



**FIRST - TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY) and  
THE COUNTY COURT AT DUDLEY  
(sitting at Centre City Tower Birmingham)**

**Tribunal Reference** : **BIR/00CR/LIS/2019/0047**  
**Court Reference** : **F06YJ106**  
**(County Court at Dudley)**  
**Subject Property** : **4 Collett Close**  
**Stourbridge**  
**West Midlands**  
**DY8 4HS**  
**Claimant** : **Stonewater (2) Limited**  
**Representative** : **Shakespeare Martineau LLP**  
**Defendants** : **(1) Peter Daniel John Roberts**  
**(2) Helen Valerie Mary Roberts**  
**Type of Application** : **(1) Liability to pay estate charges**  
**(2) Liability to pay interest**  
**(3) Liability to pay costs**  
**(All on transfer from the County Court)**  
**Date of Hearing** : **20 December 2019**  
**Judge** : **Judge Nigel Gravells**  
**Assessor** : **Robert Bryant-Pearson FRICS**  
**Date of Decision** : **10 January 2020**

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**DECISION**

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## **Introduction**

- 1 This case concerns an estate charge dispute in respect of the property at 4 Collett Close, Stourbridge, West Midlands DY8 4HS ('the subject property'). The property is located on the Penfields Estate.
- 2 The Claimant, which owns the Penfields Estate, alleges that the Defendants, who own the freehold interest in the subject property, have failed to pay estate charges in respect of the property totalling £477.50. The dispute also includes claims for interest and costs.
- 3 The case commenced in the County Court in January 2019 and the first Defendant disputed the claim. The case was subsequently transferred to the First-tier Tribunal (Property Chamber) (Residential Property). However, the Tribunal does not have jurisdiction in relation to estate charges payable in respect of freehold property. The case has therefore been determined by a First-tier Tribunal Judge sitting as a Judge of the County Court exercising the jurisdiction of a District Judge (under section 5(2)(t) and (u) of the County Court Act 1984, as amended by Schedule 9 to the Crime and Courts Act 2013), assisted by a Valuer Member of the Tribunal, sitting as an Assessor, in accordance with the Civil Justice Council flexible deployment pilot scheme. Notwithstanding that assistance, the decision is that of the Judge alone; and references to 'the Court' should be construed accordingly.
- 4 The second Defendant, the first Defendant's mother, has not participated in the proceedings. The first Defendant seems to have assumed that, because the second Defendant was no longer living at the subject property, she was incorrectly named as a Defendant. That assumption is incorrect because at all relevant times the second Defendant has continued to be registered as one of the proprietors of the subject property and has therefore continued to be liable for any estate charges. However, although the second Defendant did not formally enter a defence, it might be argued that by implication the first Defendant has acted on behalf of both Defendants. In any event, even if as a matter of law the Claimant could seek summary judgment against the second Defendant, in the circumstances the Court would urge the Claimant to accept the decision of the Court as applying equally to both Defendants.

## **Background**

- 5 The Penfields Estate was established as a development of social housing, comprising 293 residential properties (houses and flats). The freehold interests in between 90 and 100 of the properties have subsequently been sold to the residents under the right to buy provisions of Part V of the Housing Act 1985. Other properties on the development are occupied subject to tenancies.
- 6 The Defendants acquired the freehold interest in the subject property from Jephson Homes Housing Association, the predecessor in title to the Claimant (and now part of the Claimant company), by transfer dated 27 August 2003; and their title is registered at the Land Registry under title number WM812177.
- 7 By clause 20 of, and the Fifth Schedule to, the transfer, the Claimant covenants to provide a limited range of services to the development - most significantly for freeholders such as the Defendants the maintenance of the

‘common areas’ of the development (pavements, footpaths, lawns, flower beds, shrubs, trees, walls, hedges and fences).

- 8 By paragraph 1 of Part II of the Fourth Schedule to the transfer, the Defendants covenant ‘to pay the [Defendants’] proportion of the [estate charge] calculated in accordance with the Fifth Schedule’. Pursuant to that provision, the costs incurred in carrying out the services are apportioned equally among the 293 residential properties on the development.
- 9 There has been a history of dispute between the successive owners of the development and the Defendants. For a period up to 2007 the Defendants withheld payment of estate charges on the ground that the owners of the development were not carrying out grounds maintenance to a satisfactory standard (or at all). In 2007 Jephson Homes Housing Association brought a County Court action against the Defendants to recover arrears of estate charges. The Defendants successfully defended that claim.
- 10 According to Mr Roberts, the first Defendant, following that County Court action the provision of services improved and he paid the estate charges demanded. However, in his view the provision of services subsequently deteriorated and he again withheld payment.
- 11 On 17 January 2019 the Claimant commenced a County Court action against the Defendants to recover alleged unpaid estate charges of £477.50. The sum of £477.50 comprises unpaid estate charges relating to the years 2014/2015 to 2017/2018. (The estate charge year runs from 1 April to 31 March in the following year.) The sum of £477.50 does not represent the total estate charges for the four years because the Defendants made some payments between 2014 and 2017; but they have made no further payments since January 2017.
- 12 The Claimant also claimed interest (to date) of £78.00, court fees of £70.00 and legal representative’s costs of £70.00. The Claimant subsequently claimed the hearing fee of £80.00.
- 13 On 11 February 2019 the Mr Roberts entered a defence, alleging that the failures on the part of the Claimant in relation to its maintenance of the development constituted a breach of contract.
- 14 By Order dated 12 September 2019, HH District Judge Riley purported to transfer the claim to the First-tier Tribunal (Property Chamber) (Residential Property) pursuant to section 176A of, and paragraph 3 of Schedule 12 to, the Commonhold and Leasehold Reform Act 2002. However, since the Tribunal has no jurisdiction to determine disputes relating to freehold land, the Court interpreted Judge Riley’s Order as a transfer of the claim pursuant to the Civil Justice Council flexible deployment pilot scheme - for determination by a First-tier Tribunal Judge sitting as a Judge of the County Court exercising the jurisdiction of a District Judge (under section 5(2)(t) and (u) of the County Court Act 1984, as amended by Schedule 9 to the Crime and Courts Act 2013), assisted by a Valuer Member of the Tribunal, sitting as an Assessor.
- 15 With a view to clarifying the matters in dispute the Court issued Directions on 2 October 2019.

## **Inspection and hearing**

- 16 The Court inspected the development on 20 December 2019. Present at the inspection were: Ms Joanne Brennan and Mr Tim Morgan, officers/employees of Stonewater (2) Limited, and Mr Habib Khan, of Shakespeare Martineau LLP representing the Claimant; and Mr Peter Roberts and his wife Mrs Claire Roberts, representing the Defendants.
- 17 Immediately following the inspection a hearing was held at Centre City Tower in Birmingham. The same persons were present at the hearing.

## **Estate charges**

### Statutory regime

- 18 As noted above, the Defendants acquired the freehold interest in the subject property from Jephson Homes Housing Association under the right to buy provisions of Part V of the Housing Act 1985 ('the 1985 Act'). Section 45(1) of the 1985 Act, so far as material, provides –
- (1) The following provisions of this Part down to section 51 (restrictions on, and provision of information about, services charges) apply where—
- (a) the freehold of a house has been conveyed by a public sector authority; and
- (b) the conveyance enabled the vendor to recover from the purchaser a service charge.
- 19 It is not disputed that the conditions in paragraphs (a) and (b) are satisfied.
- 20 Section 47(1) of the 1985 Act, so far as material, provides –
- (1) Relevant costs shall be taken into account in determining the amount of [an estate charge] payable for a period—
- (a) only to the extent that they are reasonably incurred, and
- (b) where they are incurred on the provision 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.

### Estate charge demands

- 21 As noted above, the unpaid estate charges relate to the estate charge years 2014/2015 to 2017/2018. The demands for those years were as follows –

Head of expenditure	2014/15	2015/16	2016/17	2017/18
General repairs and maintenance	2252.79	1213.83	0.00	2148.79
Common area costs	1138.02	683.74	0.00	0.00
Health and safety costs	0.00	0.00	0.00	0.00
Communal electricity costs	226.48	222.31	184.27	120.39
Grounds maintenance	26687.52	26687.52	23671.60	21656.84
Tree works	3200.00	3420.00	0.00	0.00
Planned and cyclical works	0.00	0.00	0.00	0.00
Management charge	21389.00	21389.00	22030.67	22030.67
Total	54893.81	53616.40	45886.54	45956.69

- 22 Subject to adjustments for variance between estimated and actual expenditure, applying equal apportionment among all 293 properties on the development, the sums demanded from the Defendants were as follows –

2014/2015:	£195.37
2015/2016:	£178.34
2016/2017:	£132.98
2017/2018:	£155.31

- 23 As noted above, the Defendants made some payments in response to those demands, although the payments were not specifically allocated to particular heads of expenditure. In the circumstances, the Court took the view that it was open to it to determine the reasonableness of the costs included in the estate charge accounts under the challenged heads of expenditure for each of the four years.

#### Reasonableness of estate charges

- 24 In making its determination the Court took into account, so far as relevant, all written representations of the parties, together with the oral arguments advanced at the hearing.

#### *Issues for determination*

- 25 Although written representations from Mr Roberts referred to matters that might have constituted challenges to a range of heads of expenditure, at the hearing he only challenged the costs of grounds maintenance and the management charges. The Court therefore determined that all other estate charge costs were reasonably incurred.

#### *Grounds maintenance*

- 26 In his written statement Mr Roberts submitted that throughout the period covered by the present claim the Claimant has been in breach of its covenant in the transfer relating to grounds maintenance and that the development has fallen into disrepair. He referred to 'rotting fencing, broken walls/brickwork, loose/raised slabs and general untidiness'. In his oral evidence at the hearing, he elaborated on the alleged untidiness, referring to moss on the pathways, leaves and general rubbish among the shrubs and hedges.
- 27 Mr Roberts also alleged a failure to maintain three play areas on the edge of the development. However, at the hearing he accepted that Land Registry documentation established that the play areas were in fact owned by Dudley Metropolitan Borough Council and that their maintenance was not the responsibility of the Claimant. The Court therefore disregarded the obvious failure to maintain these areas.
- 28 Mr Roberts put in evidence a collection of photographs of the development apparently taken in July 2019. These photographs appeared to support the complaints referred to in his written statement.
- 29 He also put in evidence a further collection of photographs of the development taken in the three days before the hearing. As frequently happens in such cases the Claimant had arranged for 'remedial work' to be carried out shortly before members of the Court inspected the development. These latter photographs appeared to show that, while some of the issues had been addressed, many issues remained.
- 30 During the inspection the members of the Court noted the condition of the development, which in their view was fairly reflected in Mr Roberts' recent photographs. While some (but not all) moss on the pathways had been

scraped off, it had not been collected and removed. There were leaves that had clearly been on the ground for some time. There was rubbish in the shrubs and hedges that had clearly been there for some time. The Court concluded that the 'remedial work' carried out before the inspection had been at best superficial.

- 31 In response to questions from the Court, Mr Roberts stated that costs for grounds maintenance included in the estate charge accounts (and the Defendants' proportion of between £75.00 and £90.00 per year) would not be unreasonable *if the work were carried out to a reasonable standard*. However, he argued that the actual standard of the work meant that he should only be liable for 25 per cent of those figures.
- 32 The Claimant provided details of the agreed maintenance schedule, which specified visits by separate teams for grass cutting and litter removal, weeding and hedge trimming once every ten days from April to September and one every month from October to March.
- 33 The Claimant stated that it undertakes regular inspections to monitor the grounds maintenance work and that it had received relatively few complaints from residents on the development.
- 34 The Claimant also submitted and the Court accepted that some of the broken fencing was the responsibility of individual property owners and not of the Claimant.
- 35 Disputes of this kind present evidential difficulties for the Court. The dispute concerned the condition of the development over a period of four years from 2014 to 2018. While the Court had a good deal of photographic evidence and the evidence of its own inspection, that evidence related to the condition of the development on a few days in 2019. However, the Court was satisfied that it was able to draw wider conclusions from that narrower evidence base. Not least, the evidence demonstrated that litter and other rubbish had not been removed for some considerable time.
- 36 Although Mr Roberts claimed that he had rarely seen the grounds maintenance contractors, the Court accepts that the contractors did attend the development regularly and carried out grounds maintenance work.
- 37 However, the Court is satisfied that the standard of the grounds maintenance work did not match the detailed specification demanded of the contractor. The Court is satisfied that the work carried out was significantly below the standard that the residents of the development could reasonably expect.
- 38 Quantification of the shortfall from a reasonable standard cannot be scientific. The Court can only make a judgment. In the present case the Court determines that the costs of ground maintenance (and thus the proportion payable by the Defendants) should be discounted by 40 per cent.
- 39 The Court therefore determines that the reasonable costs for grounds maintenance are as follows –

2014/2015:	£16012.51
2015/2016:	£16012.51
2016/2017:	£14202.96
2017/2018:	£12994.10

### *Grounds maintenance: postscript*

- 40 Two weeks after the hearing, and after this decision had been drafted but before it had been issued, the Claimant submitted a plan of the development, which indicated that a number of pathways are adopted by Dudley Metropolitan Borough Council. The Claimant therefore submitted that it should not be responsible for any lack of maintenance to those adopted pathways.
- 41 The Defendants were given the opportunity to respond to this late evidence; and Mr Roberts raised pertinent questions as to the inclusion in the estate charge accounts of costs incurred in respect of the adopted pathways.
- 42 The Court is not persuaded that it should admit late evidence of matters that should have been known to the Claimant at the time of the hearing.
- 43 However, even if the late evidence were admitted, the Court is of the view that it would be a two-edged sword. On the one hand, the Claimant should not be responsible for any lack of maintenance to the adopted pathways. On the other hand, if the adopted pathways are not the responsibility of the Claimant, it should not have been paying its contractors to maintain those pathways; and costs incurred by the Claimant in respect of those pathways could not be said to be reasonably incurred.
- 44 The Court concludes that any reduction in the discount that the Court might make to reflect the lesser extent of the Claimant's responsibility for the shortcomings of the grounds maintenance work would be offset by a reduction in the reasonable costs of the grounds maintenance contract to reflect the more limited responsibility of the Claimant.
- 45 The Court is of the view therefore that the admission of the late evidence would not affect its determination set out in paragraph 39 above.

### *Management charges*

- 46 Mr Roberts challenged the management charges on the ground that 'the estate is not managed effectively or sufficiently'. At the hearing, it seemed that Mr Roberts remained focussed on the management of the grounds maintenance contract; and accordingly he initially submitted that the management charges should be discounted by at least 80 per cent.
- 47 The Claimant submits that it has received no complaints about the standard of management and that the management charges are reasonable.
- 48 The Court notes that the management charges equate to a charge per property of approximately £75.00 per year. The Court would make a number of observations.
- (i) Although the management charges constitute more than 40 per cent of the total estate charge (because the range of substantive services is limited and involves low costs), a management charge of £75.00 per property could be regarded as low. The management of any development involves unavoidable but frequently 'invisible' costs, irrespective of the substantive services provided. However, it seems that the Claimant, having calculated its management costs for the development and apportioned those costs equally among the 293 properties, is satisfied with the level of management charges.

- (ii) The management costs in relation to a freehold property, where the owner has assumed responsibility for the property, would normally be expected to be lower than for leased/rented properties in relation to which the freeholder/management company retains many responsibilities. Unless, there are additional service charges (with additional management charges) for leased/rented properties on the development, it might be argued that the equal apportionment among all properties of the management charges under consideration is unreasonable. However, in the absence of further evidence, the Court simply makes that observation.
- 49 The Court therefore takes as its starting point that the management charges included in the estate charge accounts would be reasonable *if the management were of a reasonable standard*.
- 50 However, the Court is of the view that the management provided by the Claimant in relation to the grounds maintenance contract has not always been of a reasonable standard. Notwithstanding its inspection and monitoring procedures, the Court finds that those procedures are not wholly effective and that the Claimant bears some responsibility for the failings in the provision of the grounds maintenance services. On the other hand, in determining the appropriate reduction to reflect the management shortcomings, the Court finds that the Claimant has carried out most of its other management functions to a reasonable standard. In the circumstances the Court determines that an appropriate reduction would be 10 per cent.
- 51 The Court therefore determines that the reasonable costs for management charges are as follows –
- 2014/2015: £19250.10  
 2015/2016: £19250.10  
 2016/2017: £19827.60  
 2017/2018: £19827.60

Estate charges: summary

- 52 The Court therefore determines that the reasonable estate charges payable in respect of the development are as follows –

Head of expenditure	2014/15	2015/16	2016/17	2017/18
General repairs and maintenance	2252.79	1213.83	0.00	2148.79
Common area costs	1138.02	683.74	0.00	0.00
Health and safety costs	0.00	0.00	0.00	0.00
Communal electricity costs	226.48	222.31	184.27	120.39
Grounds maintenance	16012.51	16012.51	14202.96	12994.10
Tree works	3200.00	3420.00	0.00	0.00
Planned and cyclical works	0.00	0.00	0.00	0.00
Management charge	19250.10	19250.10	19827.60	19827.60
Total	42079.90	40802.49	34214.83	35090.88

- 53 Applying the equal apportionment among all 293 properties on the development, the Court determines that the reasonable estate charges payable by the Defendants are as follows –



2014/2015: £143.62  
2015/2016: £139.26  
2016/2017: £116.77  
2017/2018: £119.76

- 54 The total reasonable estate charges payable by the Defendants for the relevant years are therefore £519.41, compared with the sum of £662.00 actually demanded.
- 55 In order to calculate the sum payable under the Court Order, it is necessary to deduct from the amount claimed in the County Court action (£477.50) the difference between the estate charges demanded and the reasonable estate charges as determined by the Court.
- 56 It follows that the outstanding sum payable by the Defendants to the Claimant is £477.50 less £142.59 (£662.00 less £519.41) = £334.91.

### **Interest on unpaid estate charges**

- 57 The Claimant claimed interest on unpaid estate charges from 7 May 2018.
- 58 In accordance with clause 18 of the transfer, the Claimant is entitled to interest (at 3 per cent above the base rate of Barclays Bank plc) on unpaid estate charges.
- 59 The Court has calculated the interest based on the Claimant's figures but adjusted to reflect the unpaid *reasonable* estate charges. The Court determines that the total interest payable to the date of judgment (10 January 2020) is £67.01.

### **Costs**

- 60 The case was allocated to the small claims track; and Mr Khan, on behalf of the Claimant, did not dispute that the question of costs was governed by CPR 27.14.
- 61 CPR 27.14, so far as material, provides –
- (1) This rule applies to any case which has been allocated to the small claims track.
  - (2) The court may not order a party to pay a sum to another party in respect of that other party's costs, fees and expenses, including those relating to an appeal, except –
    - (a) the fixed costs attributable to issuing the claim which –
      - (i) are payable under Part 45; or
      - (ii) would be payable under Part 45 if that Part applied to the claim;
    - (c) any court fees paid by that other party;
    - ...
    - (g) such further costs as the court may assess by the summary procedure and order to be paid by a party who has behaved unreasonably ....
- 62 Mr Khan tentatively suggested that the Defendants had behaved unreasonably. However, the Court rejects any such suggestion. In the view of the Court, the dispute between the parties was unlikely to be resolved except by litigation; and neither the Claimant nor the Defendants had behaved unreasonably in respectively commencing and defending the County Court action.

63 Accordingly, the Court determines that in accordance with CPR 27.14 the costs to be paid by the Defendants to the Claimant are limited to –

Court fee on issue:	£70.00
Legal representative's costs:	£70.00
Hearing fee:	£80.00
Total:	£220.00

### **Decision**

64 The Defendants shall within 28 days pay to the Claimant the sum of £334.91 in respect of unpaid estate charges.

65 The Defendants shall within 28 days pay to the Claimant the sum of £67.01 in respect of interest on unpaid estate charges.

66 The Defendants shall within 28 days pay to the Claimant the sum of £220.00 in respect in respect of legal representative's costs and court fees.

67 The Order giving effect to this Decision, a copy of which is annexed to this Decision, has been sent to the County Court for sealing.

### **Appeal**

68 If a party wishes to appeal the decision made by the Tribunal Judge in his capacity as a Judge of the County Court, that appeal must be made to the relevant Appeal Centre of the County Court. The party wishing to appeal must either (i) make a written application for permission to appeal to the Judge at the Regional office of the First-tier Tribunal which has been dealing with the case or (ii) include an application for permission to appeal in any appeal application made directly to the County Court Appeal Centre.

69 In any event, regardless of whether an application has for permission to appeal has been made to the Judge at the First-tier Tribunal, any Appeal Notice must be lodged at the County Court Appeal Centre not later than 21 days from the date of the decision being appealed against.

70 Further information can be found at the County Court offices or online.

### **Estate charges for 2018/2019 and 2019/2020**

71 Although the present decision relates to the estate charge years 2014/2015 to 2017/2018, it will be apparent that the Court's determination is largely based on evidence that relates to estate charge year 2019/2020. To avoid a possible repeated dispute and litigation, the Claimant might think it appropriate to apply the Court's decision in relation to grounds maintenance and management charges to the estate charge years 2018/2019 and 2019/2020.

10 January 2020

Professor Nigel P Gravells

Judge of the First-tier Tribunal sitting as a Judge of the County Court