



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

Case Reference : **LON/00BK/LSC/2019/0347**

Property : **75 Southwold Mansions, Widley
Road, London W92LF**

Applicant : **Scmilla (Freehold) Limited (**
Claimant/Applicant

Representative : **Zachary Kell**

Respondents : **(1) Abdalla Abd El -Mottaleb
Mahmoud (Deceased)
(2) Mervat Ali Mohamed Ali**

Representative : **In person represented by daughter**

Type of Application : **Payability of service charge.**

Tribunal Members : **Jim Shepherd
Michael Taylor FRICS**

In the county court : **Judge Jim Shepherd, with Michael
Taylor FRICS as assessor**

Date of Decision : **2 March 2020**

DECISION

Summary of the decision made

The sum of £ 20457.31 is payable by the Respondent to the Applicant within 28 days of receipt of the final order.

The Respondent chose not to challenge the Applicant's costs. These costs appear reasonable and proportionate to the Tribunal. Accordingly costs are summarily assessed at £7357.20. These costs are payable within 28 days of receipt of the final order.

Introduction

1. Scmillia (Freehold) Limited ("the applicant") is claiming for unpaid service charges in the sum of £20,457.31 for the period up to 5th December 2019 (page 396 of the hearing bundle) in respect of 75 Southwold Mansions, Widley Road, W92LF ("the premises").
2. The case was transferred from the county court to the Tribunal pursuant to an order by DJ Brooks dated 16th July 2019. The order stayed the claim pending the decision by the Tribunal as to the reasonableness of the service charges. By an order made on 17th September 2019 Deputy Regional Tribunal Judge Martynski gave directions (444). *Inter alia* he ordered that the county court claim would be dealt with in its entirety by the Tribunal with the Tribunal Judge sitting as a Judge of the County Court where matters fell outside the jurisdiction of the Tribunal.
3. The first step in the proceedings was to lift the stay that had been imposed by DJ Brooks so that the Tribunal could hear the case in full.
4. Following amendments to the County Courts Act 1984, made by schedule 9 of the Crime and Courts Act 2013, all First Tier Tribunal (FTT) judges are now judges of the county court. Accordingly, where FTT judges sit in the capacity as judges of the county court, they have jurisdiction to determine issues relating to interest and costs that would normally not be dealt with by the tribunal.

5. The Applicant is claiming unpaid service charges, administration fees and costs pursuant to contractual indemnity.

6. The Second Respondent is the widow of the First Respondent. They were Joint Leaseholders until his death when she became the sole leaseholder by way of survivorship. She is defending the claim challenging in particular the payability of reserve fund contributions claimed some of which have already been paid.

The lease

7. The premises are subject to a lease dated 16th December 2011 (" The lease" page 12-35). The lease provides for a service charge by a combination of Clause 2 of the Fifth Schedule, the Eighth Schedule and the Ninth Schedule. Significantly for this case the lease provides for a reserve fund by Clause 11 of the First Schedule. There is no challenge to principal of liability in this case the challenge is to the reasonableness of that liability. Finally the lease also provides costs to be paid by the Leaseholder including legal costs and surveying costs incurred in contemplation of any proceedings under section 146 and 147 of the Law of Property Act 1925 (Clause 5 of the Fifth Schedule).

The claim

8. The Applicants claim service charges, subscription charges in relation to the freehold partly owned by the leaseholders and administration charges in relation to legal letters sent. The most recent balance of unpaid service charges is £20,457.31. The statement on page 395-396 shows that the Respondent has not paid anything since 1st November 2017. In evidence she said that this was because she had not received demands. These had not been sent out by the Applicants because they were concerned about waiving the breach. The Respondent failed to enquire with the Applicants as to the balance. It should have been obvious to her in any event that arrears would be accruing because she wasn't paying anything. This was despite the fact that her primary dispute related to the reserve fund which only accounted for a proportion of the arrears. In circumstances where payment was not being made the Applicants commenced proceedings on 24th July 2018. The Applicants' agents are Burlington Estates

The Defence

9. In her defence dated 7th September 2018 (Page 44 onwards) the Respondent said amongst other things that she and her husband had paid £20000 towards the reserve fund which was split into four phases of proposed works by the previous managing agents to Burlington Estates. She said that only phase 1 and 2 were ever completed. The implication being that the sums paid for phases 3 and 4 had not been accounted for. The Defendant also said that final service charge accounts had not been issued within 18 months of the work being carried out therefore she was not liable. This overlooked the fact that payments into the reserve fund are in effect payments in advance which are not caught by Landlord and Tenant Act 1985, s. 20B. The Defendant also raised issues about the standard of the works although there were no specifics alleged in the written defence.

10. The Defendant's defence was elaborated upon in her statement of case (page 59). She now alleged that she had paid £21460 to the reserve fund. She said that money collected for phase 3 and 4 had not been refunded despite works having not taken place. She also alleged that she had not been properly consulted about works carried out. Finally she made an application pursuant to Landlord and Tenant Act 1985, s.20C.

The response to the Defence

11. In their statement in response (61) the Applicants maintained that the sums are due and that they notified the Respondent as to how the sums due are made up. A letter dated 30th March 2017 (73) from the Applicant to the Respondent gives some explanation but is lacking in detail in relation to the proposed four phases of work and the money collected in the reserve fund. A template s.20 notice dated 26th July 2011 deals with the phase 1 works (page 75-76). There are further s.20 notices *inter alia* at page 77 and 79 but they are not relevant to the current proceedings as the Respondent made clear during the hearing that she did not challenge the more recent work (railings, internal repair and refurbishment, drainage and boundary wall project) her concern was focussed on the proposed four phases and the ongoing payability of the reserve fund contribution.

12. Attached to the Applicant's statement in response were certified accounts for 2012 to date (Page 90 onwards). They reflected the fact that sums had been collected for the

proposed four phases of work but only the phase 1 funds had been drawn down. It transpired in evidence that this was because only Phase 1 had been completed. It also became clear in evidence that the individual reserve funds had been consolidated to one fund in March 2015. This was carried out by crediting the Respondent's account with the sums that they had paid and reclaiming the exact same amount (£19600) into a single reserve fund (Page 138).

The hearing

13. Mr Kell represented the Applicants and the Respondent was represented by her daughter. Mr Kell submitted in opening that the s.20 notice template at page 416 showed that a consultation had taken place in relation to the Phase 1 works and it was likely that the Respondent had received the same letter. He confirmed that the reserve funds had been consolidated into one fund (see the statement at page 394). This consolidation process had been explained to the Respondent in a letter dated 9th April 2015.

14. Mr Kell called evidence from Jamie Fletcher a property manager for Burlington Estates. Mr Fletcher adopted the witness statement of his colleague, Agnes Erina (180) who was ill although he accepted he was unable to give specific information he could provide information about the estate finances.

15. He said Southold Mansions consisted of 140 units in 14 blocks. 12 of the blocks were managed and 2 were under Right to Manage schemes. The blocks were on opposite sides of the road. Each block contained 10 flats and there were single budgets for each block. There was one large garden at the rear of both terraces.

16. Mr Fletcher said that Burlington Estates took over management of the estate in late 2014. The four separate reserve funds were collapsed into one sinking fund. The accounts were credited for the full amount paid and the sums were taken back into a single reserve fund. This can be seen at page 318 of the bundle. He said that external works were carried out in 2018. There was a capital expenditure plan in place.

17. Mr Fletcher said that the handover from the previous managing agents was not smooth and Burlington Estates were not given all of the information. He believed that there had been

consultation on Phase 1 works. Burlington Estates had inherited four independent trust accounts which were ring fenced for specific tasks. These sums were credited and then reclaimed into a single fund.

18. The Respondent's daughter said that her father was an avid letter writer and had raised a number of issues with the service charge accounts. Since their father died she and her brother wrote letters on behalf of the Respondent. She said that they had asked for itemised accounts without success.

19. The Respondent accepted that she had been sent demands in relation to the reserve funds (see for example page 235). She did not accept that she had received the s.20 notice in relation to the Phase 1 works (416) despite the fact that the notice had been sent by post and email. She accepted that her husband had attended a meeting about the phase 1 works. She said that the quality of the work carried out was not good citing work to the access bridge which had to be carried out three times together with a slippery surface on the bridge.

20. Following the lunch adjournment Mr Kell supplied the tribunal with the following information in response to queries raised: There was currently a reserve fund of £33411.75 for the block. Phase 2 works which involved an internal upgrade were never carried out. The final contract sum for Phase 1 was £92170 (110). Phases 2-4 were abandoned and a new asset plan was set out. There were external works carried out in 2017-2018 (but the cost of these was not in dispute).

Decision

21. The Tribunal finds that the full amount claimed by the Applicant is payable for the following reasons:

a) At first glance there was some confusion as to the contributions to the reserve funds and what works were actually carried out. Mr Fletcher's explanation was clear and cogent. The managing agents wanted to consolidate the four separate reserve funds into one. They did this by crediting the sums paid and then reclaiming the amounts to be allocated to the single reserve fund. In the event only one phase of the original proposed works was carried out. These sums were paid from the reserve fund. In

financial terms the Respondent suffered no prejudice from the accounting adjustment. Indeed it is possible that she was not fully charged for the phase 1 works as most of the sums she and her husband had paid were repaid into the single reserve fund.

b) Whilst the Respondent raised issues about the quality of the Phase 1 works these were relatively vague and unsupported by any expert evidence.

c) The s.20 notice at page 416 although a template, was supportive of the fact that a consultation exercise had been carried out in relation to the Phase 1 works. On a balance of probabilities the Tribunal finds that the consultation exercise was carried out.

d) The Respondent accepted her liability in relation to the administration charges and ongoing service charges. Her primary dispute was in relation to the reserve fund which has been dealt with above.

S20C Landlord and Tenant Act 1985

22. Whilst communication between the Applicants and the Respondent has not been smooth at all times the Applicant has tried to explain the breakdown of the charges to the Respondent in correspondence. The Applicants were hampered by the problems that are often associated with a handover from a previous managing agent and in particular the lack of information supplied. For whatever reason, the Respondent chose not to pay anything (including undisputed sums) into her service charge account from the end of 2017. The Applicant had no real choice other than to issue proceedings and needed to be represented for this purpose. On balance the tribunal is not willing to accede to the Respondent's application made pursuant to s.20 Landlord and Tenant Act 1985.

23. Accordingly the Tribunal determines that the sum of £ 20457.31 is payable within 28 days of receipt of the final order. Costs of £7357.20 are also payable within 28 days of receipt of the final order.

Jim Shepherd
2 March 2020

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

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.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

General Form of Judgment or Order

In the County Court at Central London

Sitting at 10 Alfred Place, London , WC1E7LR

Claim No: E77YX569

Scmilla (Freehold) Limited



Claimant

-and-

(1) Abdalla Abd El- Mottaleb Mahmoud (Deceased)

(2) Mervat Ali Mohamed Ali

Defendants

Before Tribunal Judge Shepherd, sitting as Judge of the County Court (District Judge) , with
with Michael Taylor FRICS as assessor.

Upon the claim having been transferred to the First Tier Tribunal for administration.

And Upon hearing Zachary Kell of Counsel for the Claimant and the Defendant in person
represented by her daughter .

And Upon this order putting into effect the decisions of the First Tier Tribunal made at the
same time.

IT IS ORDERED THAT:

1. The Defendant shall pay to the Claimant within 28 days of receipt of this order:

a) The sum of £ 20457.31 being the sum found due and payable in respect of service
charges, to the date of judgment.

b) The sum of £7357.20 in respect of the Claimant's summarily assessed costs

2. The reasons for the making of this Order are set out in the combined decision of the court
and the First Tier Tribunal (Property Chamber) dated under case Ref No
LON/OOBK/LSC/2019/0347

Dated: 2 March 2020