



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY) &**

**IN THE COUNTY COURT at
Clerkenwell and Shoreditch, sitting
at 10 Alfred Place, London WC1E
7LR**

Tribunal reference : **LON/00AB/LSC/2019/0349**

Court claim number : **F3CW32R1**

Property : **17 The Odeon, 22=30 Longbridge
Road, Barking, Essex IG11 8RR**

Applicant/Claimant : **Proxima GR Properties Limited**

Representative : **J B Leitch Limited (Solicitors)**

Respondent/Defendant : **Mr Henri Moudiki**

Representative : **In person**

Tribunal members : **Judge Donegan
Mrs E Flint FRICS (Valuer
Member)**

In the County Court : **Judge Donegan**

Date of decision : **22 January 2020**

DECISION

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

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

Summary of the decisions made by the Tribunal

1. The following administration and service charges are payable by the respondent to the applicant by 06 March 2020:

01/01/2019-30/06/2019	Service Charge	£1,137.39
01/07/2017-30/06/2018	Serve Charge YE Adjustment	£216.38
22/01/2019	Administration Charge	£60.00
15/02/2019	Legal Review Fee	£60.00
Total		£1,473.77

Summary of the decisions made by the Court

2. The following sums are payable by the respondent to the applicant by 06 March 2020:

(i)	Ground rent	£125
(ii)	Legal costs under paragraph 11(a) of the fourth schedule to the lease	£2,598.68
(iii)	Interest at 8% per annum pro rata from 18 April 2019 to 22 January 2020	£97.30.

The background and procedural history

3. The applicant is the freeholder of a mixed-use development known as Odeon Cinema and Shops numbered 24, 26, 28, 30, 32 and 38 Longbridge Road, Barking ('the Development'). The Development is managed by FirstPort Property Services Limited ('FirstPort'), which collect service charges on behalf of the applicant. A separate company, Estates & Management Limited collects the ground rent. The respondent is the long leaseholder of the Flat, which is within the Development.
4. The applicant submitted a claim to the County Court Business Centre on 18 April 2019, in which it claimed ground rent, administration charges, service charges and contractual costs totalling £3,060.44. The respondent filed a defence on 23 April and the applicant filed a reply on 28 May. The proceedings were then transferred the County Court at Clerkenwell and Shoreditch before being transferred to the Tribunal by an order of District Judge Sterlini dated 30 August 2019.

5. The Tribunal issued directions at an oral case management hearing on 17 October 2019. The applicant was represented by counsel, Mr Tom Morris and the respondent appeared in person. The case was allocated to the paper track and the paper determination took place on 21 January 2020.
6. The proceedings include some claims that fall outside the Tribunal's jurisdiction; being ground rent, interest and contractual costs. However, judges of the First-tier Tribunal are now also judges of the County Court by virtue of section 5(2)(t) and (u) of the County Court Act 1984 (as amended). Paragraphs (5) and (6) of the directions explained that the judge would decide all issues, including those outside the Tribunal's jurisdiction.
7. Direction 3 required the applicant to serve its statement of case by 31 October 2019 and direction 4 required the respondent to serve its response by 14 November. These deadlines were subsequently extended, at the applicant's request to 07 and 21 November. The applicant complied with extended deadline but the respondent did not and no response has been served.
8. Direction 6 required the parties to exchange witness statements by 12 December 2019, which was later extended to 19 December. The applicant complied with the extended deadline but no statement has been served by the respondent.

Tribunal issues

9. The applicants claim the following administration and service charges:

01/01/2019-30/06/2019	Service Charge	£1,137.39
01/07/2017-30/06/2018	Serve Charge YE Adjustment	£216.38
22/01/2019	Administration Charge	£60.00
15/02/2019	Legal Review Fee	<u>£60.00</u>
Total		£1,473.77

10. The defence filed by the respondent was extremely brief. His grounds for disputing the claim were:

“(1) I HAVEN’T RECEIVED ANY PAYMENT REQUEST

“(2) I HAVE GIVE FIRST PORT MY DIRECT DEBIT ACCOUNT NUMBER TO DEDUCT THE MONEY BUT THEY DON’T THEY

JUST KEEP TAKING TO THE SOLICITOR AND CHARGING MONEY

(3) I DON'T KNOW HOW MUCH SHE CAME TO THIS AMOUNT"

11. No additional documents were served by the respondent. His only grounds for disputing the claim were those set out above.
12. The applicant addressed these grounds in its reply and statement of case and in a witness statement from Ms Jo Walker of FirstPort. She stated that FirstPort has no record of ever receiving a direct debit mandate from the respondent and he had never paid by direct debit. In its statement of case, the applicant explained that FirstPort had sent a mandate to the respondent but this had not been returned and no direct debit had been set up.
13. Exhibited to Ms Walker's statement were copies of the various demands, which had all been sent to the respondent at 39 Meeson Street, London E5 0EA, being the address given in his defence. Additional relevant documents, including a copy of the lease and further copies of the demands, were exhibited to the applicant's statement of case.

The Tribunal's decision

14. The administration and service charges claimed by the applicant are payable by the respondent in full.

Reasons for the tribunal's decision

15. The tribunal accepts Ms Walker's evidence in its entirety. This was not challenged by the respondent who did not serve any evidence of his own. The tribunal finds that the administration and service charge demands were validly served on the respondent. It also accepts and finds that FirstPort has not received direct debit mandate from the respondent.
16. The respondent did not dispute the amount of the administration or service charges or raise any arguments over contractual 'payability' or reasonableness.

County court issues

17. In its statement of case, the applicant also claimed ground rent of £125 for the half-year commencing 25 December 2018, a 'Breach of Lease Fee' of £75, contractual costs totalling £3,257.52 plus interest. The costs figure was broken down as follows:

Solicitor's costs £2,127.10 plus VAT

Court fee £105.00

Counsel's fees £500.00 plus VAT

18. The costs are claimed under paragraph 11(a) of the fourth schedule to the lease, which obliges the respondent:

“To pay to the Landlord all costs charges and expenses (including legal costs and fees payable to a surveyor) which may be incurred by the Landlord in or in contemplation of any proceedings under Sections 146 and 147 of the Law of Property Act 1925 notwithstanding forfeiture may be avoided otherwise than by relief granted by the Court”.

The applicant contends that its costs of these proceedings have been incurred in contemplation of service of a section 146 notice and relies on the Court of Appeal's decisions in ***Freeholders of 69 Marina v Oram & Ghoorun [2011] EWCA Civ 1258***, ***Church Commissioners for England v Ibrahim and Another [1997] 1 EGLR 13 CA*** and ***Chaplain Limited v Kumari [2015] EWCA Civ 798***.

19. Following ***John Romans Park Homes Limited v Hancock [2019]*** (unreported – Martin Rodger sitting as a Judge of the County Court), it is not possible to claim all the costs of proceedings under section 51 of the Senior Courts Act 1981 ('the 1981 Act').

20. The different costs rules in the County Court and the Tribunal apply.

21. So, where the Tribunal is dealing with Tribunal issues, the Tribunal 'no-costs' (save for rule 13 costs) considerations apply. However, a landlord may be able to claim these costs under the lease, as a sucy charge will due until a valid demand is served, accompanied by a summary of rights and obligations. In that event, paragraph 5(A) of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ('the 2002 Act') may come into play. There was no evidence that contractual costs have been demanded from the respondent as an administration charge.

22. As to costs that were incurred whilst the matter was; (a) physically in the County Court, and; (b) at the Tribunal but being dealt with by the Tribunal Judge sitting as a Judge of the County Court - the Court rules apply and accordingly;

- (a) If the matter had been allocated to the Fast Track, full costs can be awarded (subject to the fixed costs of Counsel's fees – see CPR Part 45)
- (b) If the matter had been allocated to the Small Claims Track, the limited costs rules applicable to that track apply but if costs are claimed (and are recoverable) under the lease then the landlord may be entitled to contractual costs despite the Small Claims restriction.

Decision

- 23. The ground rent of £125 is payable by the respondent in full.
- 24. The 'Breach of Lease Fee' of £75 is not payable by the respondent.
- 25. Contractual costs of £2,598.68 (including VAT) are payable by the respondent.

Reasons

- 26. There was no challenge to the ground rent claim and a copy of the relevant demand was exhibited to the applicant's statement of case. The Court finds that the demand was validly served on the respondent and the rent is payable in full.
- 27. The applicant did not disclose any demand for the 'Breach of Lease Fee' or explain the contractual basis for this fee. It cannot be recovered under paragraph 11(a) of the fourth schedule to the lease, as the outstanding ground rent is below the £350 limit at section 167 of the 2002 Act. Further, there is no need to serve a section 146 notice for unpaid ground rent (above the £350 limit). The Court is not satisfied that this fee is contractually recoverable from the respondent.
- 28. The respondent did not challenge the claim for contractual costs or dispute the amount of these costs. The value of the administration and service charge claim is substantially below the Small Claims limit (£10,000). However, the Court is satisfied that the costs of these proceedings come within the ambit of paragraph 11(a) of the fourth schedule to the lease and are contractually recoverable. The respondent is to pay the applicant's costs for the period when the case was in the County Court (up to 30 August 2019), pursuant to section 51 of the 1981 Act. The respondent must also pay the applicant's costs of the County Court issues for the period 31 August 2019 to date. However, different rules apply to the Tribunal issues during this period. The costs relating to those issues cannot be awarded under section 51 and are not payable by the respondent.

29. The applicant's costs up to the commencement of the County Court proceedings were £1,176 plus the court fee of £105 (total £1,281). The Tribunal allows these costs in full. It appears that further costs of £1,976.52 have been incurred since the commencement of those proceedings (total costs of £3,257.52 less £1,281). The applicant did not apportion its post-commencement costs. Clearly some costs were incurred in the County Court between the date of issue (19 April 2019) and the date of transfer (30 August 2019). Taking a broad-brush approach, the Court has apportioned one-third of the post-commencement costs to this period, one-third to the County Court issues before the Tribunal and one-third to the Tribunal issues before the Tribunal. It follows that the respondent must pay the following contractual costs to the applicant:

Costs to the commencement of County Court proceedings	£1,176.00
Court fee	£105.00
Costs for period 19 April to 30 August 2019)	£658.84
Costs of County Court issues before the Tribunal	<u>£658.84</u>
Total	£2,598.68

Rate of interest

30. The applicant claims interest at the rate of £0.35 per day, which is based on the statutory rate of 8% per annum (pro rata), pursuant to section 69 of the County Courts Act 1984. Interest is only claimed from the date the County Court proceedings were issued. The interest claim was not challenged and the Court allows interest from 19 April 2019 today's date in the total sum of **£97.30** (278 days at £0.35 per day).

Conclusion

31. By way of conclusion, the following awards are made in favour of the applicant

Administration and service charges	£1,473.77
Ground rent	£125.00
Interest	<u>£97.30</u>
	£1,696.07
Contractual costs	£2,598.68

32. The Court has drawn a form of judgment that will be submitted with these reasons to the County Court sitting at Clerkenwell and Shoreditch, to be entered in the court's records. All payments are to be made by 06 March 2020.

Name: Judge Donegan

Date: 22 January 2020

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 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.

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

5. Any application for permission to appeal must arrive at the tribunal offices in writing within 28 days after the date this decision is sent to the parties.
6. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking.
7. 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

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