



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

**IN THE COUNTY COURT MONEY
CLAIMS CENTRE, sitting at 10 Alfred
Place, London WC1E 7LR**

Tribunal reference : **LON/00AW/LSC/2019/0290**

Court claim number : **F67YJ759**

Property : **Flat 5 York House, Western Road,
Romford RM1 3LP**

Applicant/Claimant : **Mr Allan Reece**

Representative : **In person**

**Respondents/
Defendants** : **Mr Simon John Sampson (1)
Ms Lucy Elizabeth Clegg (2)**

Representative : **Mr Richard Sandler (Solicitor)**

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

In the County Court : **Judge Donegan, with Mrs Flint as
assessor**

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. No service charges are payable by the respondents to the applicant for the period 01 April 2018 to 10 March 2019.

Summary of the decisions made by the Court

2. The applicant's claims for interest and costs are dismissed.
3. The respondents' claim for costs is dismissed in respect of:
 - (a) the period before the transfer of the proceedings to the Tribunal; and
 - (b) the County Court issues following the transfer to the Tribunal.

The proceedings

4. The applicant originally issued these proceedings on 05 July 2019 in the County Court Money Claims Centre under claim number F67YJ759. The respondents filed a defence dated 02 June 2019. The proceedings were then transferred to the Tribunal by an order of Deputy District Judge White dated 29 July 2019.
5. Directions were issued by the Tribunal on 19 August 2019 and the case was listed for hearing on 04 November 2019. The hearing was subsequently postponed and the restored hearing was vacated due to the applicant's ill-health. In a letter dated 07 January 2020, the Tribunal informed the parties that it would determine the case on the papers in the week commencing 20 January, unless either party requested an oral hearing before that date. No such request was made. The paper determination took place on 22 January.

The background

6. The applicant is the registered freehold proprietor of a three-storey property known as York House, 48 to 50 Western Road, Romford RM1 3LP ('the Block'). Originally there were offices on the ground and first floor and 7 residential flats (numbered 1-7) on the second floor. The ground and first floors were converted into 11 new flats (numbered 8-18) in 2015.
7. The leases of Flats 1-7 are tripartite with one of the parties being a management company, York House Flat Management Company Limited ('YHFMCL'). Following the conversion of the additional 11 flats a second management company, York House Flat Management 2015 Limited ('YHFM15L'), was formed. YHFMCL remains in existence and the respondents are shareholders in that company. The second respondent is also a director and the company secretary.
8. A right to manage company took over the management of the Block on 10 March 2019.

9. The specific lease provisions are referred to below, where appropriate.

The issues

10. The sums claimed by the applicant are:
- (i) A service charge of £561.80 for the period 01 April 2018 to 10 March 2019;
 - (ii) Statutory interest of £0.60 to the date of issue and continuing interest after that date; and
 - (iii) Costs.
11. The claims for interest and costs fall outside the Tribunal's jurisdiction. 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 Tribunal's directions explained that the judge would decide all issues, including those outside the Tribunal's jurisdiction.

The lease

12. The lease was granted on 16 May 1983 for a term of 199 years (less one day) from 25 March 1983. The original parties were Dennis Charles Luck, Lawrence Henry Luck and Peter Geoffrey Luck ("the Lessors"), York House Flat Management Company Limited ("the Company") and Mary Frances Alexander ("the Lessee").
13. The Lessee's covenants are at clause 3 and include:

"(3) To pay to the Company by means of the contributions mentioned in Clause 3(4) hereof a one seventh part of all moneys expended by the Company in observing and performing the covenants contained in clause 4 hereof and of all expenses incurred by the Company in carrying out the objects for which the same is incorporated other than those referred to in Clause 4 hereof

(4) To pay to the Company in each year during the said term by equal half yearly payments on the Twenty-fifth day of December and the Twenty-fourth day of June in every year a sum estimated by the Company to be the anticipated liability of the Lessee for the year commencing on the twenty-fifth day of December in each year in respect of the items mentioned in Clause 4(1) to (4) hereof any further to pay to the Company on the signing hereof the sum of One hundred pounds on account of such liability up to the twenty-fifth day of December next and further to pay to the Company within twenty-one days of delivery of the Statement of Account referred to in Clause 4(5) hereof any deficit due from the Lessee in respect of the previous year"

11. The Company's covenants are at clause 4 and include obligations to maintain and repair the 'undemised' parts of the second floor of the Block and various common parts. They also include obligations to contribute to the costs and expenses of various services to be performed by the Lessors, insure the demised premises and the 'undemised' parts of the second floor and to deliver to the Lessee an annual "*Statement of Account of the Maintenance Account*".
12. The fourth schedule lists the services to be provided by the Lessors, which include the maintenance and repair of the structure of the Block, the pipes under the Block, various external areas and the boundary walls and fences."

The Tribunal issues

13. The applicant produced a determination bundle in accordance with the directions, which ran to 512 pages. This included the pleadings and orders from the County Court, the directions and statements of case in the Tribunal, the lease, various service charge accounts and demands and other relevant documents.
14. It is convenient to summarise the respondents' case first, as set out their statement of case and reply served in the Tribunal proceedings. In brief, they contend that the disputed service charge is not payable as it was demanded by the applicant; rather than YHFMCL. They also dispute various items in the service charge accounts for the period ended 10 March 2019 and for the year ended 31 March 2018 and contend that some are not contractually recoverable under their lease.
15. The respondents invited the Tribunal to determine their service charges for the years ended 31 March 2017 and 31 March 2018, as well as the charges for the period ended 10 March 2019. The Tribunal has no jurisdiction to do so, as the earlier charges did not form part of the case transferred by the County Court. Neither party has made a separate application to determine these charges.
16. The background to the claim was set out, at great length, in the applicant's statement of case. It is unnecessary to recite this in detail. The salient points are:
 - (a) The applicant met with two directors of YHFMCL, Mr Adler and Ms Finbow, in August 2015 and discussed the possible management of all 18 flats by one company. Mr Adler and Mr Finbow "*agreed that it would be a good idea*".
 - (b) On 13 October 2015, Mr Finbow informed the applicant that Flats 1-7 preferred to stay separate to Flats 8-18 and wanted to be "*invoiced individually for any Service Charges payable going forward.*" The second respondent, as a director of YHFMCL, would or should have been aware of this 'agreement'.
 - (c) The applicant has sent individual service charge demands to the leaseholders of Flats 1-7 since 2015/16. The respondents paid these

demands, without protest, until 2019. They have only disputed the 2018/19 demand, which was issued on 11 April 2019.

(d) The disputed service charges are contractually recoverable under the lease and are payable in full.

17. The relevant service charge demand took the form of an invoice from YHFM15L dated 11 April 2019, which was accompanied by a summary of rights and obligations. The invoice incorrectly named the landlord as "*Allan Reece Associates*". The covering letter was from YHFM15L and was also dated 11 April 2019.

The Tribunal's decision

18. The disputed service charges are not payable by the respondent.

Reasons for the Tribunal's decision

19. There is no contractual basis for the claim. It is clear from clauses 3(3) and (4) of the lease that service charges are payable to YHFML. There is no obligation for the respondents to pay service charges to the applicant or YHFM15L.
20. There was no suggestion that the lease has been varied to enable the applicant to recover service charges from the respondents direct.
21. The discussion between the applicant and Mr Finbow on 13 October 2015 is unlikely to have contractual force. In any event, it did not bind the respondents in their capacity as leaseholders of the Flat. At most it was an agreement between the applicant and YHFML. The fact that the second respondent is a director of this company does not mean she is personally bound by the discussion.
22. The respondents' payment of the earlier service charge demands does not preclude them from challenging the April 2019 demand. They do not have to pay any service charges for the period ended 10 March 2019 until they receive a valid demand from YHFML.

The Court issues

23. The service charge claim has failed and is dismissed. It follows that the interest claim is also dismissed, as is the applicant's claim for costs.

24. In its statement of case, the respondents sought an “*award of costs in favour of the Defendants*” but did not supply details of their costs. In any event, 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).
25. The different costs rules in the County Court and the Tribunal apply. So, where the Tribunal is dealing with Tribunal issues, the Tribunal’s ‘no-costs’ (save for rule 13 costs) regime applies.
26. 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); and
 - (b) If the matter had been allocated to the Small Claims Track, the limited costs rules applicable to that track apply.
27. The value of the claim falls substantially below the Small Claims limit (£10,000) and the respondents have not quantified their costs. Their application for costs is dismissed in respect of:
- (a) the period before the transfer of the proceedings to the Tribunal; and
 - (b) the County Court issues following the transfer.
- The Court has no jurisdiction make an award of costs under section 51 of the 1981 Act, in respect of the Tribunal issues following the transfer.

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.