



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

**Case Reference** : CHI/43UM/LIS/2019/0030

**Property** : Flat 41, Park Heights, Constitution Hill,  
Woking, Surrey, GU22 7RT

**Applicant** : Fairhold Artemis Limited (1)  
Constitution Hill Limited (2)

**Representative** : Mr Milton McIntosh(1)  
PDC Law Limited (2)

**Respondent** : Mr Jeremy Coppola

**Representative** : Mrs Anna- Maria Coppola

**Type of Application** : **For the determination of the  
reasonableness of and the liability to  
pay a service charge- section 27 of the  
Landlord and Tenant Act 1985**

**Tribunal  
Member(s)** : Judge J Dobson  
Mr M J S Donaldson FRICS

**Date of Hearing** : 12<sup>th</sup> March 2020

**Date of Decision** : 18<sup>th</sup> May 2020

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**DECISION**

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## **Summary of the Decisions of the Tribunal**

1. The Tribunal determines that the Respondent is liable to the Second Applicant for service charges in the sum of £2876.68.
2. The Respondent is not liable for the administration charges of £706.00.
3. Any costs incurred by the Respondent in connection with the proceedings are not to be included in the amount of any service charges payable by the Second Applicant are granted.

### **Application**

4. The First Applicant apparently issued proceedings in the County Court for non-payment of service charges and related administration charges and contractual costs against the Respondent. The Respondent denied liability for those on the basis of counterclaims. The proceedings were transferred to be administered by the Tribunal and for the elements of the claim falling within the jurisdiction of the Tribunal to be determined by the Tribunal, with the remaining elements to be dealt with by a Tribunal judge sitting as a judge of the County Court.
5. The claims in respect of the service charges and administration charges are in fact, as much later became clear, made on behalf of the Second Applicant, added into the proceedings very late. The regrettable circumstances are dealt with rather more fully in the County Court judgment which accompanies this determination. It may well be that the Second Applicant could have been substituted for the First Applicant in respect of the Tribunal proceedings, in respect of which counterclaims by the Respondent against the First Applicant are not a relevant factor, but there can be no criticism of the Second Applicant simply being added given the circumstances of the very late application made. Nevertheless, there is no ongoing claim by the First Applicant within the jurisdiction of this Tribunal, indeed at all.

### **Directions made/ history of the case and the Background**

6. All of the Orders made in respect of the disputes primarily related to the County Court proceedings. This determination decision does not seek to repeat the matters set out in the judgment in those proceedings, whether in relation to the property or to the case.
7. Suffice to say that the property is a top floor flat (“the Flat”), including a mezzanine level over which there is a roof which stands above the level of the roof for the remainder of the block. The Respondent holds a long lease of the Flat (“the Lease”), containing specific provisions in respect of service charges. The terms of the Lease are referred to below, where appropriate.
8. The Tribunal, on that occasion Judge Agnew and Mr Donaldson FRICS, attempted to undertake an inspection on an earlier hearing date but was

unable to do so. The Tribunal was provided with a significant number of photographs and assisted by written and oral evidence, such that the absence of an inspection did not hamper the ability of the Tribunal to reach a decision.

### **The Law in respect of the Applications**

9. The relevant legal provisions are set out in the Appendix to this decision.

### **The Lease and interpretation of it**

10. The relevant parts of the Lease read as follows:-

“7. THE Lessee hereby covenants with the Management Company and hereby covenants separately with the Lessor that subject to the provisions of clauses 5 and 6 hereof the Lessee will

7.1 pay to the Management Company in respect of each Accounting Year (hereinafter called “the Maintenance Year”) the Lessee’s share of the Estate Maintenance Fund of the expenses which the Management Company shall in relation to the Estate reasonably and properly incur in each Maintenance Year in complying with its obligations under Part A of the Fifth Schedule hereto

7.2 pay to the Management Company in respect of each Accounting Year the Lessees Share of the Building Maintenance Fund of the expenses which the Management Company shall in relation to the Building reasonably and properly incur in each Maintenance Year in complying with its obligations under Part A of the Sixth Schedule hereto

7.3 pay to the Management Company in respect of each Accounting Year the Lessees Share of the Private Building Maintenance Fund of the expenses which the Management Company shall in relation to the Building reasonably and properly incur in each Maintenance Year in complying with its obligations under Part B of the Sixth Schedule hereto

7.4 pay to the Management Company in respect of each Accounting Year the Lessees Share of the Building Maintenance Fund of the expenses which the Management Company shall in relation to the Building reasonably and properly incur in each Maintenance Year in complying with its obligations under Part C of the Sixth Schedule hereto

7.5 pay to the Management Company in advance on the 1<sup>st</sup> January and the 1<sup>st</sup> July in each year on account of the maintenance charges payable by the Lessee one half of the Interim Estate Management Charge one half of the Interim Building Management Charge and one half of the Interim Car Park Management Charge.

7.6 within fourteen days after the accounts of the Management Company for the Maintenance Year have been audited and a certificate signed by the auditors stating the amount of the maintenance charges attributable to the Demised Premises for that year (or a certified copy thereof) has been served on the Lessee (such certificate to be final and binding on the Lessee) to pay to the Management Company the amount (if any) by which the maintenance charges payable in respect of the Demised Premises for such year exceed the amount paid on account in respect of the Demised Premises and if less than the amount paid in advance on account thereof any excess shall at the discretion of the Management Company either be repaid to the Lessee or retained by the Management Company on account of payment due from the Lessee in future years

7.7 PROVIDED THAT:-

In the event of any dispute as to the amount of the maintenance charges payable by the Lessee the certificate of the Lessor's auditors as to the amount thereof shall be conclusive and binding on all parties."

**THE SIXTH SCHEDULE hereinafter referred to**

**PART A**

9. The Management Company shall be entitled to set aside each year an appropriate amount (which amount shall be deemed for the purposes of clause 7 to be an expense incurred by the Management Company in carrying out its obligations under the Lease) as a reserve fund ("the Reserve Fund") for or towards those matters referred to in this Schedule which are likely to give rise to expenditure after such year or other period being matters which are likely to arise either only once during the then unexpired term of this Lease or at intervals of more than one year during such unexpired term including (without prejudice to the generality of the foregoing) such matters as the repair of the structure not included in any lease of a flat the repair of the conduits and the overhaul renewal and modernisation of any plant or machinery (the said amount to be computed by the Management Company in such manner as to ensure so far as is reasonably foreseeable that the building maintenance charges shall not unduly fluctuate from year to year)"

**Consideration of the service charge dispute**

11. The final hearing took place at Havant Justice Centre in conjunction with the trial of the County Court aspects of the dispute. The issues raised and the evidence given are dealt with in the County Court judgment and are not repeated here.

12. Most significantly for the purposes of the determination by this Tribunal, the Respondent did not dispute the recoverability or the reasonableness of the service charges themselves. The Respondent's case was that the sums were not payable because of a breach of duty on the part of the Second Applicant (and the First Applicant) such that damage was caused to the Flat and the Respondent was entitled to have that cease and to be compensated for the effects.
13. The question of breach of duty on the part of the Second Applicant is a matter for the County Court and not for this Tribunal. The question is dealt with in the judgment of the County Court.
14. There was an issue raised as to the degree of connection between the claim for the service charges and administration charges on the one hand and the counterclaims for breaches of duties on the other. However, that also falls within the jurisdiction of the Court.
15. As the question of whether or not the charges are payable in light of the asserted breach of duty does not fall for consideration by the Tribunal and as the Respondent has not challenged the reasonableness or recoverability in themselves of the service charges, the Tribunal finds the service charges to be both reasonable and recoverable.

#### **Consideration of the administration charges dispute**

16. The Respondent having not paid the service charges, the Second Applicant incurred cost for debt collectors to seek to recover payment. The Second Applicant wishes to recover those sums as administration charges.
17. The Respondent's case adopts the same approach as to the service charges, namely that no sums are payable by the Respondent because of the effects of the breach of duty by the Second Applicant and, of more direct relevance, that action should not have been taken by the Second Applicant to recover the sums claimed.
18. The County Court has held that at all times the Respondent's claim for damages against the Second Applicant exceeded the service charges, indeed the portion of damages awarded to the Respondent for the period prior to the dates of demand of the service charges were such as to exceed the sums demanded as service charges by a considerable distance. The County Court has also held that the Second Applicant's claim for payment of service charges, and administration charges, were so closely connected that they should not be treated separately to the Respondent's counterclaims.
19. As the effect of the findings of the County Court are such that at no time was the amount of the service charges due in practice to the Second Applicant, neither are the administration charges incurred in demanding charges then claimed to be due reasonable and recoverable, in any sum and the Tribunal so finds.

### **Applications in respect of costs and refund of fees**

20. The Second Applicant, in the event and following its addition as a party, pursued the claim in the County Court and not through the Tribunal. So too purportedly the First Applicant prior to that. Hence, the specific questions on the usual application form were not answered. Legal costs are claimed by the Second Applicant in respect of the County Court case. It is unclear whether or not any costs are sought in the Tribunal proceedings or whether any costs would in any manner be added as service charges or administration charges.
21. However, in light of the finding (of the County Court) that the service charge sums on the one hand and further in light of the finding (of the Tribunal) that the administration charges on the other hand are in both instances not in practice payable by the Respondent, the Tribunal finds that it is just and equitable in the circumstances for an order to be made under section 20C of the Landlord and Tenant Act 1985, and Para 5A of Schedule 11 of the Leasehold Reform Act 2002, so that the Second Applicant may not pass any of its costs incurred in connection with the proceedings before the Tribunal through the service charge or by way of administration charges.

**Judge J. Dobson**

## **RIGHTS OF APPEAL**

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

## **Appendix of relevant legislation**

### **Landlord and Tenant Act 1985 (as amended)**

#### **Section 18**

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -

- (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
- (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -

- (a) "costs" includes overheads, and
- (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

#### **Section 19**

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -

- (a) only to the extent that they are reasonably incurred, and
- (b) where they are incurred on the provisions 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.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

#### **Section 27A**

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -

- (a) the person by whom it is payable,
- (b) the person to whom it is payable,
- (c) the amount which is payable,
- (d) the date at or by which it is payable, and
- (e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any



specified description, a service charge would be payable for the costs and, if it would, as to -

- (a) the person by whom it would be payable,
  - (b) the person to whom it would be payable,
  - (c) the amount which would be payable,
  - (d) the date at or by which it would be payable, and
  - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
- (a) has been agreed or admitted by the tenant,
  - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
  - (c) has been the subject of determination by a court, or
  - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

## **Commonhold and Leasehold Reform Act 2002**

### **Schedule 11, paragraph 1**

(1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—

- (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
- (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
- (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
- (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—

- (a) specified in his lease, nor
  - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

### **Schedule 11, paragraph 2**

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

**Schedule 11, paragraph 5**

(1) An application may be made to the appropriate tribunal for a determination whether an administration charge is payable and, if it is, as to—

- (a) the person by whom it is payable,
- (b) the person to whom it is payable,
- (c) the amount which is payable,
- (d) the date at or by which it is payable, and
- (e) the manner in which it is payable.

(2) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) may be made in respect of a matter which—

- (a) has been agreed or admitted by the tenant,
- (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
- (c) has been the subject of determination by a court, or
- (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

- (a) in a particular manner, or
- (b) on particular evidence,

of any question which may be the subject matter of an application under sub-paragraph (1).