is said, resolved the matter of the absence of legal relationship between the parties. There was no dispute about the content of the leases, hence if a legal relationship between the parties existed then liability was not in issue, so long as proceedings were not an abuse of process. The sums claimed were also unchallenged in quantum. In response to this document, on 26th July 2019, the Claimant applied to strike out the Defence and for summary judgment.

4. By Order of Deputy District Judge Fentiman the claims had been allocated to the multi track on 13th February 2019. District Judge Shorthouse then referred them to the First-tier Tribunal Property Chamber (Residential Property) as being suitable to be dealt with under the Residential Property Dispute Deployment Pilot. Directions were given by the Tribunal on 10th September 2019 under which the Particulars of Claim were directed to be the Claimant's Statement of Case in the Tribunal. The Defendant was to provide a further Statement of Case by 4th October 2019 and the Claimant to reply to this by 25th October 2019. Directions were given to trial.

5. The Defendant filed his further Statement of Case dated 4th October 2019. This was shorter than the Defence and focused on the abuse of process argument (albeit founded still on the argument that the absence of a legal relationship between the parties had been established in the discontinuance of earlier claims).

6. Following the Defendant filing his Statement of Case, the Claimant filed a short Reply and revived its application dated 26th July 2019 to strike out the Defence and enter summary judgment for the amount claimed. That application was

listed before me and heard on 7th November 2019. The Claimant was represented by Counsel and relied upon the content of the witness statement of Hansel Ariburun, solicitor, in support of the application. The Defendant attended in person, and relied upon the content of his Statement of Case. Submissions were made by and on behalf of the parties.

7. At the conclusion of the submissions I gave a short oral *ex tempore* decision in which I concluded that the Defendant's Statement of Case was to be struck out and summary judgment was to be entered for the Claimant to the full extent of its claim. Costs were summarily assessed. I indicated at that hearing that a written decision would be provided, as well as a County Court order, and that the period for any appeal would run from the date of that decision and order. This is that decision.

THE LEGAL RELATIONSHIP BETWEEN THE PARTIES

8. As observed above, the Defendant contends that the there is no legal relationship between him and the Claimant, and requires proof that the requirements of Sections 78 and 79 of the Commonhold and Leasehold Reform Act 2002 have been complied with.

9. The Claimant's answer to this contention is simple: a Tribunal has already conclusively determined the question between these parties in earlier proceedings. Appended to the Claimant's application is a copy of a Tribunal decision dated 9th January 2013. The Tribunal was then the Leasehold Valuation Tribunal ("LVT"), rather than the First-tier Tribunal as currently constituted, but nothing turns on this: the latter is simply the successor body to the former. The parties were the same and the application under consideration was the Claimant's application to determine the liability to pay service charges under Section 27A of the Landlord and Tenant Act 1985. The first issue under consideration was the Defendant's contention set out in paragraph 2(1) of that decision: "The [Defendant] is not satisfied that the RTM Company went through the correct procedure to properly acquire the Right to Manage, and therefore has no right to demand service charges from the [Defendant]." The Tribunal carefully considered the evidence presented and concluded (at paragraph 29) that the Claimant had acquired the right to manage, with the legal consequences that flow from that (paragraph 30). This decision was not appealed.

10. Before me, the Respondent did not dispute the fact that the LVT made this decision. Whilst before me, he stated that he had not attended the hearing, but I note that he is recorded as having attended in person on 20th November 2012 (paragraph 10). In any event, the Defendant sought to argue that the decision was somehow incompatible with events in the County Court between 2009 and 2012 (which I shall turn to below), but he could not articulate any reason why this Tribunal can or should depart from the earlier decision.

11. It seems to me, and I find, that I am bound by the earlier Tribunal determination that the Claimant was properly constituted as an RTM Company in respect of Saldavian Court, and I cannot go behind that decision. The challenge raised again by the Defendant was fully considered by the LVT with evidence being adduced and findings of fact and law made, and it is binding upon the parties in

respect of the issue. The principle of issue estoppel applies, and the points taken by the Defendant have already been conclusively determined against him. Even were I wrong about this, it is impossible to see on what basis the Defendant now would have a reasonable prospect of successfully defending the claim on the basis of this issue, since there is no suggestion from him that there is pertinent material that was not before the Tribunal in 2012 (he merely gainsays the decision that he did not appeal). Summary Judgment would thus be warranted under CPR Part 24.2 (a), and there is no compelling reason why these proceedings should be disposed of at trial. To seek to resurrect a contention already resolved against him is a plain abuse of process warranting striking out of this part of the defence under CPR Part 3.4(2)(b), and this part of the Defence discloses no reasonable grounds for defending the claim and so is also struck out under CPR Part 3.4(2)(a).

ABUSE OF PROCESS

12. The Defendant contends that the current proceedings are an abuse of process because the Claimant had previous discontinued claims in 2009 (and also, it seems, in 2012) and failed in an attempt to revive previously discontinued claims in 2011/12. Indeed, the Claimant did not attend the final hearing in the County Court on 3rd February 2012. The Defendant suggests that there are, therefore, incompatible decisions of the County Court and Tribunal, and the former should take precedence and the latter was in error to disregard them. In effect, the argument is that by discontinuing its claims the Claimant was fixed with the Defendant's claim that there was no legal relationship between the parties.

13. This argument is unsustainable. The LVT in its decision dated 9th January 2013 considered earlier Court proceedings and their discontinuance in detail. It decided that a Notice of Discontinuance was not a determination by the Court of liability to pay service charges for the purposes of Section 27(4)(c) of the Landlord and Tenant Act 1985 (paragraph 38) and there was no bar to it determining the legal relationship between the parties. The Tribunal did consider that the pursuit of service charge claims through the LVT for periods overlapping the discontinued Court claims was an abuse of process (paragraph 39), but did not resolve the extent to which duplication of this sort arose and gave directions accordingly (paragraph 43). The Defendant in these proceedings seeks to revive, not the latter contention (the bulk of the claims plainly relating to later periods), but the contention that, in principle, the discontinuance of earlier proceedings is a determination that there is no legal relationship between the parties. This argument is not open to him as it was taken before the LVT (paragraph 18) and resolved against him (paragraph 32). He did not appeal and is bound accordingly.

14. This part of the defence is struck out for the same reasons as the first part, and summary judgment is accordingly granted.

COSTS

15. Costs properly follow the event in this case, and the contrary was not argued before me. I do not find that these costs arise contractually as Clause 32 of each lease (relied up[on by the Claimant) relates to costs incurred "in or in

contemplation of any proceedings or the service of any notice under Sections 146 and 147 of the Law of Property Act 2915 …", which is too remote from the current circumstances. A deduction of £720 was made at the hearing from the total claimed, primarily in relation to unreasonable time spent in letters out to the Claimant. Costs were and are accordingly assessed in the sum of £8,014.80.

16. If either of the parties is dissatisfied with this decision, they may apply to the County Court Circuit Judge for permission to appeal, but such application by way of notice to appeal (Form N164) must be made within 21 days of the date of this decision (CPR Part 52,.12(2)(b)).

Tribunal Judge Dr Anthony Verduyn sitting as a District Judge of the County Court

Dated 7th January 2020